

An International Journal on Grey Literature



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‘PUBLISHING, LICENSING, AND OPEN ACCESS’

GreyNet

The Grey Journal

An International Journal on Grey Literature

COLOPHON

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About TGJ

The Grey Journal is a flagship journal for the international grey literature community. It crosses continents, disciplines, and sectors both public and private. The Grey Journal not only deals with the topic of grey literature but is itself a document type classified as grey literature. It is akin to other grey serial publications, such as conference proceedings, reports, working papers, etc.



The Grey Journal is geared to Colleges and Schools of Library and Information Studies, as well as, information professionals, who produce, publish, process, manage, disseminate, and use grey literature e.g. researchers, editors, librarians, documentalists, archivists, journalists, intermediaries, etc.

About GreyNet

The Grey Literature Network Services was established in order to facilitate dialog, research, and communication between persons and organizations in the field of grey literature. GreyNet further seeks to identify and distribute information on and about grey literature in networked environments. Its main activities include the International Conference Series on Grey Literature, the creation and maintenance of web-based resources, a moderated Listserv, and The Grey Journal. GreyNet is also engaged in the development of distance learning courses for graduate and post-graduate students, as well as workshops and seminars for practitioners.

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GreyNet International Call to Merger / New Titleholder

GreyNet's origin and foundation is within the International Conference Series on Grey Literature. GreyNet is sustained by an expanding author/research base and is for 50% funded by Associate Membership. GreyNet is managed by its founding director and supported by four service providers and four committees responsible for program planning, resource policy, social media, and educational activities. Together these stakeholders are the guarantee for GreyNet's range of information products and services accessible to grey literature communities and those they serve.

Since its relaunch in 2003, this independent organization has operated internationally under the auspices of TextRelease, a sole proprietorship. Now 12 years on, GreyNet has reached a turning point and TextRelease alone is unable to invest in resources that would be of significant benefit to this organization. A major partner and new titleholder is vital to GreyNet's future. Interested parties are invited to access GreyNet's Business Report, May 2015.

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Is the Licensing of Grey Literature Using the Full Palette of “Contractual” Colors?: A Comparative Analysis of Grey Literature Terms of Use*

Tomas A. Lipinski and Andrea J. Copeland (United States)

Introduction

This paper reviews a sample of licenses or terms of use governing the use of grey collections. A license is a form of legal permission. It need not be a contract but often is. Some terms of service reviewed do not even provide permission per se but state a list or rules users should follow. From this analysis a list of best licensing practices or checklist of considerations can be offered. Regardless of the specific character the phrase “terms of use” is used to represent the “agreements” under discussion. The framework for comparison and assessment draws upon that used in similar studies used to evaluate the terms of service for various social media sites (Lipinski & Copeland, 2013; Lipinski, forthcoming). The various terms of use are reviewed in detail and deconstructed in terms of legal essence or effect in order to present a “landscape” or descriptive overview of the legal aspects of grey literature terms of use in current use.

Research Question - *What provisions are found in licenses (or terms of use) governing the use of grey literature and are these provisions adequate to preserve, make accessible and use grey literature? This will assist in fulfilling one goal of the Pisa Declaration on Policy Development for Grey Literature Resources, to “further strides in licensing grey content for both commercial and non-commercial purposes.” (Declaration #10, May 14, 2014).*

Research Method And Framework - *Several terms of use governing Grey Literature (GL) collections are reviewed. The terms of use identified for consideration were sourced from the affiliations of GL Conference presenters since 2009 (2010-2013 or GL12-GL15) or of a grey literature collection that was a focus of a particular GL annual conference presentation. This initial review resulted in ten readily available terms of use OpenGrey (a Creative Commons based license), CNRS the National Center for Scientific Research, CERN the European Organization for Nuclear Research, Alberta Health Services (Canada), Research Gate, KISTI the Korea Institute of Science and Technology Information, STFC (Science and Technology Facilities Council, United Kingdom), British Library, Library of Zeeland (Netherlands), and the National Documentation Center of the National Hellenic Research Foundation (also a Creative Commons based license). In addition, two commercial suppliers (EBSCO Green File and Wolters Kluwer OVID) were included for comparison.*

While not all terms of use reviewed fell within United States jurisdiction, the contract and other legal principles applied and discussed within are common to all countries. Second, specific terms and conditions were compared in order to identify problematic provisions in light of one possible measure of efficacy; proposing that the following minimum characteristics should be found or addressed in the required Terms of Service (TOS) in public repositories: Functionality, Integrity, Provenance and Permanence (FIPP).

As discussed in Lipinski and Copeland (2013), one framework used to assess the terms of use governing online collections consists of the following minimum characteristics: Functionality, Integrity, Provenance and Permanence (FIPP). An overview of these characteristics follows. It is based on that earlier work but is modified as indicated below to the present context, where a there is increased focus upon content availability rather than service functionality and one in which users have reduced rights to contribute content. (The prior work focused on analysis of several social network and community web services.) In this way the licensing of grey literature collections mirrors traditional licensing in libraries, i.e., database content licensing. This assessment can assist the licensors and users of licensed grey literature in designing more effective terms of use.

Functionality

Functionality, there should be...

- The ability to make a variety of uses of the available content; use rights should be at least as broad as those under the copyright law, i.e., the set of “rules” that would exist regarding the content in the absence of a license.

* First published in the GL16 Conference Proceedings, March 2015.

- Restrictions on use should be narrow and not go beyond those restrictions found in the copyright law, i.e., the set of “rules” that would exist regarding the content in the absence of a license. Where the website does allow for user contributions restrictions on content and format restrictions or exclusions should be limited at most to unlawful content, unlawful in terms of the criminal law, child pornography for example, or actionable in terms of the civil law, defamatory content for example.
- Warranty (a legal promise) given by the provider of service availability and functioning; and the potential for a warranty regarding the lawfulness of content from users.
- Limited termination provisions, including adequate notice prior to termination.

In general, two licenses used the Creative Commons (Open Grey and National Documentation Centre, National Hellenic Research Foundation). However the National Documentation Centre, National Hellenic Research Foundation included a set of terms and conditions in addition; it is those additional terms and conditions that are analyzed here. While Creative Commons is appealing for many social and legal reasons, such licenses are not without issues (Lipinski, 2013).

User Rights and Restrictions¹

License should not restrict use rights to those that would exist under copyright law, in the absence of the license. Some licenses however did just that, restricting for example reverse-engineering; a practice that in order to achieve interoperability is often found to be a fair use.² The Ovid terms and conditions are consistent with this position (“solely in accordance with copyright law” with specific mention of “fair use”). However, from the perspective of a user it could be argued that a license should give additional rights beyond that of the copyright law. One benefit of couching terms of use in the form of legal agreements (contractual license) is to clarify the unresolved or contentious areas of copyright and in so doing increased the scope of use rights. Licenses can for example make clear that the use of content in the creation of course packs is a fair use. Case law, at least in a commercial context suggests that such collation is not a fair use.³ While not referencing the copyright law per se CERN has very broad use rights, allowing users to “perform work, or transmit or store data consistent with the stated goals, policies and conditions of use as defined by the bodies or bodies granting you access.”

The two most common user restrictions relate to commercial use (Open Grey, Ovid, Alberta Health Service, National Documentation Centre/National Hellenic Research Foundation) and some form of data-mining or automated searching (GreenFILE: EBSCO, ResearchGate, British Library). It is arguable that such activities would be prohibited as well under broad language such as that contained in the Alberta Health Service terms and conditions (“no portions of the Site or Content...may be reproduced in any form, or by any means...”) as it is typical to create a set of sub files on which to run searches when data mining.

The Library of Zeeland is the only license to use a so-called savings clause, reserving all rights for the provider or licensor that are not explicitly granted: “Any rights not expressly granted herein are reserved.” Such clauses are somewhat archaic, a vestige of old contract practices. Recent courts and commentators argue that a saving clause is without legal effect, especially where use rights concern content protected by copyright. “The reservation of rights provision states: ‘All rights not specifically granted to licensee hereunder are expressly reserved by Licensor.’ The law in this Circuit is clear, however, that such a clause adds nothing to the substantive prohibitions in the Agreement.”⁴

However, a failure to elucidate rights does not take rights away. In other words, because a license fails to grant a user fair use rights for example, does not mean the user is without these

¹ In the previous study of co-created community repositories, it was logical to include a variable related to patron contributions to the repository. While several of the websites (National Hellenic Research Foundation and Library of Zeeland) included the right for user contributions this was not typical in the terms of use reviewed. As a result two specific variables (Ability to contribute content: create personal repository and “Content prohibited”) were replaced with “Rights” and “Restrictions” respectively, within the broad category of Functionality.

² See, *Evolution, Inc. v. SunTrust Bank*, 342 F. Supp. 2d 943 (D. Kan. 2004) (de-compilation of software in order to extract out unprotected elements fair use); *Sony Computer Entertainment, Inc. v. Connectix Corp.*, 203 F.3d 596 (9th Cir. 2000), cert. denied 531 U.S. 871 (2000) (copying computer code to extract unprotected elements fair use); *Atari Games Corp. v. Nintendo of America, Inc.*, 975 F.2d 832 (Fed Cir. 1992) (reverse engineering of computer program as intermediate step to extracting unprotected elements can be a fair use); and *Sega Enterprises Ltd. v. Accolade, Inc.*, 977 F.2d 1510 (9th Cir. 1992) (de-compilation of software program to extract unprotected elements fair use).

³ See, *Princeton University Press v. Michigan Document Services*, 99 F. 3d 1381 (6th Cir. 1996), cert. denied 529 U.S. 1156 (1997).

⁴ *Hard Rock Café, International. (USA) Inc. v. Morton*, 1999 WL 717995, *23 (S.D.N.Y., 1999) (unpublished).

rights. The fair use right is not a right for copyright holders to grant; it is a right of users. As one commentator explained: "The inclusion of a generic savings clause, such as 'All rights not specifically granted to Licensee are expressly reserved,' has no effect on a library's rights under fair use and Section 108, and hence does not bar lending under ILL arrangements. A publisher's rights are expressly limited by the exceptions in the law, including Sections 107 [fair use] and 108, so they have no right to forbid activities that Sections 107 and 108 allow."⁵

By the same token, if a provision appears to limit fair use rights in specific, such to prohibit reverse engineering, then the user will be bound to the limitations to which to he or she agreed, assuming a valid (enforceable) contract is formed.

Legal Risk and Warranty Disclaimers

As might be expected the commercial licenses (GreenFILE from EBSCO and OVID from Wolther Kluwer) contained lengthy terms and conditions. However the British Library terms and conditions were also extensive. Those terms and conditions that did form or intend to form a contract (two did not, see discussion below) included some sort of warranty waiver or "as is" clause (Open Grey, GreenFILE, Ovid, Alberta Health Service, ResearchGate, Library of Zeeland, National Documentation Centre, National Hellenic Research Foundation). An "as is" clause, as the phrase implies, indicates that the content is provided "[i]n the existing condition without modification...[in] a sale of property 'as is' means that the property is sold in its existing condition, and use of the phrase as is relieves the seller from liability for defects in that condition.—Also termed *with all faults*."⁶

Initially used by the software industry, such clauses permeate the information contracting landscape. CERN does not use this specific language but appears to intend the same result: "Use of the Grid is at your own risk. There is no guarantee that the Grid will be available at any time or that it will suit any purpose...Although efforts are made to maintain confidentiality, no guarantees are given." Similarly, STFC "disclaims all responsibility for and accepts no liability for any errors or losses caused by any inaccuracies in such information or the consequences of any person acting or refraining from acting or otherwise relying on such information."

Other warranties disclaimed in the licenses reviewed were for merchantability, fitness for a particular purposes and non-infringement (Ovid, Alberta Health Service, ResearchGate, Library of Zeeland). "[T]he implied warranty of fitness for a particular purpose is a warranty implied by law when a seller has reason to know that a buyer wishes goods for a particular purpose and is relying on the seller's skill and judgment to furnish those goods."⁷ An implied warranty of merchantability is "[a] warranty that the property is fit for the ordinary purposes for which it is used."⁸ One commentator offers this explanation: "The *implied warranty of merchantability* attaches when the seller is a merchant with respect to the goods involved in the exchange. Accordingly, the product must meet certain standards; it must pass without objection in the trade under the contract description and it must be fit for the ordinary purposes for which such goods are used. The concepts of marketability, operability, and repairability have emerged as varying criteria for merchantable goods."⁹ Such disclaimers may appear ill-suited to information "products" such as grey literature collections or for information "services" such as access to report literatures, statistical data, etc., again reflecting the impact of software licensing practices.

A disclaimer of non-infringement means that the content supplied by the licensor does not infringe another's copyright. Under the laws of copyright liability using (printing, downloading, reposting, distributing, etc.) a work that is infringing is an act of infringement, making a user that prints, downloads, reposts, etc. liable as well. Users should be aware of such risk-shifting mechanisms in license terms and conditions. Library, educational or similar institutions should never agree to a license that does warrant (a legal promise) non-infringement, as the use of any content has the potential to trigger copyright liability, not only on the part of the library, educational entity, etc. but upon its constituents as well such as patrons, students, etc.

From the user perspective it could be argued that a warranty of non-infringement should be provided by anyone providing copyrightable content; from the provider perspective it may be

⁵ Brandon Butler, Appendix A: Legal Licensing Issues (REPORT OF THE TASK FORCE ON INTERNATIONAL INTERLIBRARY LOAN AND DOCUMENT DELIVERY PRACTICES (June, 2011), available at <http://publications.arl.org/1acgvq.pdf>.

⁶ BLACK'S LAW DICTIONARY 502 (9th ed. 2009) (no pagination in Westlaw) (emphasis original)

⁷ *Martinez v. Metabolife Intern., Inc.*, 6 Cal. Rptr. 3d 494, 500 (2003).

⁸ BLACK'S LAW DICTIONARY (9th ed. 2009) (no pagination in Westlaw).

⁹ 1 JULIAN B. MCDONNELL & ELIZABETH J. COLEMAN, COMMERCIAL AND CONSUMER WARRANTIES ¶ 1.02[1], at 1-7 (1991) (emphasis original).

unreasonable (due to cost, for example) to include such warranty when the content is provided gratuitously as is the case with many grey collections. One should never make a legal promise (warranty) that one is unsure of fulfilling. Any fear on the part of providers of grey collections built from user contributions providers should be assuaged by the various take-down procedures that exist in many countries regarding content posted by third parties that is claimed to be infringing. See, 17 U.S.C. § 512 (United States). As long as the provider expeditiously removes or disables access to the alleged infringing content posted by a third party (including a link to alleged infringing content) there will be no monetary liability whatsoever.¹⁰ Even in the absence of so-called codified safe harbors, the general principles of secondary copyright liability would protect a provider that once on notice of the infringing nature of posted or linked content acts to remove or disable access to the infringing content. Observe that the statutory trigger for removal or disabling operates where the content may not actually be infringing. As a result it is suggested that provider make some assessment of whether the content is more likely than not to be infringing and not remove or disable unless this conclusion is reached. Even if there is a chance the content may be infringing additional protection from monetary award may exist for non-profit entities under U.S. law when reproducing content when the entity possesses a reasonable belief that reproduction of the content was a fair use.¹¹ Nonetheless users should be aware of using content without such warranty. Providers should be aware of safe harbor and liability principles in order to assess their level of legal risk for reproducing or hosting infringing content.

The gratuitous nature of the content provided by grey literature sites, except those published by commercial vendors of course, may also work to the advantage of content provider and obviate the need for disclaimers other than non-infringement. The nature of this harm would involve some claim of harm due to errors, omissions, or other fault with the information itself, or perhaps defamation. Most claims would rest on some concept of negligence. There are four elements to a claim of negligence: duty of care (the harm must be foreseeable in order for an actor to have a duty of care to prevent it), failure of that duty, that a failure to fulfill that duty was the proximate (or legal) cause of the harm (the harm must be foreseeable and without a superseding cause), and there must be measureable harm.¹² A plaintiff would first have to prove that there was a duty of care on the part of the provider to provide the content without any errors and omissions whatsoever or without harm of any sort. Most courts would never make this requirement of information publishers and providers, commercial or otherwise, even less so with information provided for free. The public policy implications of imposing liability would be disastrous if a court would choose to impose a duty of care that the information be 100% error free. A commercial publisher facing the reality of profits and losses and knowing that it may be liable for errors, omissions and other harms would simply opt not to provide such content altogether.

Even if there was a duty of care to provide grey literature content without errors, omissions, faults or harms of any, a court would still need to conclude that the error, omission, etc. was the legal cause of the measureable harm.¹³ Where content is provided for free there can be no liability for economic harms, e.g., loss of property. Physical harms to a person may result in liability but the gratuitous nature of the information can impact the reasonableness of the reliance upon it. The gratuitous nature of most grey literature collections means that is not reasonable for a person to rely upon it for purposes of establishing provider liability.

Is it nonetheless recommended practice to use an "as is" notice? While most legal counsel might recommend the safest course of over-protection (notices and disclaimers) the legal reality is even where the content is provided by a commercial provider, a warning notice of errors, omissions, etc. is not required to secure protection. In the seminal case of *Winter v. G.P. Putnam's Sons*, 938 F.2d 1033 (9th Cir. 1991) involving harm from publishing *"The Encyclopedia of Mushrooms"* that misidentified poisonous mushrooms as edible a U.S. appellate court concluded that a publisher has "no duty to investigate the accuracy of the contents of the books

¹⁰ See, e.g., 17 U.S.C. §512(c) and (d) ("a service provider shall not be liable for monetary relief...").

¹¹ (See, 17 U.S.C. § 504(c)(2)).

¹² The Restatement (Second) of Torts § 435, defines foreseeability as follows: "The actor's conduct may be held not to be a legal cause of harm to another where after the event and looking back from the harm to the actor's negligent conduct, it appears to the court highly extraordinary that it should have brought about the harm."

¹³ "Just as foreseeability is central to finding that a duty is owed, it is also 'the touchstone of proximate cause' and of the superseding cause doctrine." *Sanders v. Acclaim Entertainment, Inc.*, 188 F.Supp. 2d 1264, 1276 (D. Colo. 2002).

it publishes.¹⁴ Should a provider use a warning notice to dissuade users from reasonable reliance or to investigate the accuracy of content it provide in order to meet a lesser standard of care? The court in the *Winter* answered in the negative: “with respect to the first, a publisher would not know what warnings, if any, were required without engaging in a detailed analysis of the factual contents of the book. This would force the publisher to do exactly what we have said he has no duty to do—that is, independently investigate the accuracy of the text. With respect to the second, such a warning is unnecessary given that no publisher has a duty as a guarantor.”¹⁵ Providers of information content, even commercial publishers should rest assured that courts would seldom find legal liability for errors or omissions in the grey content provided in online or other collections.

For harms other than copyright and contributed (posted) by third parties in an online context, further protections are available, at least in the United States. Federal law provides complete immunity: “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1). Section 230 provides broad immunity, even where the service provider or website would edit the content users contribute or otherwise post.¹⁶ Contributions to grey collections by users made with the knowledge that other researchers will be able to access the content submitted should extend the immunity of section 230 to the hosting entity. As a result, the mechanisms of tort liability work in favor of publishers and providers of grey literature to protect them from liability for content the publisher or provider creates; for content created and submitted or posted by a user or other third party, as long as the content is contributed in the context of further online access by others, section 230 immunity should apply as well.

A final risk-shifting technique is to disclaim or limit the damages available should there be a dispute between the parties over harm from the product or service. A number of terms of use adopted this strategy (Open Grey, GreenFILE, Ovid, Alberta Health Service, ResearchGate, KISTI, British Library, Library of Zeeland, National Documentation Centre, National Hellenic Research Foundation).

