

The Copyright Regime as the Backbone of Open Access

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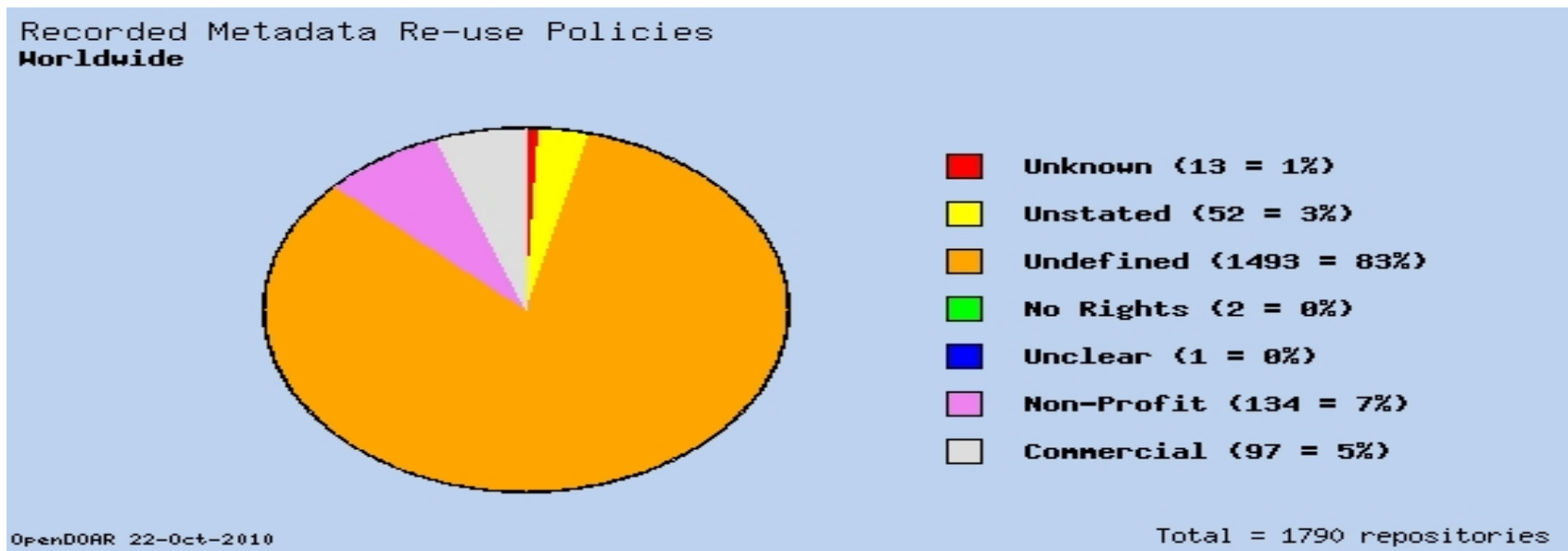
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Open Access

- ▶ OA conditions are:
 - ▶ free access,
 - ▶ possibility to re-use and
 - ▶ permanent archiving;
- ▶ No problem for the Golden Road;
- ▶ But what about the Green Road?

- ▶ Free access:
 - ▶ Necessary condition for OA;
- ▶ Permanent archiving:
 - ▶ Depends on OA business model of publisher;
 - ▶ Some measures could be put in place to encourage publishers to allow post-print archiving or reduce embargo period

Possibility to re-use:



Source: Directory of Open Access

Repositories

87% of repositories have unknown/unstated/
undefined policy

What kind of re-use?

- ▶ Anybody should be free to:
 - ▶ Read and copy (*bare minimum!*)
 - ▶ Distribute (*necessary but not always clear*)
 - ▶ Make derivative work (*not always clear or not always granted*)
 - ▶ Make commercial use (*not always clear, usually not granted*)

Cf. Berlin Declaration!

Green Road and re-use

- ▶ University libraries and repositories generally do not know under what terms the publications can be re-used;
- ▶ Copyright law should give additional support to re-use possibilities;
- ▶ Exceptions and limitations (E&L) on copyright should:
 - ▶ Allow researchers to reproduce, distribute and build upon each others' work

Ongoing discussions at the WIPO

- ▶ WIPO Standing Committee on Copyright and Related Rights:
 - ▶ Published several studies on E&L;
 - ▶ Main emphasis on exceptions for library and educational use and persons with disability;
 - ▶ July 2010 WIPO report on status of copyright E&L takes standard approach to library and educational use;
 - ▶ No indication that a treaty is in the make

Ongoing discussions in Germany

- ▶ **1st and 2nd basket brought two important changes for the benefit of research:**
 - ▶ **New § 52a Act: ‘Public access for teaching and research’, which includes digitisation of scientific works + distribution among researchers**
 - ▶ **New § 53a Act: ‘Sending of copies on order’**
- ▶ **3rd basket copyright reform started;**
 - ▶ **OA express part of the debate;**
 - ▶ **Discussion about reinforcement of E&L;**

Brazilian legislative proposal

- ▶ Art. 46 Apart from the cases expressly provided in this Article, the reproduction, distribution and communication to the public of protected works, without the express prior authorization of the owner and without requirement of remuneration by the user, shall also not constitute violation of copyright when such use is:
 - ▶ I - for the purposes of education, instruction, information, research or for use as a creative resource; and
 - ▶ II - made to the extent required for achieving the purpose, without conflicting with the normal exploitation of the work used and without unreasonably prejudicing the legitimate interests of the authors.

Exceptions and limitations for OA

- ▶ E&L should allow compliance with Berlin Declaration;
- ▶ E&L should be mandatory:
 - ▶ Requiring implementation in the national copyright law;
 - ▶ Requiring to give precedence to limitations even if TPMs are applied;
 - ▶ Requiring to give precedence to limitations in case of non-negotiated contracts;

- ▶ **Thank you very much for your attention!**
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