Termination

The terms and conditions reviewed also gave the provider the right to terminate a user from its service, often upon breach (Open Grey, Alberta Health Network). The Library of Zeeland has a termination right but does not indicate what will trigger the exercise of that right (“reserves the right in its sole discretion, to terminate your access”). Recall that Ovid refused to give a warranty of non-infringement but reserves the right to “terminate the account or access of users who infringe the intellectual property rights of others.” Ovid clearly desires it both ways. Both a provider and user might desire that any termination right be preceded by some notice of fault (typically a material breach) and an opportunity to remedy the fault with some time frame, say thirty days. This notice and opportunity is known as a cure right or right-to-cure. From both the content provider (licensor) and user (licensee) perspective it is preferable to condition the right to terminate upon breach only of a material term and then only if there has been adequate notice and a right to cure, typically requiring a 30 day period in which the party in breach can cure the fault and avoid termination. See Appendix A. Functionality Provisions in Web-based Grey Literature Collections, Examples.

Integrity

Integrity (of legal particulars), requires an...

- Opportunity to view terms coupled with a clear mechanism of assent to those terms (contract formation).
- Indemnification to accompany the service and user warranties provided.

¹⁴ A publisher may [] assume such a burden, but there is nothing inherent in... the surrounding legal doctrines to suggest that such a duty should be imposed on publishers.” Id. at 1037.

¹⁵ Id. at 1037-1038 (underscore original).

¹⁶ See, *Donato v. Moldow*, 865 A.3d 711, 725 (N.J.Super. 2005): “Appellants claim that Moldow controlled the content of the discussion forum, thus shaping it, as a result of which he was transformed into an information content provider. He accomplished this, according to appellants, by selectively choosing which messages to delete and which to leave posted.” The statute does limit immunity to information “provided by another information content provider.” In *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003), involving the posting on an open website of a private email that the sender did not intend to be posted the court indicated that section 230 would not apply: “immunity applies only with regard to the third-party information provided for use on the Internet or another interactive computer service.” Id. at 1033.

- If the licensor has the ability to change the terms and conditions of use, there should also be adequate notice of any change in terms.
- Assent (agreement) to changes should be subject to a clear and distinct mechanism, e.g., a click-to-agree screen prompt.

Most of the terms and conditions reviewed, as is typical in online settings, equate use of the service or access to content with agreement to terms and conditions of use. While this is an efficient mechanism in online settings, users should be aware of the dangers of equating use with assent; use of service by patrons might constitute assent to renewal or acceptance of a change in terms. The problem should be obvious, how is one to know when a use really means “I agree” or a use is just that, use of the service or website. Use equal assent mechanisms are prevalent in the terms of service reviewed (Open Grey, GreenFile, Ovid, Alberta Health Services, ResearchGate, Library of Zeeland, National Documentation Centre, National Hellenic Research Foundation).

Assent to Terms and Conditions and Changes and Terms and Conditions

As observed many licenses equated use with assent, with the user bound to abide by the terms of use. Two licenses did not have its terms and conditions in the framework of a contract, i.e., the website did not intend its terms and conditions to be binding on users. In fact, the language made it clear to the user that a contract was not intended. The Science and Technology Facilities Council website statement consisting of seven lines of text state that “the information made available ... does not form part of any contract between STFC and the user.” The British Library website makes a similar statement: “The usage guide for images is based on goodwill. It is not a legal contract.” Oddly, the British Library website still had a robust set of terms and conditions that included a number of restrictions as discussed above.

Where a contract is formed there may be a need on the part of the provider to change the terms and conditions of use. While this is common from the licensee user perspective what is more important is whether or not such changes are communicated to the user coupled with an opportunity to accept or reject (typically by ceasing use of or access to the service) the new terms. How is change of terms communicated to user of grey literature collections? Ovid uses a website posting to announce changes in terms, with further use after posting deemed acceptance of the changes. Alberta Health Services uses a similar mechanism and admonished users to “please review the Terms and Conditions regularly as your continued use of the site will constitute your agreement to any changes.” The National Hellenic Research Foundation can also “amend the Terms & Conditions [] from time to time, also using a web posting mechanism. At least if the changes are “substantial” the National Hellenic Research Foundation will notify users “by posting a prominent announcement on the Website.” The Library of Zeeland “reserves the right to changes the terms, conditions, and notices” but does not indicate the mechanism for effecting the changes. Only Open Grey requires that changes to terms must be based on the mutual written consent of both parties.

It is questionable whether an approach such as “check our website for changes” is a legally valid mechanism for purposes of assent to those changes. In mass market agreement scenarios such as those for grey literature collections, i.e., those scenarios where there is no opportunity to negotiate over the terms of use, where every user gets the same terms of use, at least one United States appellate court indicated that a “check our website for changes” mechanism is indeed not valid.¹⁷ The best way to incorporate such changes would be for a user to be unable to proceed past the home page of the website without first clicking-to-agree that the user has read and agrees to the substantial changes. Even from the provider perspective this might be preferable as then there is clear indication that the user is aware of and accepts the terms

¹⁷ The United States Court of Appeals for the Ninth Circuit in *Douglas v. Talk America, Inc.*, 495 F.3d 1062 (9th Cir. 2007), cert. denied 552 U.S. 1242 (2008), concluded that posting of changes followed by use of service is not enforceable: “Talk America posted the revised contract on its website but, according to Douglas, it never notified him that the contract had changed. Unaware of the new terms, Douglas continued using Talk America’s services for four years” Id. at 1065. The court concluded that the new terms were not part of the agreement: “Even if Douglas had visited the website, he would have had no reason to look at the contract posted there. Parties to a contract have no obligation to check the terms on a periodic basis to learn whether they have been changed by the other side” Id. Once a contract is formed any changes represent an offer for additional terms, an offer that in theory requires separate and distinct assent. The court further commented on the problem of providing notice unless the notice also identifies which terms changed: “Nor would a party know *when* to check the website for possible changes to the contract terms without being notified that the contract has been changed and how. Douglas would have had to check the contract every day for possible changes. Without notice, an examination would be fairly cumbersome, as Douglas would have had to compare every word of the posted contract with his existing contract in order to detect whether it had changed” Id. at 1066, n. 1.

presented and that a contract is formed, at least for those provider desiring the terms be binding on users.

Indemnification

As discussed earlier a provider of content should warrant that it has the legal right to make the content available and that the content is not infringing. This should be expressed in clear language; not conditioned with limiting phrasing such as “to the best of its knowledge.” The content provider should also offer an indemnification in case the promise (warrant of non-infringement) was made in error and the content is actually infringing. None of the licenses made this indemnification and as discussed above most disclaimed a warranty of non-infringement. Perhaps it is the non-commercial (free) environment of grey literature collections that is prompting this strategy, a trade-off in the minds of providers in return for the no-cost access. Even the two commercial vendors (GreenFILE EBSCO and Ovid) do not offer non-infringement warranties, Ovid specifically disclaims it. In fact, both commercial vendors not only fail to offer a promise of non-infringement and a supporting indemnification; rather both require the user to indemnify the vendor! Indemnifications for copyright harms from use of content should extend from provider to user not the other way around. Users should not enter into an indemnification lightly as it shifts along with damage disclaimers all risk from the content provider to the content user.

Some providers of grey literature do require such indemnifications from users of its content. Alberta Health Service does not require indemnification from users but does require users to “agree that any information submitted to AHS does not infringe the intellectual property of any third party.” ResearchGates does in fact require users to indemnify it for “any information that is stored on request of the respective user.” While this might appear logical it is somewhat unnecessary as the Section 512 take-down process—included in its terms and conditions, see discussion below—would provide for complete damages remission for infringing content posted by users. For other (tort) harms that result from user posted content, tort immunity provisions such as section 230, in the United States, provide protection as well; only the user who posted the content would be liable. Even though many collections are located in other countries, the choice of law and possibly the jurisdiction governing disputes can be the United States (see discussion below under Provenance). Several providers not based in the U.S. nonetheless chose U.S. law and courts as the intended jurisdiction.

In the European Union consumers have rights relating to jurisdictional issues. The rules are mandatory and cannot be waived or contracted away. The Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters for example indicates that as long as the seller’s activities are directed to the consumer’s domicile, the consumer can sue there.¹⁸ It is likely that users of grey collections would be considered consumers and so would have the rights of jurisdictional choice. Grey literature terms of use are not contracts for the sale of goods in the traditional sense. Article 13(3) of the Brussels Convention indicates that the rules apply to “any other contract for the supply of goods or a contract for the supply of services.” Access to grey collections is a service supplied to users. A library entering into an agreement with a provider of grey literature is likely not a consumer. Rather the transaction would be considered B-2-B (business-to-business).¹⁹ Recall also the two providers

(FTSC and the British Library) disclaim any contractual formation whatsoever so it is unclear whether protections such as those offered in the EU apply at all. For these reasons determining whether the jurisdictional provisions in the terms of use reviewed are enforceable. See

¹⁸ EC Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, Brussels, 1978 O.J. (L 304). The seller, however, may sue the consumer only in the consumer’s country of domicile. Article 15 defines “consumer” as someone who is acting “outside his trade or profession” which is definition used by the European Legislature in all of its mandatory consumer rules. “Even when a contract for the sale of goods involves a consumer, the Rome Convention [Rome Convention on the Law Applicable to Contractual Obligations, June 19, 1980, 80/934/EEC, 1980 O.J. (L 26)] permits the parties to choose governing law with one important qualification. In all cases, the consumer is protected by the law of his country of residence, if the mandatory laws (i.e., laws that a contract cannot override) of that country provide him with additional protections.” GEORGE B. DELTA AND JEFFREY H. MATSUURA, *LAW OF THE INTERNET* § 3.04, *Foreign Principles of Jurisdiction* (2014) (no pagination in Westlaw). A consumer might be able to sue in his or her own country but the court may need to apply the seller’s law. Other instruments echo these concepts. Council Directive 93/13/EEC of April 1993 on Unfair Terms in Consumer Contracts, 1993 O.J. (L 95) 29; and **Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.**

¹⁹ See discussion regarding the library as merchant under United States contract law in Tomas A. Lipinski, *THE LIBRARIAN’S LEGAL COMPANION FOR LICENSING INFORMATION RESOURCES AND SERVICES* 57-58- (2012).

Appendix B. Integrity of the Legal and Practical Circumstances in Web-based Grey Literature Collections, Examples.

Provenance

Provenance (legal) of the content should include...

- Copyright or other legal notices.
- Attribution or other designations.
- Identification of ownership rights for both service provider and user, if applicable.
- Use rights to other licensees.

Most terms and conditions reviewed made a statement of copyright ownership, i.e., that the supplied content was protected by copyright (Open Grey, GreenFILE EBSCO). Again, because all but two of the websites assessed did not allow for the contribution of user content the “Non-exclusive rights given to website or to other users content” of the prior study was replaced with “Boilerplate” as a variable of analysis under the legal Provenance area. Boilerplate refers to “[r]eady-made or all-purpose language that will fit in a variety of documents...Fixed or standardized contractual language that the proposing party often views as relatively nonnegotiable.”²⁰

Notices and Attributions

The use of copyright notice is required by some provisions of United States copyright law.²¹ However, the concept of author or copyright holder attribution is not a copyright concept. The failure to include such attribution does not constitute copyright infringement.²² However, since one tenet of grey literature collections is a commitment to making such works available at no cost it is not unreasonable to require in return the users of the content provide adequate citation information.

Open Grey, using a Creative Commons licensing scheme offers the strictest requirement regarding attribution and the moral rights of presentation or appearance while other terms of use included provisions related to notice. The British Library asks users to “please credit the source material” and to “preserve all public domain marks and creative commons licenses attached to the works” and “not to remove or alter any notices, conditions, forms of identification or dedications if required not to. Such requirements have support in the copyright law. In the United States for example it is unlawful to “intentionally remove or alter any copyright management information” (CMI) regarding the work, the right holders, attributes of the work, etc.”²³ Consistent with this articulation, CNRS users “may not remove or change the names of authors or references to copyright of the publishers or any other means of identification of legal notice contained on the elements under license.” Likewise Alberta health Service users must “ensure that all copyright, trade-mark and other proprietary notices are retained ...” Even CERN, though not referencing the use a copyright notice indicates that users “shall respect intellectual property.”

Boilerplate

Use of boilerplate provisions in licenses is an efficient mechanism for resolving selected issues in contract execution. Often these provisions relate to peripheral issues not essential to the central purpose of the contract, i.e., for grey collections that would be issues related to access and use of content. The typical boilerplate terms and conditions in contracts include: choice of law and choice of forum (whose law will govern disputes and where those disputes would be litigated), force majeure (also known as an act of god provision indicating that non-performance due to natural disaster and similar unforeseen circumstances will not constitute a breach of the

²⁰ (BLACK’S LAW DICTIONARY 502 (9th ed. 2009) (no pagination in Westlaw).

²¹ See, e.g., 17 U.S.C. § 108(f)(1).

²² Failure to credit does not amount to copyright infringement: *Graham v. James*, 144 F.3d 229, 236 (2d Cir. 1998); Moral Rights: 17 U.S.C. § 106A; *Museum Boutique Intercontinental, Ltd. v. Picasso*, 880 F. Supp. 153, 157 at n. 3 (S.D.N.Y., 1995); *Gilliam v. American Broadcasting Companies, Inc.*, 538 F.2d 14, 24 (2d Cir. 1976).

²³ 17 U.S.C. § 1202(b)(1). In U.S. law the concept of CMI is broad enough to include the terms and conditions of use or symbols for example indicating the category of Creative Commons or that the work is protected by copyright (©). CMI “means any of the following information”: name of, and other identifying information about, the author of a work, terms and conditions for use of the work, Identifying numbers or symbols referring to such information or links to such information, other information as the Register of Copyrights may prescribe by regulation. 17 U.S.C. § 1202(c)(2) and (6)-(8).

contract), severability (or survivability, indicating that if a provision of the contract is found legally unenforceable by a court, the rest of the contract remains in force), non-waiver (whereby the decision by one party not to enforce a term or condition or act upon a breach of the other party does not preclude the party from enforcing the term or condition or taking action in the future), integration (the current agreement represents the complete understandings of the parties, superseding prior versions or any other information).

Ownership Right Claimed and Non-Exclusive Rights Granted

As might be expected where users can post content, the terms of service indicate that the one who posted the content does not surrender any rights through mere submission of content but retains any rights. Retention of copyright interests is articulated in the Library of Zeeland terms of use. Similarly, the CNRS indicates that other users cannot claim a copyright interest in the content. CERN indicates that users “shall respect the intellectual property” rights that govern the content. One would expect that providers that allow user contributions would claim a non-exclusive right to use the content submitted and that other users could make similar use, but such provisions were not apparent. It is also possible that one could argue an implied license was granted to the provider and to other uses in such instances. Many grey literature content providers do however indicate that the provider possesses a copyright interest in at least the attributes of the website (British Library, National Hellenic Research Foundation) or the content (Open Grey, EBSCO, Ovid, KRISTI) and in some cases both (ResearchGate). Making a claim of copyright in collection content is important as it indicates that misuse of content (in contravention of the terms of use) may lead not only to a claim based on contract law (for breach of contract) but also one based on copyright law (infringement). See Appendix C. Provenance Aspects in Web-based Grey Literature Collections, Examples.

Permanence

Permanence, there should be in place...

- Limitations on changes to service and content.
- A mechanism whereby content that a copyright holder claims is infringing can be removed from the website.
- Articulation of whether content removal can occur in accordance with so-called take-down processes as articulated in U.S. copyright law (17 U.S.C. § 512).
- Processes for restoration of removed content in conjunction with the take-down process.

Changes in Content

Few terms and conditions reviewed allow for change in content. As might be expected the two commercial sites allow for changes in content (GreenFILE EBSCO and Ovid). As both vendors are aggregators of content and may in turn be licensees of the content each can make available, as such their provision of content is often dependant on agreements with others. Circumstances may change and the provider may no longer have the right to further make the content available. ResearchGate also “reserves the right to change, reduce, interrupt or discontinue the Service or parts of it any time.” The language is broad enough to allow for changes in content. As with a change in terms the National Hellenic Research Foundation will post notice on its website; it will do the same for changes in content but it is the only service to offer this feature to users (“the sole relevant announcement of these on this website”). While it is unreasonable to expect that content never changes, a provider should provide notice to users of significant or substantial changes in content.

Removal and Restoration of Content

A number of terms of use reviewed reference either generally or by specific citation some mechanism of take-down or disabling of access to alleged infringing content. The statutory processes in U.S. law is outlined in 17 U.S.C. § 512. If a provider of grey literature includes content that a copyright holder claims is infringing the terms of service indicate that the service provider will follow the section 512 or other take-down and disabling requirement. Under U.S. law however the statutory safe harbor—protection against all monetary remedy—offers protection only for content posted by a user, not for content produced or acquired then made available by the grey literature provider.

It may be that grey literature providers employ this mechanism because as discussed earlier no warranty of non-infringement is provided and providers see this as a trade-off. Perhaps

if a copyright holder realizes that a mechanism is provided for the removal of suspect (in terms of the copyright law) understands that content will be removed the copyright holder would be less likely to sue the grey literature provider. This take-down will occur even if the content is not infringing. The protection a service provider receives from the statute requires the content be removed or disabled “expeditiously.” While the take-down statute provides for a process of restoration of content or access none of the TOS reviewed alert users to the possibility of restoration. Under the statute, a restoration request must come from the user whose content was removed or access disabled.

Oddly, several websites make reference to U.S. copyright law and its take-down processes even the content is not within the jurisdiction of the United States. While British Library does not make specific reference to section 512, four of the five statutory factors are indicated for the take down notice to be valid, UK address is provided for contact. The Choice of Law and Choice of Forum is of course England and Wales. The Library of Zeeland terms and conditions reference Section 512 and include “Notice and Procedures for Making Claims of Copyright Infringement.” However, this makes sense as the Choice of Law and Choice of Forum is King County, Washington, USA. Perhaps the oddest combination is ResearchGate, reciting the five Section 512 requirements for an adequate take down notice, yet German contact and address information is provided with the choice of law and choice of forum being the Federal Republic of Germany. See Appendix D. Permanence Aspects in Web-based Grey Literature Collections, Examples.

Results

While there is diversity in approaches the terms of use that govern access and use of grey collections there is some consistency. However, not all practices may be either necessary from a legal risk perspective or in the best interests of promoting the maintenance and wide dissemination of grey collections as expressed in the Pisa Declaration. The adjustment in the FIPP evaluative factors demonstrate to both providers and users what legal risks still exist in license or terms of use articulations and more important what is within the realm of the possible. FIPP continues to be useful as model for both providers and users to of grey literature collections better understand the limitations and possibilities of maintenance, access and use of grey collections.

Recommendations (from the user perspective, but not exclusively)

Functionality

- Rights, should be granted to users at least as extensive as that given to users under the copyright law; this would allow for data mining for example, which is fair use under U.S. copyright law. Consider expanding the user rights in the areas of education (course packs), scholarly sharing, etc. Derivative uses should be allowed.
- Restrictions, avoid those provisions that might impact privacy rights (monitoring or reporting of abuse) or free speech rights (product reviews); restriction on commercial use is reasonable, whether content supplied by commercial or non-profit entity.
- Risk-shifting, content providers should include a warranty of non-infringement (and indemnification, see below under Integrity). Risk-shifting, “as is” warranty or other disclaimers may not be necessary; take-down and disabling mechanism may protect a responsive provider by limiting or reducing liability for infringing content posted by users; such processes may reduce liability in other scenarios. The principles of tort liability would work to protect the content provider for harms deriving from content given the gratuitous nature of grey literature content provided by government or non-profit entities. For harms other than copyright due to content posted by third parties, at least in the United States, 47 U.S.C. § 230(c)(2) provides complete immunity.
- Termination may be inevitable in some circumstances; however the right to terminate should be exercised only in situations of material breach and if notice is first given with a notice and 30 day right to cure. The use of a suspension mechanism should not be available to the provider.

Integrity

- Contract formation should be based upon a click-to-agree mechanism and provide an opportunity to read the terms before “clicking.”
- Change of material terms should be accompanied by notice and click-to-agree similar to initial contract formation.
- Indemnification should accompany a warranty of non-infringement, or if not, include mechanism for take-down and disabling responses, include restoration process as well. Users should not be required to indemnify the provider.

Provenance

- Attribution is not an exclusive right of the copyright holder but use of copyright notices is often required by some statutory provisions; attribution and other information about the work including terms and service can constitute Copyright Management information which should not be removed.
- Moral rights would include attribution; while criticism of content should be allowed, use that is unlawfully prejudicial to the honor or reputation of the creator should be prohibited.
- Copyright “ownership”: a user-creator does not surrender copyright in content submitted to a grey literature collection and assuming the contributor possess the legal right grants the entity a non-exclusive right to make the content available and grants users a non-exclusive right to use the content. Providers hold copyright in the website and aspects of its functionality (associated software, for example).
- Boilerplate used should include choice of law and forum (but should allow for user preferences, consistent with EU mandatory rules regarding consumer contracts), integration, severability/ survivability, non-waiver, force majeure.

Permanence

- Changes in content should be allowed, but if substantial in terms of quantity (items, articles, titles, etc.) or significance, change should be accompanied by prominent notice or alert.
- Removal of infringing or otherwise unlawful is of course acceptable, but providers should realize that various safe harbors are dependent upon removal or disabling of content before adjudication. Providers may want to make an assessment of whether or not removal or disabling is necessary in light of such request from a copyright holder. In circumstances of user contributed content removal of content should include a notice of removal or disabling to the contributor.

Section 512 or other take-down process must include restoration rights and communication of same to contributor whose content is being removed or disabled

References

Tomas A. Lipinski, *The Librarian’s Legal Companion for Licensing Information Resources and Service*, 299-310 (2013) (Chapter 9: General Public Licenses, Open Source Agreements, and Creative Commons Agreements, pp. 299-336).

Tomas A. Lipinski and Andrea Copeland, Look before you License: The Use of Public Sharing Websites in building Patron Initiated Public Library Repositories, 42(4) *PRESERVATION, DIGITAL TECHNOLOGY & CULTURE*, at 174, November 2013 (pp. 174–198).

Tomas A. Lipinski (forthcoming), Click Here to Cloud: End User Issues in Cloud Computing Terms of Service Agreements, in *IMCW2013 Proceedings* (Yaşar Tonta editor, 2014) (Springer: Communications in Computer and Information Science Series).

Appendix A. Functionality Provisions in Web-based Grey Literature Collections, Examples.

	<i>Rights (replaced: Ability to contribute content: create personal repository)</i>	<i>Restrictions (Replaced: Content prohibited.)</i>	<i>"As is" and other warranty disclaimers relating to accuracy or availability of service, including damage disclaimer.</i>	<i>Termination.</i>
Creative Commons (Open Grey).	Nonexclusive license to reproduce, adapt, to make public display or public performance and to otherwise modify the work if necessary to access and use the work in "other media and formats"	Commercial use. Serial licensing required.	" As-is ", including the absence of defects or errors or accuracy of the work. Damages disclaimed.	Automatic termination upon breach of terms.
GreenFILE: EBSCO.	Nontransferable and non-exclusive license granted to licensee for use by Authorized Users. Provide on-site and remote access to Authorized Users..."solely in accordance with copyright law," "fair use" allowed.	Data-Mining or Automated Searching ("Downloading all or parts... systematic or regular manner)"). Internal or personal.	" As-is ", no warranty regarding the information. Damages are also disclaimed, representations or warranties including the absence of defects or errors or accuracy of the work.	Upon breach, notice and 30-day cure right required.
Ovid.	"used for your internal management, reference and informational purposes...limited local electronic copies of select materials"	"Redistribution, retransmission, publication, transfer or commercial or other exploitation," derivative, course or study packs, reproducing or distributing entirety or lengthy sequence and archiving.	"As is" other warranties disclaimed include: merchantability, fitness for a particular purposes and non-infringement. Damages disclaimed.	"in appropriate circumstances and at its discretions, terminate the account or access of users who infringe the intellectual property rights of others."
CNRS. (Humanities and social science information portal).	Display, download and store for a variety of uses.	Personal use. Data-Mining Combine or creative derivative. Download or print entire fascicles.	Not applicable.	Not applicable.
CERN (European Organization for Nuclear Research).	"perform work, or transmit or store data consistent with the stated goals, policies and conditions of use as	Anti-circumvention.	"Use of the Grid is at your own risk . There is no guarantee that the Grid will be available at any time are that it will suit any purpose...Although efforts are made to maintain	"entitled to regulate, suspend or terminate your access, within their domain of authority, and you

	defined by the bodies or bodies granting you access"		confidentiality, no guarantees are given."	shall immediately comply with their instructions"
Alberta Health Service.	"personal, non-commercial use"	"no portions of the Site or Content ... may be reproduced in any form, or by any means..."	"As is" other warranties disclaimed include: merchantability, fitness for a particular purposes and non-infringement. " Damages disclaimed. "Site provided for general information purposes only...does not make any representation or warranty of any kind as to the quality, accuracy, currency or completeness of the Content on this Site."	"If you violate any of the Terms and Condition, your limited license to use the Content will automatically terminate. You must immediately cease your use of the Site and destroy any copies of the Content or any portion thereof."
ResearchGate	None.	" automated or massive manual retrieval of other User' profile ('data harvesting')" prohibited and "information provided within the Service by the Provider and by other Users may only be accessed manually by a natural person using ordinary Internet devices."	"as is" other warranties disclaimed include: merchantability, fitness for a particular purposes and non-infringement. " Damages disclaimed.	None.
KISTI (Korea Institute of S&T Information).	None.	None.	"direct and/or indirect" damages disclaimed.	None.
STFC (Science and Technology Facilities Council, United Kingdom).	None (no contract formed, so no rights granted or restrictions imposed, see below).	None no contract formed, so no rights granted or restrictions imposed, see below).	"The information made available... is for information purposes..." "disclaims all responsibility for and accepts no liability for any errors or losses caused by any inaccuracies in such information or the consequences of any person acting or refraining from acting or otherwise relying on such information."	None.
British Library.	None (no contract formed, so no rights granted or restrictions imposed, see below).	"no part of the Content maybe sold, resold , licensed, transferred, copied or reproduced in or in part in any manner or on any media to any person..." Data-mining or automated searching ("systematically extract and/or re-utilize the content...not limited to the utilisation of any data mining, robots, or similar data gathering and extraction tools... " prohibited.	"does not warrant that the sharing of Content, including Public Domain or Creative Commons content will not infringe upon the rights of third parties." "disclaims all warranties, express or implied...as to the content, accuracy, timeliness or completeness...uninterrupted or error-free" Non-infringement: "makes no representation warranty, and expressly disclaims any liability with respect to copyright statements and disclaimers..." Damages disclaimed.	None.

Library of Zeeland.	"Any rights not expressly granted herein are reserved." "By posting, uploading...you are granting [...] permission to use your Submission..."	"damage, disable, over burden, or impair ... or interfere with any other party's enjoyment." Numerous restrictions on content that can be uploaded: defamatory, infringing, obscene, upload viruses or corrupted files, conduct surveys, contests, pyramid schemes or chain letters...harvest emails.	"as is" other warranties disclaimed include: merchantability, fitness for a particular purposes and non-infringement." Damages disclaimed.	"reserves the right in its sole discretion, to terminate your access..."
National Documentation Centre, National Hellenic Research Foundation.	"you may copy, distribute, transmit and adapt the work..." "if you provide any information...you agree to grant [] all necessary intellectual property rights to use such information..."	"do not use this work commercial purpose" "may not frame or mirror" not "cause damage or malfunction to the Website, adversely affect or jeopardize [] service provision"	"As is" "makes no representations or warranties with respect to this Website or its content, all warranties relating to this Website and/or its content and/or any website to which it is linked are here to the fullest extent by law excluded." "No representations or warranties are given as the accuracy or completeness of the information provided..." Damages disclaimed. "does not guarantee ... uninterrupted... error...free of viruses"	"reserves the right to suspend or terminate your access and use of this Website at any time without notice."

Appendix B.

Integrity of the Legal and Practical Circumstances in Web-based Grey Literature Collections, Examples.

	Contract Formation: Assent Issues	Change in terms	Notice of Changes in Terms	Indemnification
Creative Commons (Open Grey).	Using a work subject to a CC license equates to assent of terms. The rights granted to users in a CC license functions as consideration for purposes of contract formations.	If a CC license is used to govern access to content then changes to terms must be by mutual written agreement of the licensor and the user.	None required.	None required.
GreenFILE: EBSCO.	Use equal Assent.	None.	None.	Required by license for violations of Copyright Act of 1976.
Ovid.	"By accessing, browsing and/or otherwise using" equal assent.	Yes.	"any time without notice by updating this posting... you... should therefore periodically visit the Online Service and page to determine the then current	"You agree to defend, indemnify and hold harmless Ovid, its licensors, and any of their respective officers."

			terms and conditions of use..."	
CERN (European Organization for Nuclear Research).	"By registering as a Grid user you shall be deemed to accept these conditions of use."	None.	None.	None.
Alberta Health Service.	"By using the Site, you, the user agree to the following terms and conditions."	"Terms and Conditions may be revised by AHS at any time without notice. "	" Please review the Terms and Conditions regularly as your continued use of the site will constitute your agreement to any changes...date of the last revision...at top of page."	None, but users "agree that any information submitted to AHS does not infringe [] intellectual property rights ... you grant AHS the right to provide access to the information..."
ResearchGate.	"legally binding between the Provider and any natural or legal person who... uses the Services for any purpose."	None.	None.	"Users indemnify the Provider from any claims raised by third parties to any information that is stored on request of the respective user."
STFC (Science and Technology Facilities Council, UK).	None: "The information made available ... does not form part of any contract between STFC and the user."	None.	None.	None.
British Library.	None: "The usage guide for images is based goodwill. It is not a legal contract. "	None.	None.	None.
Library of Zeeland.	"Your use ...constitutes your agreement to all such terms, conditions, and notices."	"reserves the right to change the terms, conditions, and notices"	None.	No indemnification, but "you warrant...that you will not use ...for any purpose that is unlawful or prohibited..." and "you earrant and represent that you own or otherwise control all of the rights to your submission..."
National Documentation Centre, National Hellenic Research Foundation.	Use equals assent: "Visitors/User of this Website are bound by the Terms & Conditions..." "You will be deemed to have accepted such changes, if you use the Website after EKT has	" may amend the Terms & Conditions or Privacy Policy from time to time..."	"..by posting changes on the Website...any substantial changes ...will notify you by posting a prominent announcement on the Website."	"you warrant to [] that such use will not infringe the Intellectual Property right of any third party." "You agree to indemnify and hold harmless EKT, its

	published the modified format and/or content and/or services on the pages of the website..”			directors, employees, suppliers and affiliates, from against any damages or costs (including, without, without limitation, reasonable lawyers’ fees) that arise directly or indirectly from your breach Terms & Conditions.”
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Appendix C. Provenance Aspects in Web-based Grey Literature Collections, Examples.

<i>Website</i>	<i>Attribution Requirements</i>	<i>Moral Rights: Presentation or Appearance</i>	<i>Copyright and Ownership</i>	<i>Boilerplate (Replaced: Non-exclusive rights given to website or to other users content.)</i>
Creative Commons (Open Grey).	Distributions, public performances and displays require inclusion of the Uniform Resource and applicable copyright notices (name of author, title, and source work if an adaptation) and keeping disclaimer of warranties intact.	Presentation rights prohibit distortion, mutilation, modification or “other derogatory action” that “prejudicial to the ... honor or reputation” of the author.	Works subject to a Creative Commons license are protected by copyright.	Severability, Non-Waiver, Integration.
GreenFILE: EBSCO.	None.	None.	EBSCO or its licensees are the owners.	Force Majeure, Severability, Integration. Non-Assignment.
Ovid.	None.	None..	“materials...are copyrighted materials of Ovid or its licensors...”	Severability, Non-Waiver, Choice of Law and Choice of Forum (New York, USA).
CNRS (Humanities and social science information portal).	Users may not “remove or change the names of authors or references to copyright of the publishers or any other means of identification of legal notice... ”	None.	Users cannot “acquire [] any right of ownership in the data or portions of data...”	None.
CERN (European Organization for Nuclear Research).	None, but “shall respect intellectual property and confidentiality agreements.”	None.	“You shall respect intellectual property and confidentiality agreements.”	None.

Alberta Health Service.	"ensure that all copyright, trade-mark and other proprietary notices are retained on any copy of the Site materials in the same form and manner as the original."	None.	None.	Choice of Law and Choice of Forum (Province of Alberta , Canada), Integration, Severability, Non-Waiver.
ReasearchGate.	None.	None.	"Software...site design and other graphics, articles and other texts as well as the database are protected by copyright and property of the Provider."	Choice of Law and Choice of Forum (Federal Republic of Germany), Severability.
KISTI (Korea Institute of Science and Technology Information).	None.	None.	"All contents in the websites are copyrighted and protected by the Laws."	None.
STFC (Science and Technology Facilities Council, United Kingdom).	None.	None.	None.	None.
British Library.	"please credit the source material" "preserve all public domain marks and creative commons licenses attached to the works" "agree not to remove or alter any notices , conditions, forms of identification, or dedications, if required not to."	"any adaptations made to an image should not be attributed to the original creator and should not be derogatory to the originating cultures or communities."	"'the Site' ... is either protected by third-party rights such as copyright or trademarks...is copyright to The British Library Board, or are materials which are in the public domain or made available under a Creative Commons License."	Choice of Law and Choice of Forum (England and Wales).
Library of Zeeland.	"Falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material...uploaded."	None.	"does not claim ownership of the materials you provide"	Choice of Law and Choice of Forum (King County, Washington , USA), Severability, Integration.
National Documentation Centre, National Hellenic	"and you give credit to EKT"	None.	"is the copyright holder of this website"	Severability, Non-Waiver, Choice of Law and Choice of Forum

Research Foundation.				(Greek/Greece).
	Attribution Requirements	Moral Rights: Presentation or Appearance	Copyright and Ownership	Boilerplate (Replaced: Non-exclusive rights given to website or to other users content.)

Appendix D. Permanence Aspects in Web-based Grey Literature Collections, Examples.

Website	Changes in Content	Removal provision-general	Removal provision-specific: Section 512 take-down process	Restoration
Creative Commons (Open Grey).	None.	None.	None.	None.
GreenFILE: EBSCO.	"sites may be added or deleted from this Agreement as mutually agreed upon EBSCO and Licensee.	Yes.	Yes.	None.
Ovid.	"may, at any time, remove..."	Yes.	Yes. Specific reference to Section 512 and 5 statutory requirements for a valid take-down notice.	None.
CNRS (Humanities and social science information portal).	None	None.	None.	None.
CERN (European Organization for Nuclear Research).	None.	None.	None.	None.
Alberta Health Service.	None.	None.	None.	None.
ResearchGate.	"Provider reserves the right to change, reduce, interrupt or discontinue the Service or parts of it any time.	Yes ("act expeditiously to remove or disable access t such information" "where necessary, remove or disable access to this information ('notice and take down' process").	Yes. Even though the specific Section 512 requirements for an adequate take down notice are recited, German contact information and address is provided.	Yes. Even though the specific Section 512 requirements for a counter notice are recited, German contact information and address is provided.
KISTI (Korea Institute of Science and Technology Information).	None.	None.	None.	None.
STFC (Science and Technology Facilities Council, United	"Changing circumstances may cause STFC to have to change the information	None.	None.	None.

Kindom).	and contents of its pages at any time."			
British Library.	None.	Yes: "in the event that any Content infringes your rights or the rights of any third parties... not properly identified or acknowledged we would like to hear from you..." "material on our website, for which you have not given permission... please contact us..."	No, but 4 of the 5 statutory factors are indicated for the take down notice to be valid, UK address is provided for contact.	No. But implies restoration is possible: "material will be temporarily removed from the British Library website pending an agreed solution...following possible outcomes": replaced unchanged, replaced with changes, permanently removed.
Library of Zeeland.	"right to review material posted ...and to remove any material in its sole discretion"	Yes.	Section 512 and "Notice and Procedures for Making Claims of Copyright Infringement."	
National Documentation Centre, National Hellenic Research Foundation.	"may change the format and/or content and/or services of the Website at any time and without notice, with the sole relevant announcement of these on this Website."	None, but "EKT may restrict the availability of the Website temporarily or permanently ... in order to update content or for any other reason."	None.	None.
	Changes in Content	Removal provision-general	Removal provision-specific: Section 512 take-down process	Restoration

NTK

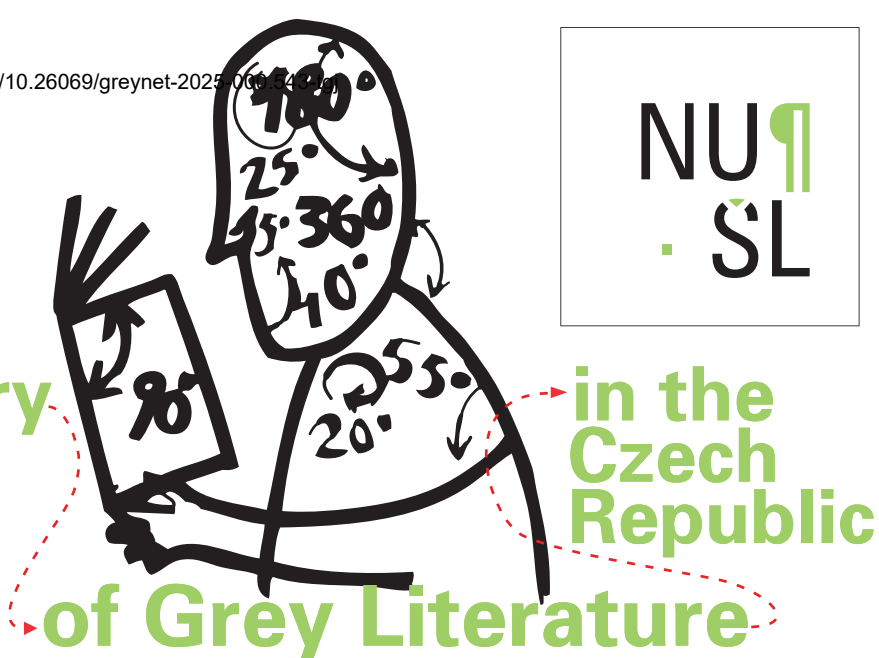
<https://doi.org/10.26069/greynet-2025-0000402>

50°6'14.083"N, 14°23'26.365"E

Národní technická knihovna
National Technical Library

NU
SL

National Repository



Features

Website: www.nusl.cz

Provider: National Technical Library

Records: over 200 000 records

Partners: over 90 organizations

Source area: Academy of Science, Public Research Institutions, Universities, Libraries etc.

International Cooperation: OpenGrey, DRIVER, ROAR, OpenDOAR

Collection provenance: Czech Republic

Based on

Project: The Digital Library for Grey Literature

– Functional Model and Pilot Implementation (2008 – 2011)

Participants: the National Technical Library, the University of Economics Prague

Financial support: by the Ministry of Culture of the Czech Republic acknowledged

Goals

- Central access to grey literature and the results of research and development in the CR
- Support of science, research and education
- Systematic collection of metadata and digital documents
- Long-term archiving and preservation
- Cooperation with foreign repository

Support of expert discussion about Grey Literature

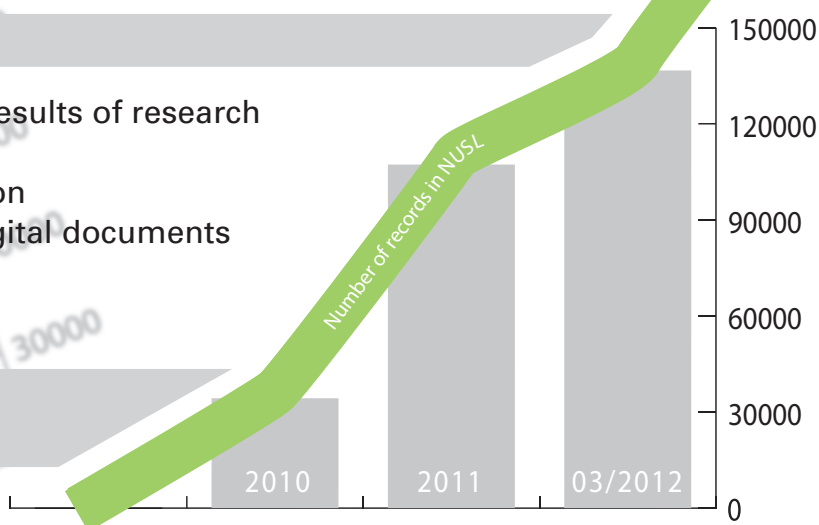
Annual Workshops:

<http://nrgl.techlib.cz/index.php/Workshop>

Informative Web pages: <http://nrgl.techlib.cz>

Publication: Grey Literature Repositories

<http://nrgl.techlib.cz/index.php/Book>



www.nusl.cz



Free Licences and Creative Commons: A Powerful Tool for Open Access Publishing in Grey Literature*

Petra Pejšová (*Czech Republic*) and Marcus Vaska (*Canada*)

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 (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.openaccessmap.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" (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).

* First published in the GL16 Conference Proceedings, March 2015.

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].

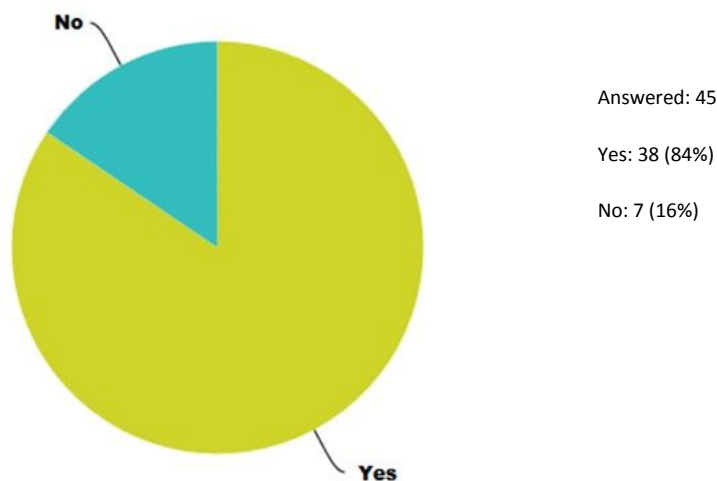


Figure 1. Level of use of Creative Commons licenses in worldwide institutional repositories.

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]

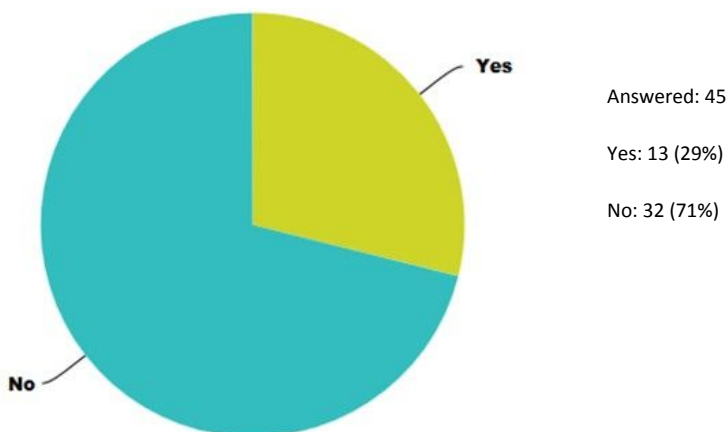


Figure 2. Availability of Creative Commons license policy in worldwide institutional repositories.

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]

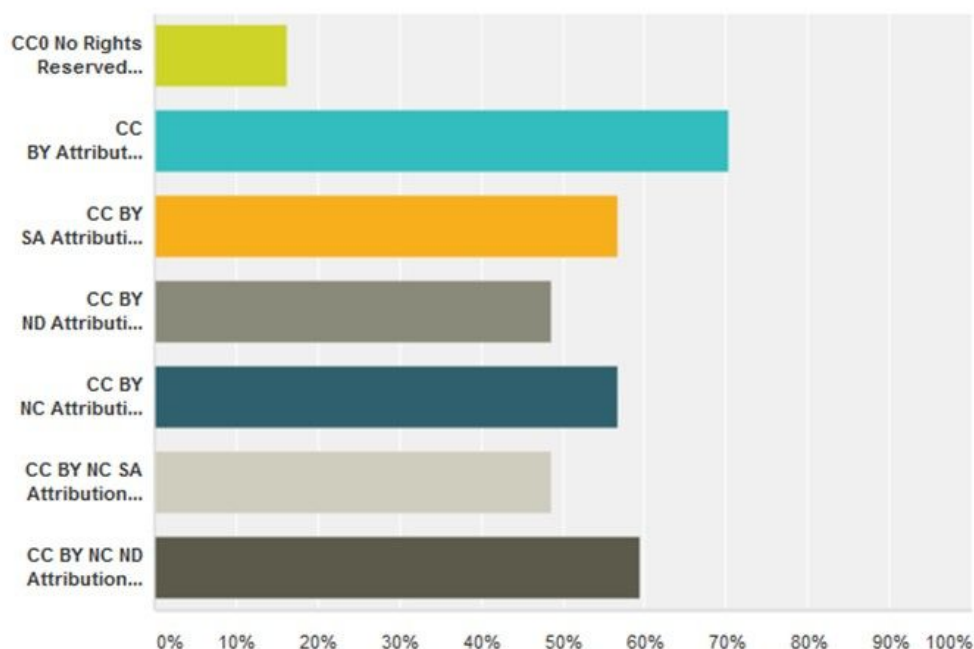


Figure 3. Terms of Creative Commons License deed in worldwide institutional repositories.

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]

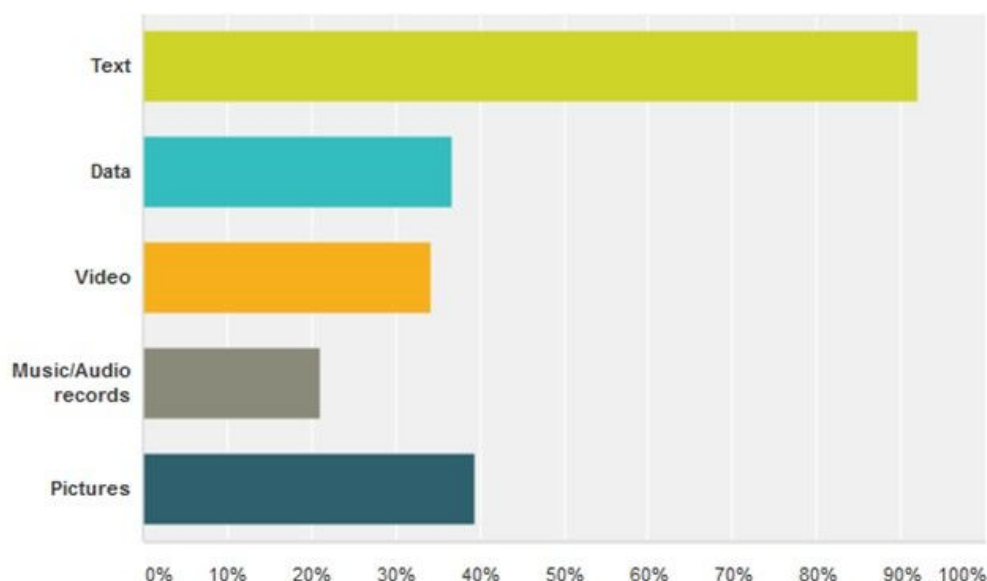


Figure 4. Types of documents deposited via use of Creative Commons license in worldwide institutional repositories.

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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Publishing Geodesy, Topography and Cartography Research via Invenio*

Jiří Drozda, Veronika Synková, and Petra Pejšová (Czech Republic)

Abstract

We would like to present open source system Invenio that helps to really small specialized library to provide high standard services and grey literature open the access for limited budget and minimal staffing. It will describe access to research outputs in branch of geodesy, topography and cartography. The Surveying Library is unique library focused on geographic branch in the Czech Republic and surrounding countries. The Surveying Library keeps more than 44 thousands units/books, some of them more than 400 years old. Although the Czech Republic is a small country the community of geodesy, topography and cartography is not concentrated in one place. There are four research, ten administrative workplaces and seven universities with geographic or geodetic department. In addition the Surveying Library is located in small city Zdiby outside of Prague and can lure more travellers than students or researchers who should be main users of library. The Surveying Library found the way how to take advantage of the time when readers do not use their legs but mainly their fingers on the keyboard to reach documents they are looking for. Information technology, open source software and the common availability of the internet allowed that the library can provide their services remotely and at higher quality standards than before. In the past the information sources were fragmented. Users had to know how to reach library catalogue, the digital library, electronic resources, archives; many documents were hidden only on the webpages especially grey literature (conference proceedings, research reports, etc.). Today all information sources are provided from one common location and are part of one system in institutional digital repository. It is managed through the implementation of open source software Invenio, whose functions will be presented on the example of implementation in our Surveying Library.

Keywords: *Invenio, open source software, repository, grey literature, digital library, electronic resources, on-line library services, geodesy, topography, cartography*

Before we go into a description of the solutions used in the Surveying Library, will want to present the structure of the research institutes in the Czech Republic.

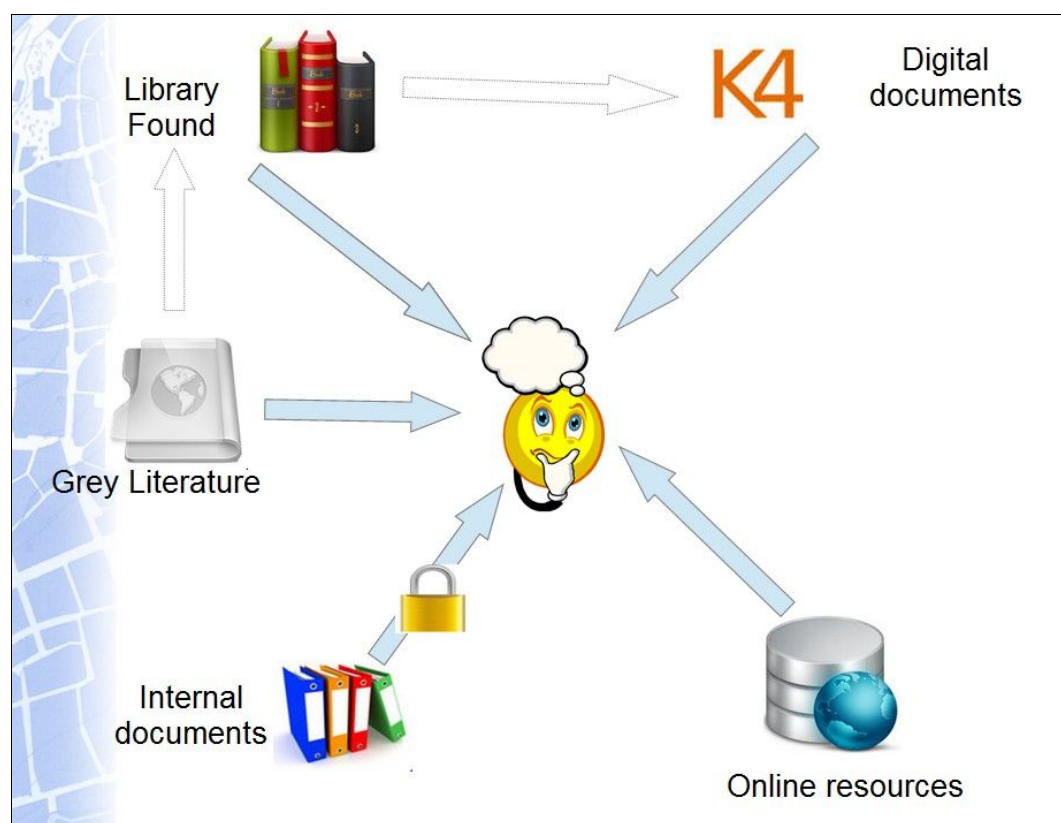
The strongest and most widely supported is a group consists of 61 research institutes of Academy of Sciences of the Czech Republic (ASCR). These institutes are financed from the budget of the ASCR and are methodically and software supported by the library of the ASCR. The library of the ASCR ensures for all research institutes ASCR collection, processing, storage and dissemination of all publications and other information sources using in R&D through the ASEP system of ASEP (Evidence of publishing ASCR activities). ASEP is a heavy library information system with a wider range of services that currently allows storing full texts. The second group is approximately 50 private research institutions financed by the companies for which they are working. This group have no interest and in many cases they cannot publish R&D outputs due to these outputs are industrial property. Last but not least is a group of public research institutions. Those institutions are partly financed from public funds, but the main financing they must ensure through grants and projects. There is lack of methodological and technical support and it brings large problems in research management and cooperation.

Another important aspect is software used as library information systems and digital repositories. There are used Aleph, KPWin and Clavius as commercial library information systems in the Czech Republic. But those systems are expensive and system maintenance demanding for small institutions. Non-commercial library information systems are used very rarely, (Koha and Evergreen), but those system usually do not have sufficient support and are mostly "home made" system tailored for specific needs. In the last time open source information systems begin to gradually penetrate in small and medium size libraries.

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The Surveying Library is part of the Research Institute of Geodesy, Topography and Cartography (VÚGTK). The library has a unique and exclusive position not only in the Czech Republic, but also on an international scale thanks to its collections and its specialization in the areas of geography, geodesy, geodynamics, cadasters and metrology. The library is involved in many international activities involving cooperation and the provision of scientific information resources from the areas of its competence. Its uniqueness has been confirmed by the registration of "The Surveying Library" as a trade mark (hereafter simply referred to as the library) in the Register of Trademarks held by the Czech Industrial Property Office. The library cooperates with the Czech Land Survey and Cadastral Office (hereafter simply referred to as the ČÚZK) in the collection of expert travel reports for all the employees from the ČÚZK, research reports, industry regulations and standards, all resort directives, professional newsletters and journals and the proceedings of scientific conferences and meetings.

The demise of the library was threatened a few years ago. Fortunately, the library and its unique collection managed to survive. The library has had to solve the question of how to most efficiently transform itself so that it can offer the best possible services to all its users. The main problems were in obsolete library system, fragmented information sources posted on the Web site VÚGTK. Second unhandiness was that using of most information services needs to visit the library that is located outside the city and outside of campus.



Picture 1 – Fragmented resources

The main task of library transformation was implementing of full online service. Two main objectives have been identified. Create and/or store electronic content and to give users a single access point for all services. Limitations were both insufficient funds and small number of employees. In addition, the long-standing employees had only a limited ability to learn new information systems and there was limitation in his willing to the innovation and helping in the implementation of the new system.

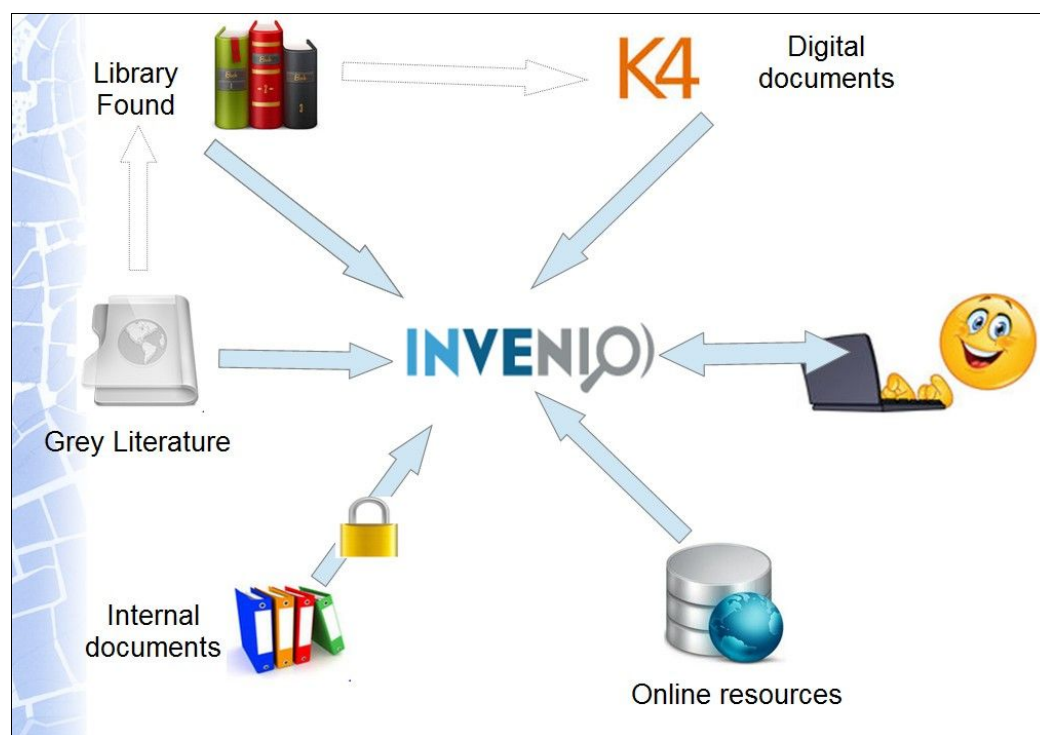
Just at the time the preparation of transformation, the VÚGTK was approached by the National Technical Library (the NTK) with the request for cooperation with the National Repository of Grey Literature (hereafter simply referred to as the NUŠL). It was a major impetus for change. The VÚGTK took up the offer NTK, which distributes the INVENIO in order to support cooperation with the NUŠL. However, the most important reason for this selection is the fact that the system library already had a built-in INVENIO module that was able to provide all the library's services and its low demand on technical, financial and personal resources.

The NTK offered a free system for processing preset INVENIO grey literature as one of the forms of cooperation. (Pejšová, 2011) The pre-setup INVENIO library system can be downloaded from the NUŠL website and installed on your own hardware. Installation instructions are also available. Furthermore, the library's INVENIO system can be edited according to the library's needs. The NTK also ensured the localization of INVENIO in Czech. Another important reason involved the fact that stable development was ensured. The European Organization for Nuclear Research (CERN) in Geneva ensures that the INVENIO system has a team of developers which develops the system, regularly publishes new INVENIO versions and has a clearly defined system development for INVENIO for the future.

The library, therefore, had to deal with two issues; it needed both a library system and a digital repository within the framework of insufficient finances and capacity building. From the perspective of maintaining the research needs of the VÚGTK, it needed to ensure the availability of a high-quality library and information resources for all its employees. The VÚGTK also wanted to act openly and to share its research output.

As well as the library's collection and the materials on the website, the VÚGTK still collects many other materials in digital form which are only available locally on the institute's network or on its employees' computers. This mainly involves the different standards of the ČÚZKC and the Surveying Office, materials from conferences, analytical and methodological materials, research data, promotional and training materials, output from projects, departmental directives, etc.

The original intention to use the INVENIO system as a library system and a digital repository has grown to an idea to use Invenio system as the discovery system too (use it as a central search point for both the printed and digital collections).



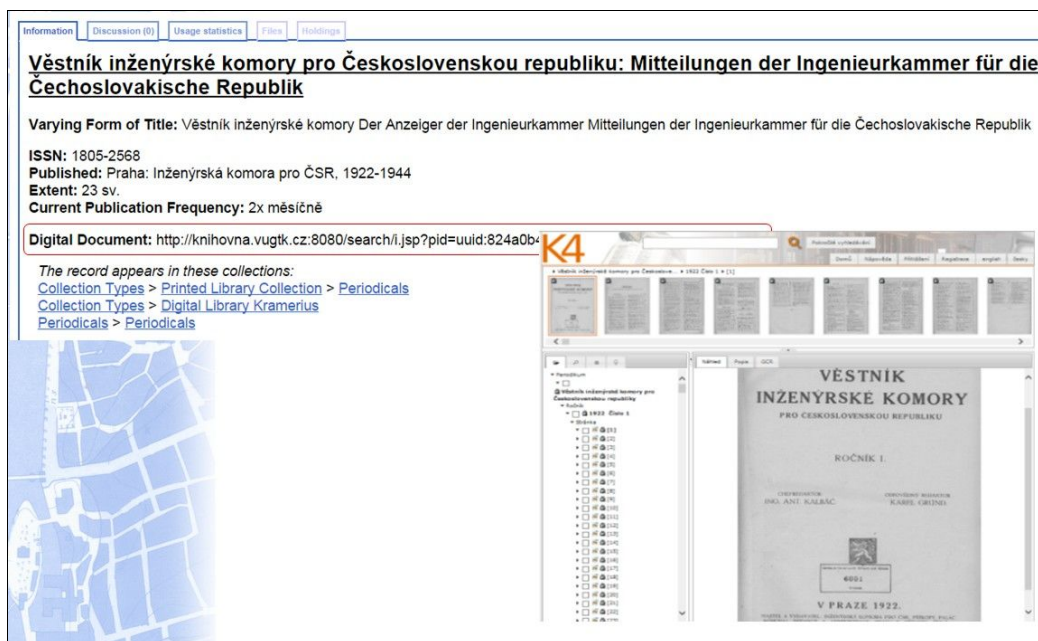
Picture 2 - The resources of the library in the INVENIO system

As already mentioned, both hardcopy and electronic documents are registered in the Invenio system. It presents all bibliographic records migrated from the original library system - 40 000 records of monographs, 3 000 periodicals records and 148 000 records of scientific articles. As a new feature, records of online magazines and digital born documents begun recorded in system. In addition recorded digital copy of printed monographs and journals are referred to a link to the digital library Kramérius.



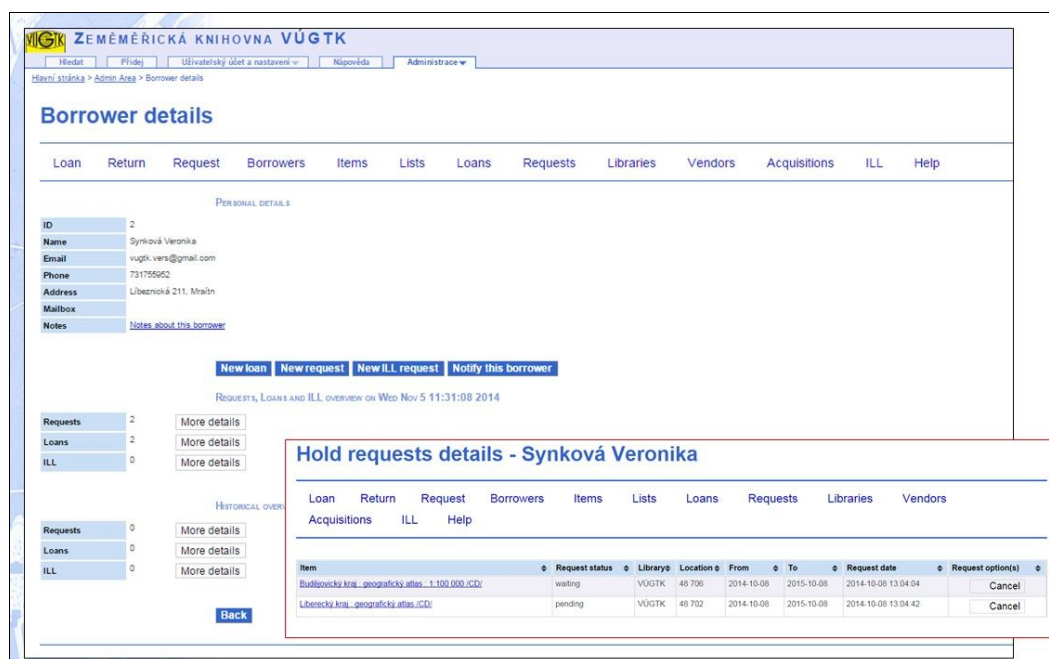
Picture 3 - Central browse and search point for both the printed and digital collections

In the case that the printed monograph or journal have been already digitised, the record is directly linked to digital Kramerius library where digital document is stored.



Picture 4 - Record with a reference to the digital library – Kramerius

A user, who has also set up access to his or her reader account via the web interface, can check the status of his or her membership account online. If the loan period has not been exceeded, the user can extend an existing loan and/or may cancel loan requirements for any titles which he or she is no longer interested in.



Picture 13 – Readers web account

Although the library has used the INVENIO system that the NTK runs for grey literature within the NUŠL project, the library has also greatly expanded its use for many other purposes. The library stores not only the grey literature but also a variety of other types of documents, including its library collection too, into the INVENIO system. Some records refer to sites outside the INVENIO system (Kramérius, the full text of available online journals and magazines).

Compared to the INVENIO version, which is run by the NTK, the library has also added some new elements such as MARC21, different templates and also the adjustment of the indexes for searching and displaying thumbnails of bibliographic records to its installation. A major extension includes the activation of the BibCirculation module and the loan service functions in this module. There has been no experience with this module in the Czech Republic to date. The activation of the BibCirculation module has brought new changes and tasks involving familiarizing the register readers with the available functions, entering orders, borrowing and returning all related instruments for the loan system. It also coincided with the need to localize the module into the Czech language. The localization has been time consuming and has still not been fully completed.

The main aim of the library is to fully satisfy both internal and external users and to always provide accessible and transparent information about the library's collection, subscribed and freely available online resources and other information materials that the library can offer all its users. The library is trying to achieve this goal by using the INVENIO library system which represents a single interface enabling searches in all the library's information sources.

The method we use is an original solution, which has not been implemented anywhere yet. This implementation also brings some technical and management complications that we are ready to address and we are willing to share our experience with other libraries.

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Degrees of Openness: Grey Literature in Institutional Repositories*

Joachim Schöpfel and Hélène Prost (France)

Abstract

In spite of the growing success of the open access initiative, a significant part of scientific and technical information remains unavailable on the web or circulates with restrictions. Even in institutional repositories created to disseminate the scientific production of an academic institution, broad and open access to more or less important sectors of the scientific production is restricted. In order to provide new empirical evidence, 25 large institutional repositories from different continents were selected in the international directory OpenDOAR. For each repository, the access to the full text for different document types was evaluated, and the statistics were analysed for each site and cumulated. Building on our past work and new empirical data from large institutional repositories on different continents, we distinguish between different degrees of openness. Which are the main reasons, which are the stabilizing functions of this situation? The communication tries to provide some elements of understanding, together with good practices and recommendations.

Introduction

The institutional repository of the University of Nebraska-Lincoln¹ (UNL) is a collaborative service of the university's libraries that aims to provide long-term preservation and world-wide electronic accessibility of digital materials deposited by faculty, researchers and students associated with UNL. It contains 13,296 theses and dissertations from 1897 to 2014 (October 6, 2014). 12,024 dissertations are indicated as "available in PDF" while 1,272 dissertations have no link to full-text. Yet, for "non-UNL users" it is impossible to log into the UNL proxy server and download any of these PDF files, and they have to request the items through interlibrary loan.

The open access principle requires that scientific information be made widely and readily available to society. Defined in 2003 as a "comprehensive source of human knowledge and cultural heritage that has been approved by the scientific community"², open access implies that content be openly accessible and this needs the active commitment of each and every individual producer of scientific knowledge.

In spite of the growing success of the open access initiative, a significant part of scientific and technical information remains unavailable on the web or circulates with restrictions³. Even in institutional repositories created to disseminate the scientific production of an academic institution, broad and open access to more or less important sectors of the scientific production is restricted.

Institutional repositories (IR) have been defined as "tools (...) for collecting, storing and disseminating scholarly outputs within and without the institution" (Jain, 2011) and as "a set of services (...) for the management and dissemination of digital materials created by the institution and its community members (based) on organisational commitment to the stewardship of these digital materials" (Lynch, 2003). With 2,258 sites out of 2,729 (83%)⁴, they represent the most important part of the so-called green road to open access.

They contain many scientific documents that were not available previously on the Internet, but some items are under embargo or restricted to on campus access, and for other items there is only metadata, without links to the full text. Following the OpenDOAR, many repositories contain different document types (table 1).

¹ DigitalCommons@University of Nebraska-Lincoln, available at <http://digitalcommons.unl.edu>

² Berlin Declaration on Open Access, available at <http://openaccess.mpg.de/Berlin-Declaration>

³ Estimations on the part of scientific publications in open access are difficult and vary widely, between 10% and 50%, depending on type of documents, discipline, country and source of information.

⁴ Statistics from the OpenDOAR directory (28 September 2014).

Document type	% of institutional repositories
Articles	72%
Books, book chapters	37%
Electronic theses and dissertations	61%
Communications	37%
Reports	(37%)*
Working papers	(37%)*
Patents	4%
Datasets	4%

Table 1: Part of institutional repositories containing different types of documents (N=2,258)
(*OpenDOAR index reports and working papers together as “unpublished”)

Most of the institutional repositories contain articles (72%) and theses (61%). One third have books, conferences or unpublished papers (reports, working papers...). Very few hold patents or datasets (4%). Normally, all these items should be at least “gratis”, available, ready to view, read and download, if not in “libre” open access with maximum reuse rights. In fact, one part of them are neither gratis nor “libre”. Open archives are less open than they should be.

Yet, it is difficult to estimate the part of “missing” full text in institutional repositories. OpenDOAR warns that “full texts are not available for most results” of its content search tool but does not provide any statistics. Operated by the Bielefeld University Library, the search engine BASE harvests metadata from more than 50 million documents but indicates that the full text is available for only 75% of them.

These are global figures. Recently, Ahmed et al. (2014) reported low availability of electronic theses and dissertations in several Asian institutional repositories. In order to contribute to a better understanding of this situation we conducted a survey of 25 institutional repositories together with more than two million items. Our intention was to evaluate their degree of openness with specific attention to different categories of documents. Some results have already been published (Schöpfel & Prost 2014). The following paper shifts the focus on grey literature.

Methodology

The empirical data in our study are from a sample of 25 institutional repositories. All repositories were selected using OpenDOAR, the authoritative directory of academic open access repositories. The following search criteria were applied:

- Repository type: Institutional
- Content type: PhD theses and articles (at least)
- Size: 10,000+ items (preferred)

The search was conducted by region (Europe, Asia, Africa, Australasia, North America, South America/Central America/Caribbean), and only those repositories that are operational (i.e. recently updated), that contain different document types including non commercial literature (theses, reports etc.), that allow for filtering by document type and access options (full-text vs. restricted/no access to full-text) as a browse and/or search functionality and that indicate the exact number of results (retrieved items) were selected.

Secondly, we conducted a detailed search and/or browsed on each site for specific document types: articles, books and book chapters, conference proceedings and communications, reports, PhD theses, and working papers (unpublished). We also looked for patents and datasets but did not include them in the global analysis. For each document type, we distinguished the items with free and non-restricted access to the full text (open access) from those with restricted access (embargo, intranet, authorized users, etc.) or without full text (reference only). Whenever possible, we also made this distinction for the entire repository content.

The repositories were selected in February 2014. The analyses of each site were conducted in February and March 2014.

Results

Size and openness of the repositories

The selected repositories (IR) are listed in the appendix. For our study, we did not evaluate the whole content of each IR but limited the analysis to six document categories (working papers, theses, reports, articles, communications, books/book chapters). The total number of items in our study is 2,086,622.

The median size of the sample repositories is 26,683 documents, ranging from 1,199 (Amherst) to 775,561 (HAL⁵). Again, this is not the total size but the sum of the selected and evaluated document types, excluding for example courseware, images or Master dissertations. Thus, the true size of the IRs is higher (in average, +9%).

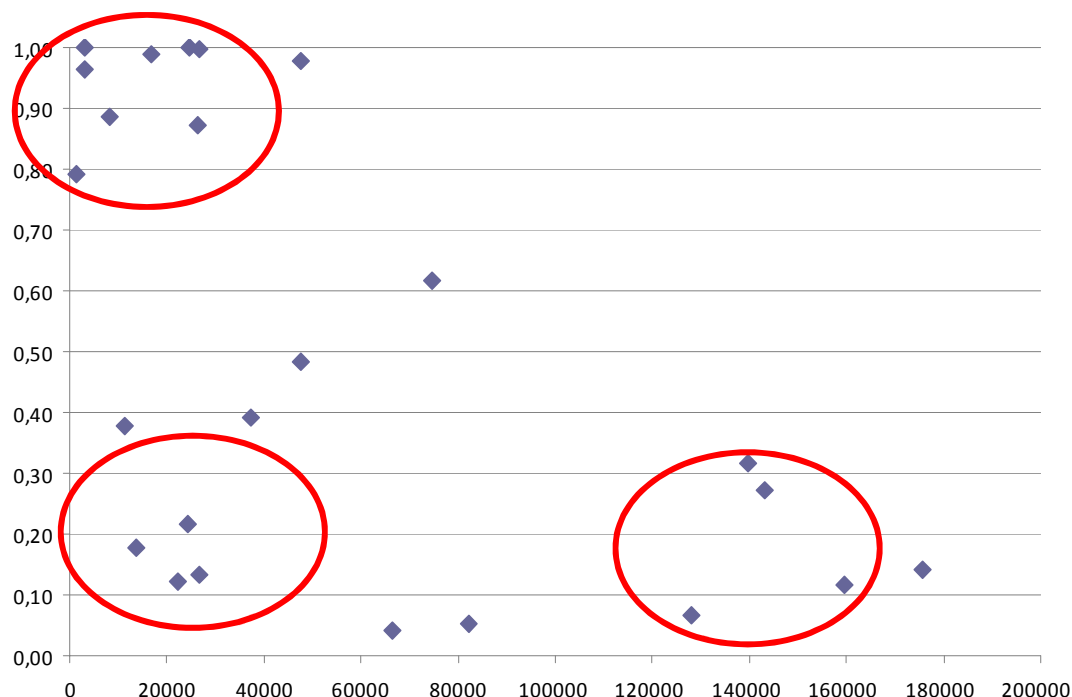


Figure 1: Openness and size of institutional repositories (without HAL)

The median degree of openness of all repositories is 0.38, which means that only close to 2/5 of all items provide open access to the full text. The individual repositories range from 0.04 (only 4% of items have full text) to nearly 1.00 (except for a few items, all deposits have freely available full text). There is no significant correlation between size and openness; yet, all larger repositories have degrees of openness below the median, while the repositories with higher degrees of openness (higher than the median) are generally smaller. Figure 1 shows three different clusters of repositories: smaller repositories with low level of openness (left side, below), smaller repositories with high degree of openness (left side, above), and larger repositories with lower degrees of openness (right side, below). HAL is part of this third cluster, with nearly 800,000 items and a degree of openness of 0.37. Why is there no large repository with a high degree of openness, that is, with a large number of metadata linking to full text? Is access restriction the price to pay for the development and growth of repositories? At least and obviously, it is a risk.

Openness per document type

The sample contains 53% of articles and 10% of books and book chapters, i.e. items that are not generally considered as grey literature. The other document types included in the analysis are distributed as follows (figure 1).

⁵ The French HAL repository is a special case insofar as it is a national open repository that integrates several institutional repositories from universities and other research organisations. It was included in the study for this reason.

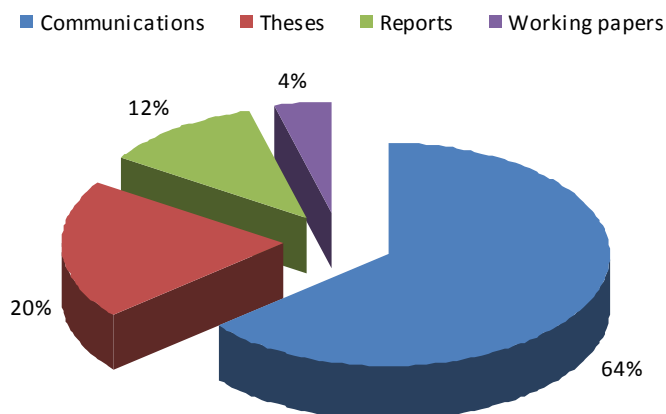


Figure 2: Document types in the institutional repositories (only grey literature, N=769,237)

In addition to these items, some repositories also contain patents and datasets. These items represent 2.8% (datasets) and 0.4% (patents) of the global content.

The evaluation of their degree of openness – the part of the items freely available on Internet – offers specific values for each document type.

Document type	Number of items	Degree of openness
Communications	490,442	0.21
Theses and dissertations	156,546	0.78
Reports	91,069	0.63
Working papers	31,180	0.96

Table 2: Degree of openness per document type, with number of items

The overall degree of openness of working papers is 0.96, which means that in the entire sample all but 4% of the working papers are freely accessible, followed by PhD theses (0.76) and reports (0.63). Significantly less open are communications (0.21) (table 2).

The median degree of openness per repository confirms the overall statistics. The median is high for working papers (0.98) and theses (0.92), medium for reports (0.63), and low for communications (0.29). The variance of openness (dispersion from average) is low for working papers, medium for theses and reports, but high for communications (figure 3).

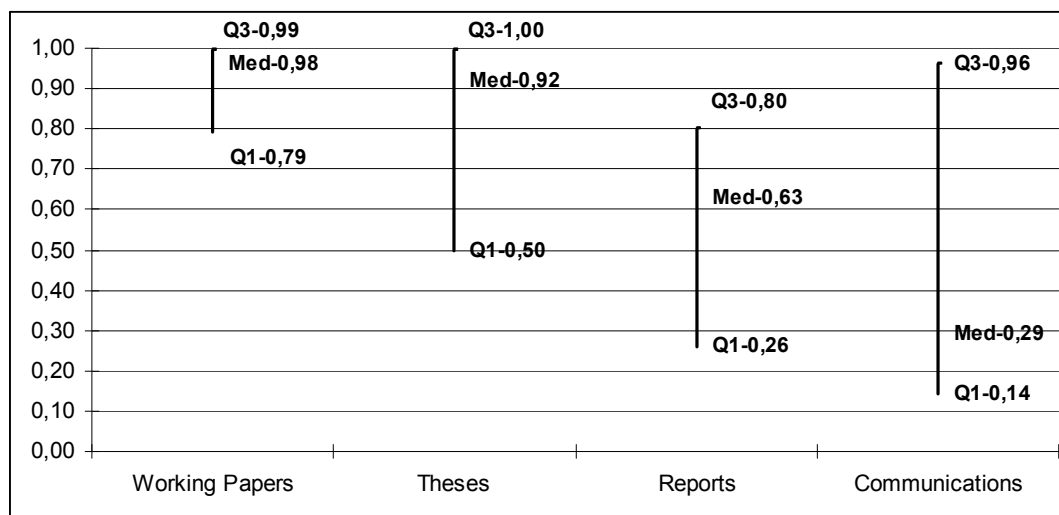


Figure 3: Degree of openness per document type with Median, 1st and 3rd quarter (only grey literature, N=769,237)

However, we must be careful with interpretation because all of the repositories have theses, most have reports and communications, but only half of them have working papers, a fact which reduces the variance. A last observation: the number of items and their openness are inversely correlated, in that the more important categories (communication) are less open than the less important ones (table 2). Yet, this inversed relationship is not significant.

Datasets and patents

Some institutional repositories contain datasets and patents. These items are not really grey literature – datasets are not literature, and patents are not hard to find. But as they are not available through usual publishing channels, they are sometimes considered as “in the margin” of grey literature. We identified nearly 70,000 items in our sample; 60,219 datasets and 8,982 patents. While only 3% of the datasets were freely available, patents are disseminated with a degree of openness of 0.61, which means that nearly 2/3 of the patents are freely accessible in these repositories.

This is surprising for two reasons: because of the global tendency in favour of “open data”, research data in institutional repositories should be more available but are not, obviously; patents are often protected behind pay walls but in our sample, several thousands are freely available.

Embargo and restricted access

Often the real nature of access restriction remains uncertain. Are the documents under embargo and will they be released and openly accessible in the future? Are they restricted to on-campus access only or is it both of these? And what about missing full text, records without documents? From our results we can only make a cautious guess, that embargo periods represent a small part of access restrictions (only 2% in our sample) and that most of the lack of openness is caused by on-campus only access and by the deposit of metadata without a corresponding document. Embargo decisions are taken in particular for PhD theses while very few reports and even less working papers are embargoed.

Repositories with a high degree of openness to grey literature

In our sample, we identified seven repositories with high levels of openness to all kinds of grey literature, i.e. with more than 80% items with full text in each category (table 3).

	Working Papers	Theses	Reports	Communications
DIGITAL.CSIC	0,99	0,93	0,99	0,81
Frankfurt a M	1,00	1,00		1,00
Milano	0,99	0,83		0,97
Dokuz Eylül University Izmir		1,00		1,00
Chiba	1,00	0,99	1,00	0,96
UNTexas		0,92	1,00	
Stellenbosch		1,00		1,00

Table 3: Institutional repositories with high degrees of openness (type 1)

Obviously, these repositories apply an open access policy that prefers unrestricted availability of documents to other objectives, in compliance with the initial goal of direct communication of the open access movement. In particular, the institutional repositories from the Spanish CSIC and Chiba University (Japan) are exemplary and should be taken for best practices, such as those from the Universities of Frankfurt and Milano even if they do not contain (or index) reports.

Other repositories

Six repositories have relatively low level of openness for all document types (table 4). Here, they clearly adopt a policy that prefers exhaustiveness (completeness) to openness. Is this still open access or do these repositories become tools designed to increase impact and facilitate evaluation of the scientific output?

	Working Papers	Theses	Reports	Communications
Torino		0,48		0,04
Ghent		0,39		0,18
INRA		0,15	0,27	0,15
Uppsala		0,39	0,21	0,03
Chalmers		0,17	0,32	0,26
NTUR		0,55	0,28	0,02

Table 4: Institutional repositories with low degrees of openness (type 2)

The other repositories are somewhere in between, with higher degrees of openness for some document types and lower degrees for others. Typically, theses and working papers are “more open” than reports and communications (table 5).

	Working Papers	Theses	Reports	Communications
HAL	0,98	0,97	0,73	0,24
KNAW	0,79	0,28	0,65	0,32
Geneva		1,00	0,74	0,85
Macquarie University Sidney	0,99	0,50	1,00	0,20
Swinburne	0,34	0,93	0,26	0,24
Monash	0,54	0,75	0,02	0,01
RMIT		1,00	0,00	0,07
Brisbane	0,93	0,64	0,82	0,67
HKU	0,80	0,99		0,13
SMU		1,00	0,07	1,00
UMassAmherst		0,70	0,65	0,87
Western Kentucky University		1,00	0,60	1,00

Table 5: Institutional repositories with mixed degrees of openness (type 3)

There are probably various explanations and reasons for these “IR profiles”, combining ETD policies, disciplinary particularities (working papers) or a large number of communications published by commercial publishers. Figure 4 illustrates the average differences of these three types of repositories.

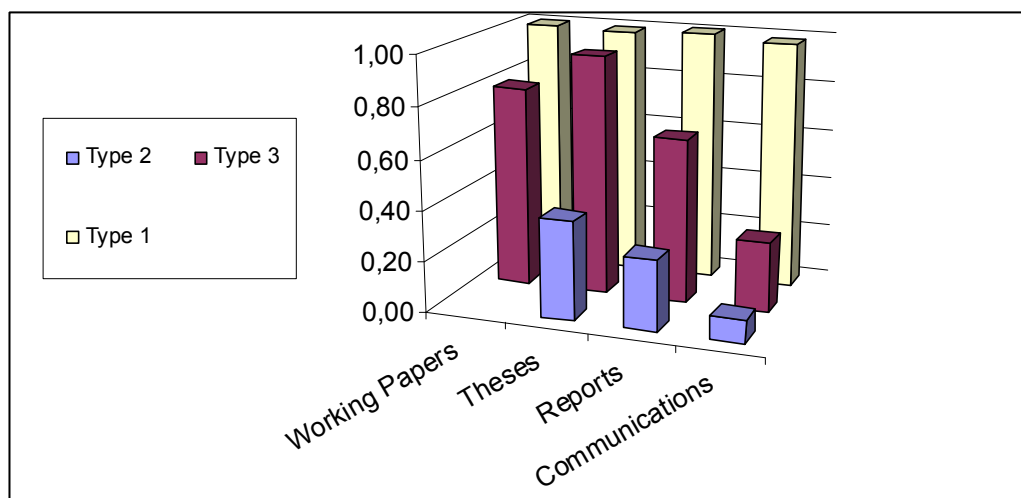


Figure 4: Three types of institutional repositories (median of openness)

However, if we compare this reality with past expectations about the Internet as “the solution for grey literature”, we must admit that this is right for one part of the institutions and collections but not for all. A significant part of communications, reports and even theses still remain “hidden” and “hard to get” items.

Discussion

Methodological shortfalls

Three aspects limit the reliability of our data: (1) The different repositories do not index their content in the same way, document typologies are not consistent, and the interpretation of items as “grey literature” is not always easy. (2) Statistics on the content of repositories are often not available or not complete; thus our sample is already a somewhat biased selection of “best practice sites”. (3) Only one part of the repositories clearly inform about the nature of restricted or denied access to the full text.

Typology of institutional repositories

Institutional repositories can be described and distinguished in many different ways. Our survey invites to four different typologies:

Size: Even if the focus of our methodology puts is on larger repositories, the sample includes the whole range of repositories⁶:

Small (<1,000): 1 repository

Medium (1,001-5,000): 8 repositories

Large (>5,001): 16 repositories

Openness: Following our data, we would suggest three categories:

Low degree of openness (<0.30): 11 repositories

Medium degree of openness (0.30-0.80): 6 repositories

High degree of openness (>0.80): 8 repositories

Document profiles: The openness criteria can be further differentiated by document types (theses, working papers etc.). As we showed above and limited to the field of grey literature, we can distinguish three different repository types (figure 4). Including commercial publication, this typology can be quite different and shed another light on repositories (see below).

Repository types: In the past, we suggested four different types of institutional repositories (Schöpfel et al. 2012). Even if we did not match our sample against this typology, it seems obvious that some of them are similar to type 4 repositories ("institutional deposit") while others are more like type 1 ("publishing grey literature") or type 3 ("scientific heritage") repositories.

These different typologies may allow in the future profiling of open repositories, in order to improve knowledge and understanding of open access but also to enhance marketing and service development.

Grey and white literature

We conducted the same analysis for published articles, books and book chapters (Prost & Schöpfel 2014). Compared to grey literature, their degree of openness is generally lower:

	Openness
Working papers	0.96
Theses	0.78
Reports	0.63
Articles	0.31
Communications	0.21
Books, book chapters	0.17

Table 6: Degree of openness per document type (N=2,086,622)

Only one third of all articles in our sample repositories is available in full text and without any restrictions, and less than 20% of all books and book chapters can be downloaded by any user. Obviously, regarding openness there is a significant advantage of grey literature over so-called white (commercially published) literature. Figure 5 shows this advantage on the level of each repository.

⁶ For the categorization, see Kindling & Vierkant (2014)

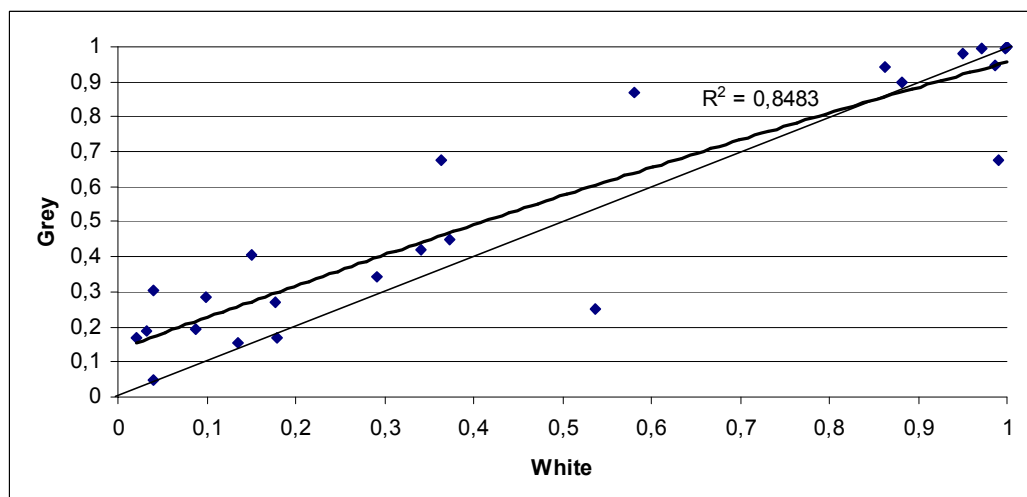


Figure 5: Degree of openness for grey (vertical) and white literature (horizontal) per repository

Except for two repositories (Chalmers and Amherst), the cumulated degree of openness of grey literature is at least as high as for published items; most often, it is significantly higher. The reason for the two “special repositories” seems different; Amherst is a small repository where most items, in particular articles, are in open access while the availability of some dissertations and reports is restricted to the campus. Chalmers appears to accept (and probably foster) deposits that cannot be disseminated freely on the Web so that especially dissertations, reports and communications cannot be accessed off campus. The tendency shows a strong relation between the two variables (determination coefficient $R^2=0.85$).

The special case of conferences

Yet, these figures and statistics also confirm the special case of communications. Their overall degree of openness is not only lower than for other types of grey literature but they are similar to published articles and books. Figure 6 shows the same statistics as figure 5, except for communications which have been deleted from the cumulated degree of openness for grey literature. The result is obvious.

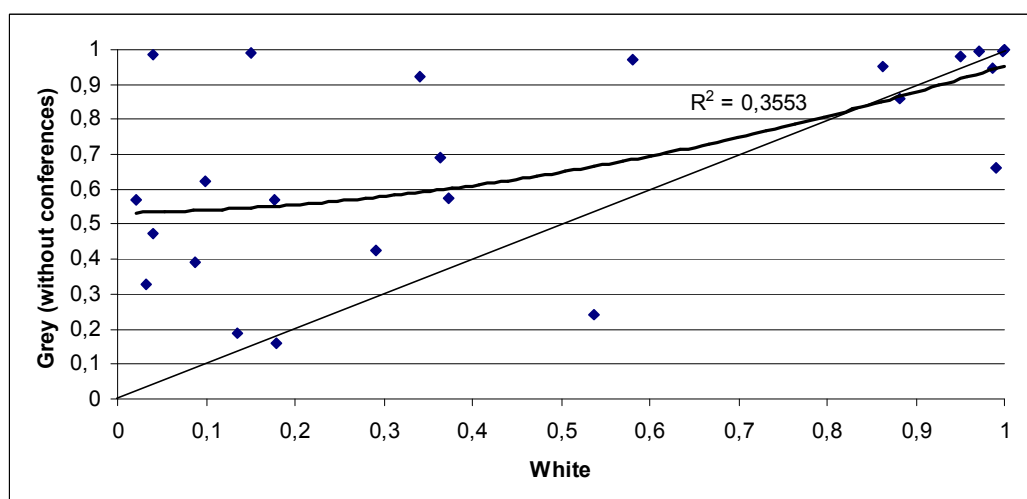


Figure 6: Degree of openness for grey (vertical) and white literature (horizontal) per repository (without communications)

This time, without communications, the difference between grey and white literature is more significant, and the tendency line with an $R^2=0.36$ confirms a relatively low relationship between both document types. The message of this figure is clear: institutional repositories are good for the availability and open dissemination of grey documents, at least better than for published items.

So what about communications? The reason is probably that an important part of communications is edited and disseminated by commercial publishers, in special issues of journals together with articles or as proceedings like monographs. Therefore, one part of them is not grey but white. Following our figures, this percentage can be estimated at 40-60%.

About embargo

Embargo periods and other access restrictions are normally enforced by publishers, in order to protect their revenues by delayed availability of “their” items in open archives, i.e. articles, books and those communications published by commercial publishing houses.

Our figures show that one part of grey literature is also embargoed or limited to on-campus availability, without any pressure from publishing companies. The reasons are different and have nothing to do with licensing or publishing conditions, at least not directly. Privacy and confidential information may play a role, such as third party rights, fear of plagiarism and, especially for datasets, competitive strategies opposed to free sharing of results with everybody and not only with colleagues.

Yet, publishers’ open access policies indirectly affect one part of decisions on embargo and on-campus access, because PhD students anticipate these policies and often prefer not to publish in open access before a formal publication of their dissertation by a corporate publisher.

Stabilizing functions

According to published studies and our own surveys, we can distinguish between three main reasons that tend to stabilize the unsatisfying situation with restricted access to grey literature in institutional repositories:

1. For one part of these grey items, especially for communications, the authors have probably transferred their rights to publishers that disseminated the conference proceedings as special journal issues or monographs. This may explain why a significant number of communications are under embargo or cannot be disseminated outside of the campus.
2. In particular for PhD theses, authors may prefer restricted or no access at all because they intend to publish the content as a book with commercial publishing houses.
3. Last explanation, the preference of some hosting organizations for an exhaustive number of metadata that allows for evaluation and studies of the institutional scientific output. Here, the institutional repository becomes a tool for evaluation and a showcase for the institutional productivity, like a web-based bibliographic database while the need of the scientific community and society for access to results (full text, data) is not or only partially respected.

As we showed for PhD theses, embargo decisions can be motivated by many different reasons and people (Schöpfel et al. 2014). For the scientist in need of information, this is all but satisfying.

Best practice

However, these stabilizing functions are not always barriers to open access. Even in the small sample of our survey, some institutional repositories perform better than others, with higher degrees of openness. Benchmark studies should reveal their way of dealing with these problems. Why are they better, i.e. more open? Probably, they are different on six dimensions:

1. Mandatory policies (institutional support, acquisition policy).
2. Selection of deposits (moderation, metadata policy).
3. Specific approach for different document types (ETD policy, working paper publishing...).
4. Institutional workflows (including assistance for submission).
5. Legal environment.
6. Commitment to open access principles.

In the field of PhD theses, such kinds of studies will be undertaken by the European H2020 project ETD4OA.

Conclusion

In the past, we put forward the fact that for grey literature, “open is not enough”, i.e., institutional repositories need a set of minimum requirements for grey items such as metadata, selection procedures, quality standards, collection management and clear deposit policy (GL13, Schöpfel et al. 2012). We then narrowed our research on electronic theses, recommended five ways to add value to theses in open archives (GL14, Schöpfel 2012) and identified access restrictions to theses in institutional repositories (GL15, Schöpfel & Prost 2014). This means that

while “open is not enough”, all deposited theses in repositories are nevertheless not open; or more specifically, they are available with different degrees of openness, and some are not available at all.

This year, we return to a larger perspective. Building on our past work and new empirical data from large institutional repositories on different continents, we make distinctions between various degrees of openness. Based on our empirical data, our recommendations for improved access to grey literature in institutional repositories would be:

- Typology: standardize the description of document types in institutional repositories, with a common and accepted terminology. Metadata should clearly index the document type, in terms derived from a controlled and standard terminology.
- Discovery: allow browsing and searching with document types.
- Access rights: clearly indicate the availability or access restrictions for each document, differentiating (at least) between embargo and on-campus access. Metadata should include precise information on access rights (Neylon et al. 2014).
- Policy: foster the deposit of metadata with full text for grey literature whenever possible, in particular for reports, working papers and theses. Submission of metadata without full text should be an exception, not by default. For the scientific community, access to documents is more important than exhaustiveness of records that are already published and available elsewhere on the Internet.
- Differentiation: distinguish between the different document types.
 - Reports and working papers should be systematically and by default made fully available in open access, and access restrictions should be the exception.
 - Incentives should help research teams to publish their working papers on their institutional repository and not (exclusively) on other web sites.
 - Proceedings should be published either in open access or with rights that allow immediate open access, at least after a short embargo period (six months). Institutional repositories should be able to publish proceedings as a collection and not only in the form of individual papers; perhaps they should also be able to manage the preparation and selection of conference papers (at least they should be linked to these systems).
 - A specific institutional workflow should be created for theses and dissertations in order to facilitate and foster their publishing in open access.

For grey literature in institutional repositories, unrestricted, open access should be the status by default, not the exception or an option among others. Non (or less) controlled by commercial publishers, grey literature should not be disseminated under embargo or on the campus only. Of course, embargoed items are better than no items at all, and “gratis” open access is better than no access at all. But we should not call open what is not open and transform vectors of direct scientific communication into tools of evaluation and control of institutional output.

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Appendix – List of surveyed repositories

Europe

Chalmers <http://publications.lib.chalmers.se/> Chalmers Publication Library contains research publications produced at Chalmers University of Technology, Göteborg, Sweden.

CNRS <http://hal.archives-ouvertes.fr> HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research papers, including nearly 100 institutional repositories from French HE and research institutions.

CSIC <http://digital.csic.es/> Digital. CSIC the institutional repository of the Spanish National Research Council (CSIC)

Frankfurt a. M. <http://publikationen.ub.uni-frankfurt.de> publication server of Goethe University Frankfurt a. M.

Geneva <http://archive-ouverte.unige.ch/> Open Archive UNIGE (University of Geneva)

Ghent <https://biblio.ugent.be/> Ghent University Academic Bibliography

INRA <http://prodinra.inra.fr> ProdiNRA institutional repository of the French National Agricultural Research Institute

KNAW <http://depot.knaw.nl> Repository of the Royal Netherlands Academy of Arts and Sciences

Milan <http://air.unimi.it> AIR Archivio Istituzionale della Ricerca of the University of Milan

Torino <http://porto.polito.it> PORTO open repository of publications produced by the scientific community of Politecnico di Torino

Uppsala <http://uu.diva-portal.org> institutional repository of the Uppsala University

Australasia

Macquarie University Sidney <http://www.researchonline.mq.edu.au> Research Online open access digital collection

Monash University Melbourne <http://arrow.monash.edu.au> Arrow research repository

Queensland University of Technology Brisbane <http://eprints.qut.edu.au/> QUT e-Prints Archive

RMIT Royal Melbourne Institute of Technology <http://researchbank.rmit.edu.au/> RMIT Research Repository

Swinburne University Melbourne <http://researchbank.swinburne.edu.au> Swinburne Research Bank

Asia

Dokuz Eylül University Izmir <http://deu.mitosweb.com/> open archive

Chiba University <http://mitizane.ll.chiba-u.jp/curator/> CURATOR Chiba University's Repository for Access To Outcomes from Research

University of Hong Kong <http://hub.hku.hk/> HKU Scholars Hub institutional repository

Singapore Management University <http://ink.library.smu.edu.sg/> InK Institutional Knowledge at Singapore Management University

National Taiwan University <http://ntur.lib.ntu.edu.tw/> NTUR National Taiwan University Repository

America (North, Central and South America, Caribbean)

University of Massachusetts Amherst <http://scholarworks.umass.edu/> ScholarWorks@UMass institutional repository Amherst

Western Kentucky University Bowling Green <http://digitalcommons.wku.edu/> Top Scholar institutional repository

University of North Texas Denton <http://digital.library.unt.edu/> UNT Digital Library

All websites were accessed in March and April 2014.

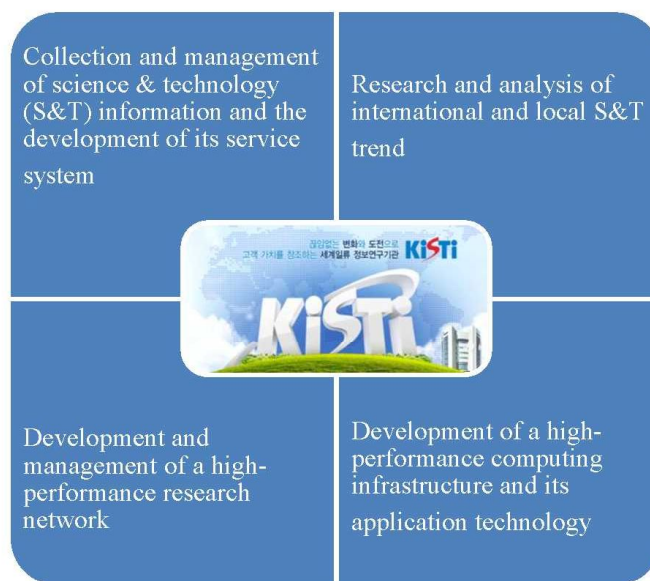
Korea Institute of Science and Technology Information (KISTI)

English version - <http://en.kisti.re.kr/>

* Vision

World-class information research institute creating values for customers

* Main functions



* Management and service of Korean R&D reports

KISTI exclusively manages, preserves, and serves Korean R&D reports for citizens and government officials. It provides Korean R&D reports and their information with National science & Technology Information Service (NTIS) and National Discovery for Science Leaders (NDSL).

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Analysis of Collection and Management of the Korea National R&D Report*

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Abstract

The term 'National R&D Program' has been widely used in a Korean society, but it is quite new as a legal term. Recently, its legal concept from the perspective of the unified semantics was defined, and the regulation on its scope has been established. In particular, 'National R&D Program' was officially used as a legal term for the first time in 'Special Act on Innovation in Science and Technology (No. 5340) enacted in April 1997. In the Regulation on the Management of National R&D Programs, 'National R&D Program' is defined in Article 2 as follows: "An R&D program in science and technology, in which a certain R&D project is chosen and partially or wholly funded by the government or public organization in accordance with the related law. It refers to all programs except for the basic programs promoted by government-funded research institutes in accordance with Paragraph 1 of Article 2 of Act on the Establishment, Operation and Fostering of Government-funded Research Institutes". In particular, because the national R&D report, one of intangible research outcomes among national R&D programs, contains important matters on R&D such as R&D method and results, it is the final outcome of the national R&D program regardless of its type. Since it is the evaluation standard of the R&D project and major research outcome as the final outcome which takes place at the end of the R&D program, the systematic management of related information is especially important. In this sense, the establishment of the information distribution system which makes it possible to collect, manage and use national R&D reports has been perceived as one of the most important R&D policies in any country. In fact, each country has systematically managed related duties through a national science & technology information agency. After all, the management of national R&D reports is a critical part in the management of the research outcomes of national R&D programs. This study examines the trend of national R&D report production, progress & assignment of national R&D programs and current non-disclosure reports, investigates the current collection and management of national R&D reports by the KISTI, a professional R&D report management agency in Korea, and proposes a future direction. In addition, the development of an information distribution system and database for national R&D reports and online services are analyzed.

1. Introduction

For a national R&D report, the result of the national R&D programs, diverse systems have been developed and operated to disclose the public knowledge asset to the general public and spread its outcome. In other words, a general distribution system on the related information has been established and operated through National Science & Technology Information System. In addition, a national R&D report is regulated to be registered on the research outcome management agency (Korea Institute of Science & Technology Information, KISTI) as a part of the national R&D outcomes to have it kept and managed by the government.

The term 'National R&D Program' has been widely used in a Korean society, but it is quite new as a legal term. Recently, its legal concept from the perspective of the unified semantics was defined, and the regulation on its scope has been established. In particular, 'National R&D Program' was officially used as a legal term for the first time in 'Special Act on Innovation in Science and Technology (No. 5340) enacted in April 1997. Even though 'National R&D Program' was used as a legal term, it just meant 'government-led R&D program'. Then, its legal concept was clearly defined in Framework Act on Science and Technology (No. 6353) enacted in January 2001. After stipulating the clauses on 'Promotion of National R&D Programs (Article 11)', 'Regulations on the Management of National R&D Programs (Presidential Decree No. 17429)' were enacted in December 2001 in accordance with the provision above. Then, the legal terminologies were finally defined and established. [1] According to Article 2 of 'Regulations on the Management of National R&D Programs', the National R&D Program is defined as follows:

* First published in the GL16 Conference Proceedings, March 2015.

"An R&D program in science and technology, in which a certain R&D project is chosen and partially or wholly funded by the government or public organization in accordance with the related law. It refers to all programs except for the basic programs promoted by government-funded research institutes in accordance with Paragraph 1 of Article 2 of Act on the Establishment, Operation and Fostering of Government-funded Research Institutes". [2] The fact that the basic programs promoted by government-funded research institutes are excluded means that the managerial characteristics of national R&D programs promoted by government-funded research institutes are admitted, not that the characteristics of national R&D programs are denied.

Therefore, the National R&D Program can be defined as follows: "A government-led R&D program which develops and promotes a plan for the advancement of national science and technology using government or public funds with a particular purpose". More specifically, it refers to "An R&D program in science and technology, in which a certain R&D project is chosen and partially or wholly funded by the government or public organization in accordance with the related law". [3]

2. The production type and management of national R&D outcomes

2.1 Production type of national R&D outcomes

The outcome of national R&D programs refers to all research results which occur after the fulfillment of the research projects regardless of their type and period. From the broad perspective, it refers to "both scientific and technological outcomes which are created through R&D such as patents and papers and other tangible and intangible economic, social and cultural results".

The outcome of national R&D programs can be largely divided into two categories: tangible outcome which is obtained during the execution of national R&D programs such as research equipment & materials, research facilities and prototype and intangible outcome including industrial property right and copyright on research reports.

First, tangible outcome refers to various results obtained from the byproducts of R&D, including biological resources, compounds and information data. Their performance is measured based on quantity or usage. On the contrary, intangible outcome is knowledge performance acquired through R&D, including knowledge assets (ex: patent, etc.), and its performance is measured considering both quantitative and qualitative aspects. In terms of royalty, the performance is analyzed based on revenue.

Meanwhile, the science and technology research outcome is divided into primary and secondary outcomes depending on its development stage or period. In other words, it is classified by the concept of time-based outcome depending on time difference. The primary outcome refers to the result which directly occurs for a short period time including knowledge creation, technology development, product production and process improvement derived from science and technology R&D activities. As the output directly related with R&D, the primary outcome includes patent, paper and prototype as well as research equipment.

The secondary outcome refers to social and economic effects derived from the primary outcome, including cost reduction, increase in sales and other social and economic contributions. As the succeeding outcome from the primary result, the secondary outcome is usually stated as a performance indicator associated with business activities such as market share, profit percentage, import substitution effects.

2.2 Management of the outcome of national R&D programs

The outcome derived from national R&D programs is a public funded important asset so that it should be properly managed to enhance its industrial economic utility. In fact, the ultimate goal of national R&D programs is to promote socioeconomic development through the use of the results from the R&D activities. Therefore, the outcomes of national R&D programs should be disclosed to all people and widely used through national management and distribution except for extraordinary cases. [4]. In particular, because the national R&D report, one of intangible research outcomes among national R&D programs, contains important matters on R&D such as R&D method and results, it is the final outcome of the national R&D program regardless of its type. Since it is the evaluation standard of the R&D project and major research outcome as the

final outcome which takes place at the end of the R&D program, the systematic management of related information is especially important. [5]

Meanwhile, to prevent redundant research or investment and select a new research project through the mutual exchange of R&D information by informing various information derived from the national R&D programs to the general public and providing related information to researchers from the academia-industry-research cooperation institutes, there should be a system which can describe national R&D and manage general and detailed information. For the collection and supply of national R&D information, however, it is hard to develop a particular means but the national R&D report which includes the details and results of the R&D activities. Hence, it is critical to develop a management system which can and distribute manage national R&D reports in an integrated manner.

In this sense, the establishment of the information distribution system which makes it possible to collect, manage and use national R&D reports it recognized as one of the most important R&D policies in any country. In fact, each country has systematically managed related duties through a national science & technology information agency. After all, the management of national R&D reports is a critical part in the management of the research outcomes of national R&D programs.

3. Collection and management of national R&D report information

3.1 Progress and projects of national R&D programs

Korea's national R&D programs have continuously risen since the 1990s. For the last five years, they have grown by more than 10% annually. In 2012, for example, a total of KRW 15.9064 trillion was invested. The number of the R&D programs was as large as 537, and 43,192 projects were promoted, which means that the unit number of R&D projects is about 40,000.

<Table 1> Current Status of National R&D Programs, their Investments and Specific Projects by Year

Year Category	2008	2009	2010	2011	2012
Investment (x KRW 100 million)	109,936	124,145	136,827	148,528	159,064
No. of Programs	486	474	483	493	537
No. of Specific Projects	37,449	39,565	39,254	41,619	43,192

※ Source: National Education Science & Technology Council,
National R&D Program Survey & Analysis Report, Annual Reference

3.2 National R&D report production trend

The national R&D reports (ex: final report, summary, etc.) derived from the national R&D programs have gradually increased. Since a strict survey on the number of final report started in 2012, it has declined. In principle, the final report of national R&D programs occurs by the unit of specific R&D project. Considering multi-year R&D programs and non-disclosure R&D projects, about 25% of the national R&D projects have been found.

<Table 2> National R&D Report Production Trend

Year Category	2010	2011	2012	Total
No. of Report Produced	14,565	15,044	9,646	39,255

※ Source: The internal data (internal analysis) of the KISTI.

3.3 Current non-disclosure of national R&D reports by bureau

Among the R&D reports derived from the national R&D programs, constant ones can be kept undisclosed. In fact, a great portion of national R&D reports aren't open to the public. For the last three years, the reports' non-disclosure rate has been as high as 36.9%.

<Table 3> Classification of Non-disclosure Projects of National R&D Programs

Category	2010	2011	2012	Total (Average)
Total Projects	8,540	8,461	4,805	21,806
Disclosed Projects	4,399	5,635	3,736	13,770
Non-disclosure Projects	4,141	2,826	1,069	8,036
Non-disclosure Ratio (%)	48.5%	33.4%	22.2%	36.9%

※ Source: Ministry of Education, Science and Technology / KISTI, National Science and Technology Information System (NTIS)

According to analysis on current non-disclosure of national R&D reports, a big difference has been found among government bureaus. In terms of the percentage of non-disclosure when the Defense Acquisition Program Administration in which the particularity of national R&D programs was accepted was excluded, Small and Medium Business Administration was the highest with 100%, followed by Ministry of Knowledge Economy (63.3%), Ministry of Land, Transport and Maritime Affairs (32.1%), Ministry of Agriculture and Forestry (30.6%) and Ministry of Health and Welfare (22.3%).

<Table 4> Classification of Non-disclosure Projects of National R&D Programs by Bureau

	No. of Projects	Disclosed	Undisclosed	Percentage %
Ministry of Education, Science and Technology	8,622	8,302	320	3.7%
Ministry of Knowledge Economy	5,014	1,838	3,176	63.3%
Ministry of Agriculture and Forestry	471	327	144	30.6
Ministry of Health and welfare	780	606	174	22.3%
Ministry of Environment	388	371	17	4.4%
Ministry of Land, Transport and Maritime Affairs	308	209	99	32.1%
Small and Medium Business Administration	3,884	-	3,884	100%
Rural Development Administration	1,083	1,073	10	0.9%
Korea Food and Drug Administration	861	835	26	3.0
Defense Acquisition Program Administration	4	1	3	75.0
Total	21,415	13,562	7,853	36.7%

※ Source: Ministry of Education, Science and Technology / KISTI, National Science and Technology Information System (NTIS)

3.4 Collection and management of national R&D reports by the KISTI

For the government-led collection and management of national R&D reports, they should be submitted to or registered in the KISTI. However, the results have been very poor. In other words, the generation distribution of R&D information according to the related laws and the number of national R&D reports submitted to or registered in the KISTI have been very little. Since 2010, the registration standards for national R&D program reports changed to final reports. As a result, the volume of database on national R&D reports collected by the KISTI was 8,540 cases in 2010 and 8,461 cases in 2011. Based on the final reports, the percentage of database to the conventional national R&D reports was about 69%. With revision of the standards for the registration rate of national R&D program reports, the ratio of database was somewhat raised. However, the increase is very minor considering the functions and roles of the KISTI.

<Table 5> Development of National R&D Report Database by the KISTI

Year	2008	2009	2010	2011	2012
No. of Productions	17,233	18,160	14,565	15,044	9,646
No. of Database Development Cases	4,623	7,108	8,540	8,461	4,805

※ Source: Internal data of the KISTI

Among the national R&D reports collected by the KISTI, in particular, the percentage of non-disclosure national R&D reports is very high. According to the national R&D reports registered in the KISTI's NTIS, a total of 16,085 non-disclosure reports are registered as of March 2012 for the past five (5) years (2008 thru 2012), accounting for 48.0% of total national R&D reports. This kind of result means that when the reports are submitted or registered in the KISTI, those which are good to be disclosed are frequently kept undisclosed.

<Table 6> Collection of Non-disclosure National R&D Reports by KISTI

Category	2008	2009	2010	2011	2012	Total
No. of Total Reports Registered	4,623	7,108	8,540	8,461	4,805	33,537
No. Non-disclosure Reports	3,213	4,836	4,141	2,826	1,069	16,085
Percentage of Non-disclosure reports (%)	69.5%	68.0%	48.5%	33.4%	22.2%	48.0%

※ Source: Ministry of Education, Science and Technology / KISTI, National Science and Technology Information System (NTIS)

4. Conclusion

As mentioned above, the information distribution systems for national R&D reports have been managed quite well. In other words, in addition to the information-linked distribution through the government bureau's information distribution system, the general registration system for national R&D reports has been operated from the perspective of the management of national R&D outcomes. From the formal aspect, therefore, the information management system of national R&D reports is well-designed and systematic.

However, current information management and distribution of national R&D reports are still very poor. As described above, the collection of the KISTI's national R&D reports and development of database on related information are way behind. Therefore, it is urgent for the government and institutions to come up with a solution.

Especially, it is critical to develop a system to disclose non-disclosure national R&D reports and distribute information. Among the national R&D reports, those which should be improved by the government or others requested by concerned parties such as participating firm can be kept undisclosed. Even so, the percentage of non-disclosure national R&D reports is significantly high. As a result, the collection of related non-disclosure reports by the KISTI is very low.

For the integrated registration and management and efficient distribution of national R&D reports, after all, there should be a more specific and practical plan. Then, the problems with which the reports are not properly submitted to or registered in the KISTI should be derived, and an improvement plan for them should be developed. For the systematic and unified submission and registration of national R&D reports, the use of a standardized R&D report form should also be suggested.

For the comprehensive distribution of the submitted or registered reports, moreover, an improvement plan for the related system should be developed for the efficient and effective development and operation of the government-led information distribution system by reviewing the related information together with a copyright issue which could be raised during the development of database and promotion of online services.

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Open Access Korea, Phase 1: Five Years On*

Hyekyong Hwang, Seonheui Choi, and Hyesun Kim (Korea)

Introduction

As the world began to take interest in the open access, the Korean government has been taking an interest in the open access as well, and policies in relation to information sharing are being development. The Ministry of Culture, Sports and Tourism established a comprehensive plan for library development, and open access movement started in 2009 for the sharing and spreading the research output published in Korea. A Korean style repository was developed and supplied as a technical foundation to realize the open access, and an electronic publishing system started being established for the open access journal publishing. Moreover, in order to promote policy/system strategies for the open access of the research output produced by Korean researchers, public access policies have been studied and expert groups have been formed and forums have been held. Various types of workshops and conferences were held as well in order to raise awareness of open access in Korea. This paper introduce such projects and activities of OAK for the past five years and various effects on policy, system and service as well as future tasks of OAK.

Project Outcomes and Activities

OAK Institutional Repositories(OAK IR) and OAK Portal

As a part of the OAK project, the Korea Institute of Science and Technology Information and Argonet Company developed a Korean open access repository system. OAK IR was developed as a part of a green road strategy for the spreading of OA. OAK IR is a repository system customized to meet the needs of Korean circumstances based on an open source, Dspace, developed by the Massachusetts Institute of Technology and HP. This system was formed with the institutional customizing module, the Korean common module, and the global base module.

- Institutional Customizing Module: Providing website UI of OAK IR, linkage with the internal management system (e.g. digital library system, research management system)
- Korean Common Module: Providing Hangul morpheme analyzer, automatic system for key word search , statistics system
- Global Base Module: Registration into global site (OpenDOAR, ROAR), Open API

Open Access is not commonly known in Korea. Thus, strategies were established to select organizations that are willing to actively share the knowledge and information of the organisation and to open access the collected contents, and to install OAK IR. Every year, applications were received and a group of expert evaluators evaluated organizations to which OAK IR is to be provided. The selected organizations were visited by system engineers, and the engineers analyzed, researched the demand, and installed the OAK IR. The selections were made based on evaluation of three categories—organization, systems, and open access contents.

- Organization: Willingness of the representative to operate the repository, a department and personnel to be solely responsible for the IR operation
- System (H/W, S/W): Whether the organization satisfies the minimum basic conditions for operation of the repository
- Open access contents: Diversity, richness and level of academic professionalism of the contents that are able to be openly accessed

25 organizations were selected after evaluation of the above factors by the expert evaluators. The types of these organizations range from public organizations, research centers, university libraries and public libraries. About 300,000 contents are currently contained in OAK IR, including academic articles, reports, patent documents, etc. The OAK IR system developed in Korea is now publicly accessible as open source, and can be downloaded and installed for free on OAK Portal.

OAK Portal is a comprehensive search platform for open access contents in Korea (refer to <figure 1>). The contents provided by OAK Portal include metadata of contents established and operated by individual organizations as well as contents contained in OAK IR. OAK Portal regularly collects metadata from individual IR through Open Archives Initiative Protocol for Metadata Harvesting (OAI-PMH), the international standard for metadata exchange, indexes and provides a comprehensive search service.

* First published in the GL16 Conference Proceedings, March 2015.

In particular, the contents metadata collected from each organization goes through a process of filtering by way of contents quality management before they are provided. The contents quality management process of OAK Portal is as follows.

The items of metadata collected in the OAK Portal are categorized into mandatory/ optional, and the categorized items in the OAK Portal are regularly examined. Through this process, error data are discovered, and managers of OAK Portal implemented a system of recollecting the error items in the OAK Repository of each organization.

Through such process, materials such as academic papers, RnD reports, patents, multimedia contained in IR of each organization are collected, and collected information are provided through a browsing service by each organization, type of information and subject.

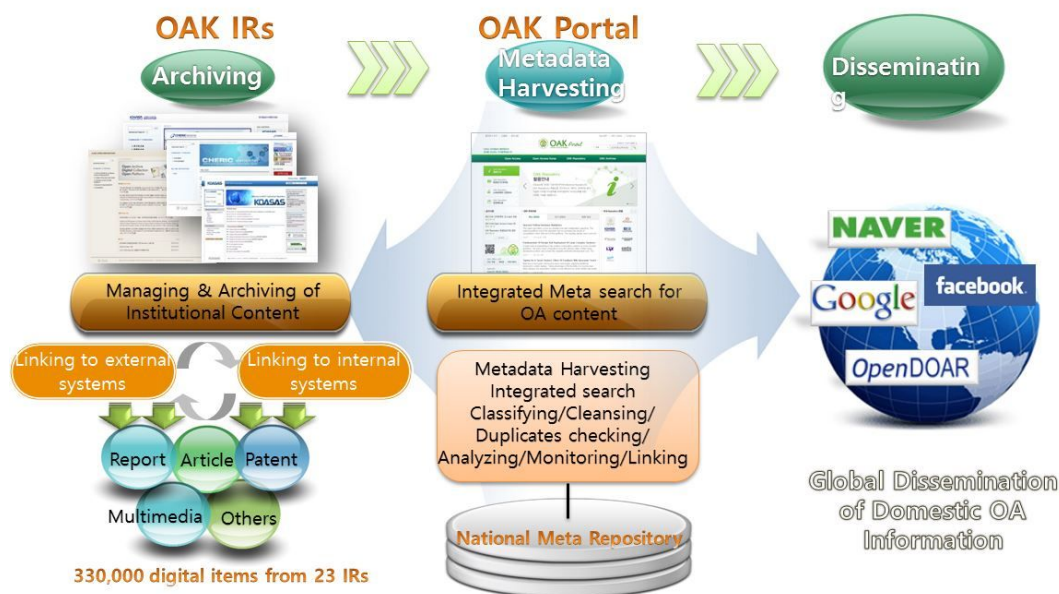


Figure 1. IR content archiving and dissemination process

Open Access Journal and OAK Central

World renowned publishers such as Springer tend to convert PDF files into XML files in order for the academic papers to become more accessible and readable. A global representative medical archive, PMC (Pubmed Central) provides a PMC Journal Publishing DTD for production of high-quality academic papers.

As Korean academic societies had been providing academic journals on the internet for free, they did not know the difference between open access and free access. Therefore, the project researchers had difficulties to explain the concept and necessity of open access to the executive members of academic societies.

In this regard, in this project, we have thought about strategies to induce publishing of open access academic journals in Korea. While the awareness level of academic societies for open access journals was low, we have proposed free establishment of full texts into XML for the academic papers in order to persuade the editors. The editors had strong demand to make their academic society journal into SCI level journal. Having understood this need, this OAK project attempted to induce conversion of the selected academic papers according to JATS 1.0 DTD into full text XML for free.

As a result, 25 titles of academic journals and 2,979 articles in Korea have been established into full-text XML, and the academic journals published in the academic societies have been able to change into open access journal. KISTI produced a guideline to establish full-text XML and established articles in a standardized form, verified XML structuring, using the PMC XML validation checker, and produced open access/free access information in 25 titles of academic journals.

Moreover, in order to convert the electronic versions (PDF) of academic papers into XML format, automation function was developed in addition to XML Workbench, which enabled shortening of time required for establishment of each academic paper.

OAK Central is a platform to archive Korean open access journals and provide them globally (refer to <figure 2>). Through this website, Korean open access academic papers are able

to be searched by table, figure, and ppt. In addition, this website also provides a function to view related articles, and data extract functions based on OAI-PMH. This is the result of OAK project research team in objectifying Korean academic papers by analyzing Journal Publishing DTD 3.0 developed by NCBI.

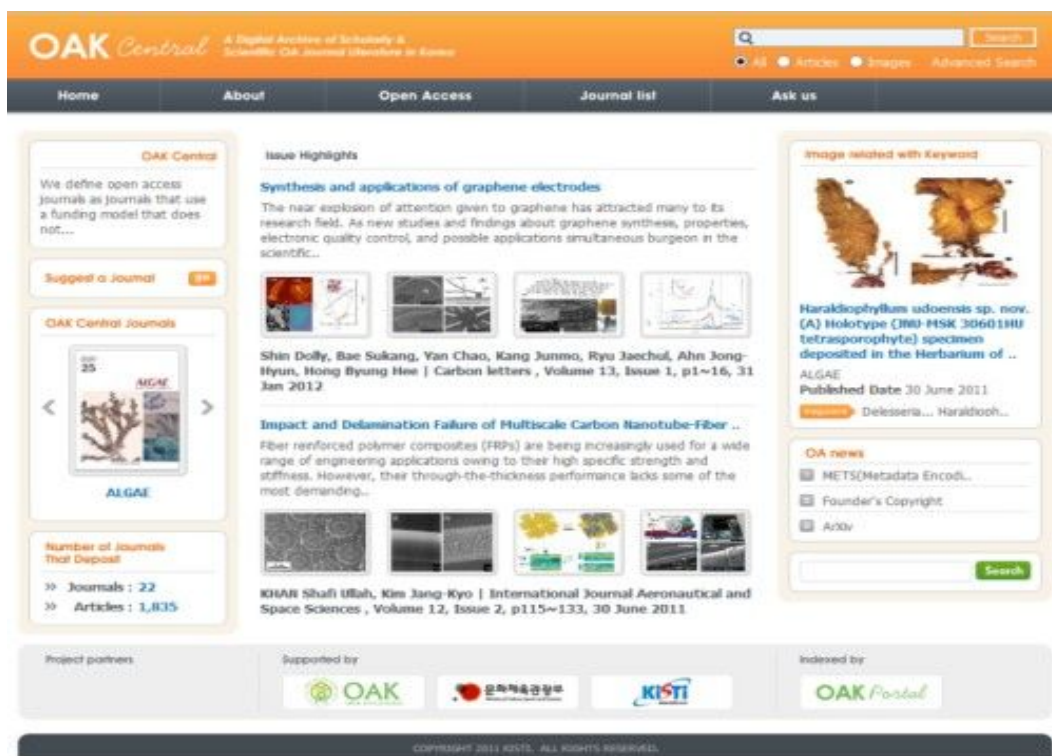


Figure 2. OAK Central(<http://central.oak.go.kr>)

Research on Public Access Policy

In 2010, through research of public access policies the publicly funded research output, domestic and international rules and regulations were analyzed and public access policy proposals were developed. And in 2011, laws and policies related to public research outputs were analyzed, and regulations and processes were developed. With the drafts of law, public hearings were held with organizations in related fields, but it was difficult to gather opinions from the participating stakeholders. Awareness of open access, and the conditions for acceptance from the academia, libraries, publishers, etc. were deemed inadequate to finalize the drafts of law. It would be necessary to gather opinions with stakeholders through discussions in order to enact drafts of law related to public access policies in the future.

To gather such opinions, OAK project team and the government need to continue to promote OA with strong will. Furthermore, mid and long-term plans, such as funding support, introduction of incentive systems, would be necessary. However, there are some issues to be faced for institutionalization of the open access of research outputs with public funds.

First, Korea is managing research outputs of government RnD project, but the scopes of research outputs are limited to RnD reports, and there are no regulations on public access of academic journal papers, which are the key points of academic communication. It would be necessary to prepare public access policies to include such academic journal papers.

Second, the awareness of open access is low for Korean researchers, and the publicly funded research outputs are perceived as private property of the researchers, it is difficult to arrive at an agreement of opinions on open access.

Third, Korean DB distributors strongly resist academic society journals being changed into open access journals, concerned with reduction of income from the sales of academic database.

Other Promotional Programs and Activities

Through this project, we have conducted various activities for vitalization of OA in Korea.

First, we operated forums for open access expert and open access academic journal editors.

Second, for the development of open access business model, we studied the cooperation scenario with SCOAP3 and KESLI, a Korean consortium for electronic journals.

Third, to raise awareness of Koreans, we have produced and disseminated online various types of education materials and promotion videos.

Fourth, we have produced a guideline to operate an open access repository through the special group for OAK repository managers and held many types of workshops to share management know-how.

Fifth, by holding OAK conferences in Korean during the open access week, we tried to contribute to raising awareness of Korean researchers. The OAK project team promoted scholarly communication of Korea to governments, foundations, organizations, libraries, researchers and users through such conferences.

The purpose of these conferences was to make the stakeholders related to scholarly communication a group in favour of open access.

Discussions

While proceeding with OAK project for the past 5 years, we have tried to raise awareness of domestic researchers and members of academic societies. In particular, resistance from DB producers who had established and sold academic paper DBs was very strong, and affected open access movement.

Scholarly communication in Korea is seldom commercial, which is different from overseas. Academic journals are published mainly by academic societies, and the costs for publishing academic societies consist of membership fees from academic society members and the government funds. However, not all of the academic societies are funded by the government, academic journals that have been evaluated as excellent have been supported by the government.

In this regard, the Korean Federation of Science and Technology Societies, which supports funds of scientific, technological academic journals, and National Research Foundation of Korea, which funds academic journals on liberal arts, social science and science, began to include "whether they are openly accessible" in the factors to be evaluated. This is the result of raising awareness of open access in Korea through OAK project, and the government took this awareness into effect by systemization.

Moreover, another effect of this project is that public fund management organizations such as Korea Centers for Disease Control & Prevention have started to manage public access policies on research outputs.

In the case of OAK Repository, the number of repositories is increasing, but there are still issues on system and management to be complemented. Especially, it would be necessary to codify policies and/or management guidelines on the point that the research outputs created by researchers who belong to organizations should be required to be deposited and openly accessed.

In the case of Korea, repositories are operated based on libraries that belong to organizations, cooperation with related departments (IT and research output departments) continues to be needed.

This project, upon completion of the research and development for five years, is proceeding to continue on with Phase 2 with the National Library of Korea, and will continually try to solve such remaining issues.

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GreyNet's Web Access Portal is the GreyGuide

The GreyGuide Portal redefines GreyNet's position on the information landscape

Now via one locator grey literature metadata, linked data, full-text and non-textual content is online accessible

<http://greyguide.isti.cnr.it>

NEWSFLASH

GreyForum on Digital Preservation

Amsterdam, November 30, 2015

Annual GreyNet Award Dinner

Amsterdam, November 30, 2015

GL17 - Seventeenth International Conference on Grey Literature

Amsterdam, December 1-2, 2015



DOCUMENT SHARE

- GL SlideShare Series (2003 - ...)
- GL Program Books (2003 - ...)
- OpenGrey Conference Preprints
- OpenAIRE GreyNet Publications
- DANS Published Datasets
- Other GreyNet Publications



COLLECTIONS

- Proposed Good Practices
- Published Good Practices
- GL16: Conference Proposals
- GL17: Conference Proposals
- GSI: GreySource Index
- BIO: Who is in Grey Literature

GreySource Index

VIDEOS

- YouTube videos on Grey Literature
- GREYLIT Tutorials



PREVIOUS EVENTS

- Pisa Declaration meeting (2014)



ARCHIVE

- January, 2015
- February, 2015
- March, 2015



Seventeenth International Conference on Grey Literature 'A New Wave of Textual and Non-Textual Grey Literature'



Royal Netherlands Academy of Arts and Sciences
Amsterdam, Netherlands on December 1-2, 2015

Day 1 - Conference Program

OPENING SESSION

Welcome Address	<i>Marnix van Berchum, Data Archiving and Networked Services, DANS-KNAW, Netherlands</i>
Opening Address	<i>To be confirmed</i>
Keynote Address	Dissertations and Data: Convergence of Textual and Non-Textual Content <i>Joachim Schöpfel, Univ. of Lille, France; Primož Južnič, Univ. of Ljubljana, Slovenia; [et al.]</i>

Moderator Day 1 Marnix van Berchum, DANS-KNAW, Netherlands

SESSION 1 – CONVERGENCE OF TEXTUAL AND NON-TEXTUAL GREY LITERATURE

Move beyond text – How TIB manages the digital assets researchers generate

Irina Sens, German National Library of Science and Technology (TIB), Germany

Grey content in health care: issues and challenges – An institutional experience

Medha Joshi, Department of Lib Scs (Digital Library), Tata Memorial Hospital, India

**Copyright Reform and the Library and Patron Use of Non-text or Mixed-Text Grey Literature:
A Comparative Analysis of Approaches and Opportunities for Change**

*Tomas A. Lipinski and Katherine Chamberlain Kritikos, School of Information Studies;
University of Wisconsin Milwaukee, United States*

**Library as Publisher: Convergence of New Forms and Roles of Textual and Non-Textual
Grey Literature in Digital Scholarship**

*Julia Gelfand, University of California, Irvine;
Anthony Lin, Irvine Valley College, United States*

SESSION 2 – INFLUENCE OF SOCIAL MEDIA AND NETWORKS ON GREY LITERATURE

Academic blogging consequences for Open Science: a first insight into their potential impact

Carla Basili, National Research Council of Italy, CNR-IRCrES Institute; Luisa De Biagi, CNR-Biblioteca Centrale, Italy

Altmetrics as a method to validate and enhance grey literature

Peter Nieuwenhuizen, Rijkswaterstaat, Netherlands

Can uptake of public health interventions be improved by including grey literature in the evidence base?

Jess Tyndall, Flinders University, Australia

Public sharing of medical advice using social media: an analysis of a Twitter

*Gondy Leroy, Eller College of Management, University of Arizona; Philip Harber, Zuckerman College of Public Health,
University of Arizona; Debra Revere, School of Public Health, University of Washington, United States*

INTRODUCTION TO CONFERENCE POSTERS

On the afternoon of Day One, each person presenting a poster will have the opportunity to introduce their work in the Main Forum. The Poster Session and Sponsor Showcase will continue in adjoining rooms on the morning of Day Two, where the presenters will be able to meet with conference delegates and participants in an informal setting.

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Seventeenth International Conference on Grey Literature 'A New Wave of Textual and Non-Textual Grey Literature'



Royal Netherlands Academy of Arts and Sciences
Amsterdam, Netherlands on December 1-2, 2015

Day 2 - Conference Program

Moderator Day 2 Jens Vigen, European Organization for Nuclear Research, CERN (CH)
POSTER SESSION AND SPONSOR SHOWCASE

The GL17 Call-for-Posters is currently underway. Guidelines and due dates are available on the conference site, <http://www.textrelease.com/gl17callforposters.html>. Due to limited space available for physical posters, early submissions are recommended. Once your abstract has been accepted, it will appear on the conference site and in the GreyGuide Repository – GreyNet's Web Access Portal <http://grevguide.isti.cnr.it/>.

SESSION 3 – INNOVATIVE WAYS IN LEVERAGING GREY DOCUMENT TYPES

Analysis of National R&D Project Report Output Utilization and Economic Contribution

Kiseok Choi, Cheol-Joo Chae, Yong-hee Yae, Yong Ju Shin, KISTI, Korea

Impact of Grey Literature of the Ibero-American and Lusophone conferences in the fields of Communication and Social Sciences

*Sonia Regina Soares da Cunha, CECS/Uminho, Portugal
Ricardo Abravanel, Federal University of Rio Grande do Norte, Brazil*

The National Portal for Recording Theses (PNST): Its Role, Importance and Constraints for Algerian Researchers

Azzedine Bouderbane, Nadja Gamouh, and Hadda Saouchi, University of Constantine, Algeria

Grey Literature Sources in Historical Perspective : Content analysis of handwritten notes

Snježana Ćirković, Faculty of Philology, University of Belgrade, Serbia

SESSION 4 – VISUALIZING CONTENT IN AND FOR GREY COMMUNITIES

Grey Literature citations in the age of Digital Repositories and Open Access

*Silvia Giannini and Stefania Biagioni, Institute of Information Science and Technologies ISTI-CNR;
Sara Goggi and Gabriella Pardelli, Istituto di Linguistica Computazionale, ILC-CNR, Italy*

Public Interest in Accessing the INIS Collection

Dobrica Savić, Nuclear Information Section, International Atomic Energy Agency, NIS-IAEA, Austria

Extracting value from grey literature: processes and technologies for aggregating and analyzing the hidden "big data" treasure of organizations

Gabriele Motta, Roberto Puccinelli, and Lisa Reggiani, Network and Information System Office, CNR; Massimiliano Saccone, Central Library, CNR, Italy

Leveraging Grey Literature – Capitalizing on Value and the Return on Investment:

A Cumulative Case Study

*Dominic Farace and Jerry Frantzen, GreyNet International, Netherlands
Stefania Biagioni and Carlo Carlesi, ISTI-CNR, National Research Council, Italy
Christiane Stock, Inist-CNRS, National Centre of Scientific Research, France*

CLOSING SESSION – REPORT CONFERENCE MODERATORS, CONFERENCE HANDOFF, AND FAREWELL

Post-Conference Tour To be announced

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Seventeenth International Conference on Grey Literature 'A New Wave of Textual and Non-Textual Grey Literature'



Royal Netherlands Academy of Arts and Sciences
Amsterdam, Netherlands on December 1-2, 2015

Call for Posters

Guidelines for Abstracts

Title of Poster:

Topic/Theme:

Author Name(s):

Telephone:

Organization(s):

Fax:

Address/P.O. Box:

Email:

Postal Code - City - Country:

URL:

Participants who seek to present a poster during GL17 are invited to submit an English abstract between 350-400 words. The abstract should describe the project and/or related information product or service. The abstract should likewise include a title, name(s) of the presenter(s) and their full address information. Abstracts are an important source of information available prior to the conference that is accessible to both delegates and conference participants.

Conference Related Topics

- ☐ New Types of Grey Literature Documents
- ☐ New Forms of Non-Textual Grey Literature
- ☐ The Convergence of Textual and Non-Textual Grey Literature
- ☐ The Influence of Social Media and Networks on Grey Literature
- ☐ Innovative ways in Leveraging Grey Literature
- ☐ Other Conference Topics

Due Date and Format for Submission

Timely registration is a guarantee of your placement on the conference program. The conference venue is only able to accommodate a limited number of physical posters (size A1). Abstracts in MS Word should be emailed to conference@textrelease.com on or before **October 15th 2015**. The author will receive verification upon receipt and this will be accompanied by further guidelines for submission of PowerPoint slides, Conference Registration, etc.

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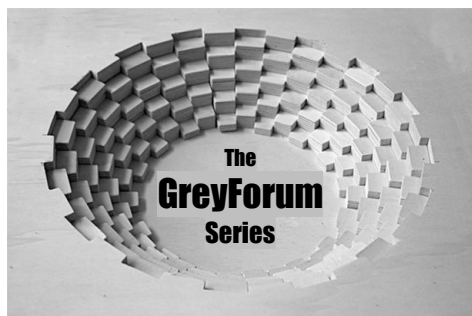
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Grey Literature and Digital Preservation: Standards in Practice



This pre-conference workshop is organized by GreyNet International together with speakers from Open Preservation Foundation (United Kingdom), ISTI-CNR (Italy), NIS-IAEA (Austria), and CERN (Switzerland)

Grey Literature and Digital Preservation: Standards in Practice



GreyForum 4.1

Workshop

Grey Literature and Digital Preservation: Standards in Practice

Date

Monday, 30 November 2015

Time

10:30 – 16:00 hours

Location

Huis de Pinto
Literary and Cultural Center
Sint Antoniesbreestraat 69
1011 HB Amsterdam
The Netherlands

Registration

The Program includes coffee/tea service during the day and workshop materials. Early registration is recommended. Seating arrangements for thirty participants.

<http://www.greynet.org/greyforumseries/digitalpreservation.html>

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About the Program and Panel:

Open Community Approaches to Digital Preservation

Ed Fay, Open Preservation Foundation, OPF, United Kingdom

Technical Aspects of Preserving Linked Data

Carlo Meghini, Institute of Information Science and Technologies, ISTI-CNR, Italy

Digitization and Preservation of Non-Conventional Literature for the International Nuclear Information System, INIS

Germain St-Pierre, Nuclear Information Section, IAEA, Austria

Research Data Analysis Preservation and Reuse: Case Study in High-Energy Physics

Tibor Simko, European Organization for Nuclear Research, CERN, Switzerland

Grey Literature and Digital Preservation is geared to service providers, publishers, librarians, archivists, and other information professionals in government, academics, business and industry involved in the curation and preservation of grey literature resources.

10:30 Registration Desk Open

12:30 Lunch

10:45 Welcome

13:30 NIS-IAEA Presentation

11:00 OPF Presentation

14:15 CERN Presentation

11:45 ISTI-CNR Presentation

15:00 Panel Discussion

Note

A special reduced fee is offered participants who are registered for the GL17 Conference in Amsterdam on December 1-2, 2015.

About the GreyForum Series www.greynet.org/greyforumseries.html

GreyNet

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