

Constructing Open Access by Effective Copyright Management

Professor Anne Fitzgerald

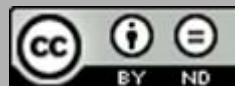
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What is “open access” in the context of open access publishing?

It is the free (gratis) online availability of the research results that scholars give away themselves (peer-reviewed journal articles and conference papers, mostly), provided by authors upon acceptance for publication and made permanently available without restrictions on use.

Alma Swan, “Open Access: Why should we have it?” *Key Perspectives* (2006):

OAK Law Project



- Various bodies of law are relevant to open access publishing:
 - Intellectual property – mainly copyright;
 - Contract (eg in publishing contracts and agreements with digital (e-prints) repositories);
 - Privacy/confidentiality/defamation etc...
- Our focus is on the **strategic management** of legal rights to enable Open Access to Knowledge (OAK) – creating legal framework to manage the interests of funding bodies, authors, publishers, users, reusers of information/knowledge

Why? What's New?

- Internet ⇒ proliferation of authors, publications (formats) and publication channels
- Dealing with legal issues is “part and parcel” of traditional publishing/media industries
- Universities, research organisations, governments, individuals are increasingly involved in publishing
 - need to take on tasks/“know how” long familiar to traditional publishers
 - in particular, need to manage legal issues involved in publishing so they are able to do what they want to – and avoid incurring liabilities (unintended/unexpected)

Some challenges....

- Taking on role of publisher requires universities, governments etc to pay attention to legal and other issues
 - requires a shift in approach of university copyright administrators:
 - until recently, main focus was on licensing-in of external materials (eg hard copy publications, digital databases) and negotiation of payments under statutory copyright licences (eg to CAL, Screenrights)
 - now, online publication turns the focus onto management (licensing-out) of copyright material produced by the university/research institution
 - diverse range of authors and materials

Managing rights for open access publishing

- As content producers (responsible for licensing-out), universities need to deal with
 - ownership of rights in material produced by academics, researchers etc
 - rights to be granted to others
 - publishers
 - users and re-users
- But, the flow-through from traditional publication models means that some legal interests (notably, copyright) need to be addressed and actively managed for OA

Copyright and open access

- copyright is a collection of legal rights that attach to an original work when it is created
- for literary works, the copyright owner has the exclusive rights to:
 - reproduce the work in a material form (i.e. copy); publish the work; perform the work; communicate the work to the public (e.g. online); make an adaptation of a work (e.g. a translation).
- before the internet
 - information was scarce; publishing and distribution was expensive; distance was a communication and time barrier;
 - publisher was editor, printer, disseminator, publicist, agent
- traditionally, authors of academic publications (journal articles/books etc) invariably transferred copyright entirely to the publisher in the publishing contract
 - enabled publisher to exercise all the exclusive rights, freely, in order to do what was needed to disseminate the work to an audience

Copyright and open access

- From late 1990s, increasing awareness of problems caused by assignment of copyright to publishers, while demands for open access were growing
- OA to academic materials has been provided in two main ways:
 - **Gold** publication - publishing in an open access journal;
 - **Green** publication – depositing/self-archiving in a subject-based or institutional repository, or posting the work on the author’s personal website
- Can the author publish via OA if copyright has been assigned to publishers? Publisher has the exclusive rights to control and charge fees for
 - access
 - use and reuse (including copying)

Copyright and open access

- In OA context, focus has been on publisher-author relationship
 - If publisher holds copyright, what can the author do with the pre-/post-print or publisher's version? Self-archive, deposit in a repository?
- But, in OA systems, a broader range of relationships needs to be understood and managed
 - role of funding bodies, universities, authors, publishers, users and reusers need to be understood and dealt with

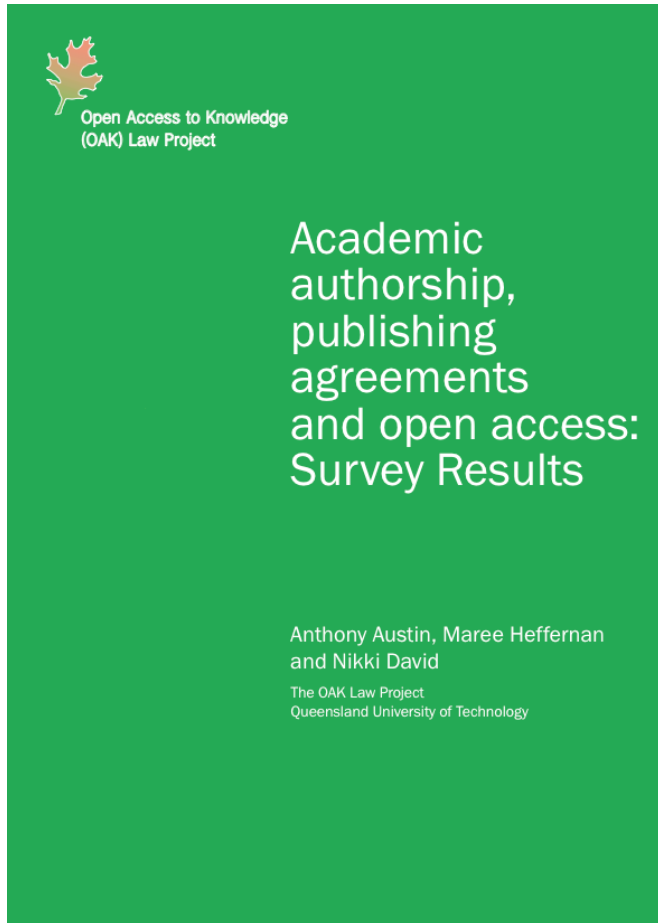
Copyright and open access

- To manage copyright for OA
 - define what kind of OA you want (who can do what with the material)
 - understand the roles of the different stakeholders (rights holders)
 - structure the system to ensure that you have the legal rights to be able to provide the desired OA

Our surveys of publishers/authors/researchers

- OAK Law and Legal Framework for e-Research Projects have done 3 surveys (available at <http://www.oaklaw.qut.edu.au/reports>):
 - **authors:** published 2008; survey conducted Oct-Nov 2007 - *“Academic authorship, publishing agreements and open access: survey results”*
 - **publishers:** 2007/2008 – *“A review and analysis of academic publishing agreements and open access policies”*
 - **e-Research:** published 2007; survey conducted April-May 2007 - *“Legal and project agreement issues in collaboration and e-research: survey results”*
- Provide information about knowledge, attitudes and practices
- Implications for institutions and how they respond to the demand for solutions/strategies to foster innovation
- Findings inform development of legal frameworks for managing access to/reuse of research publications and data

Author Survey



- published May 2008
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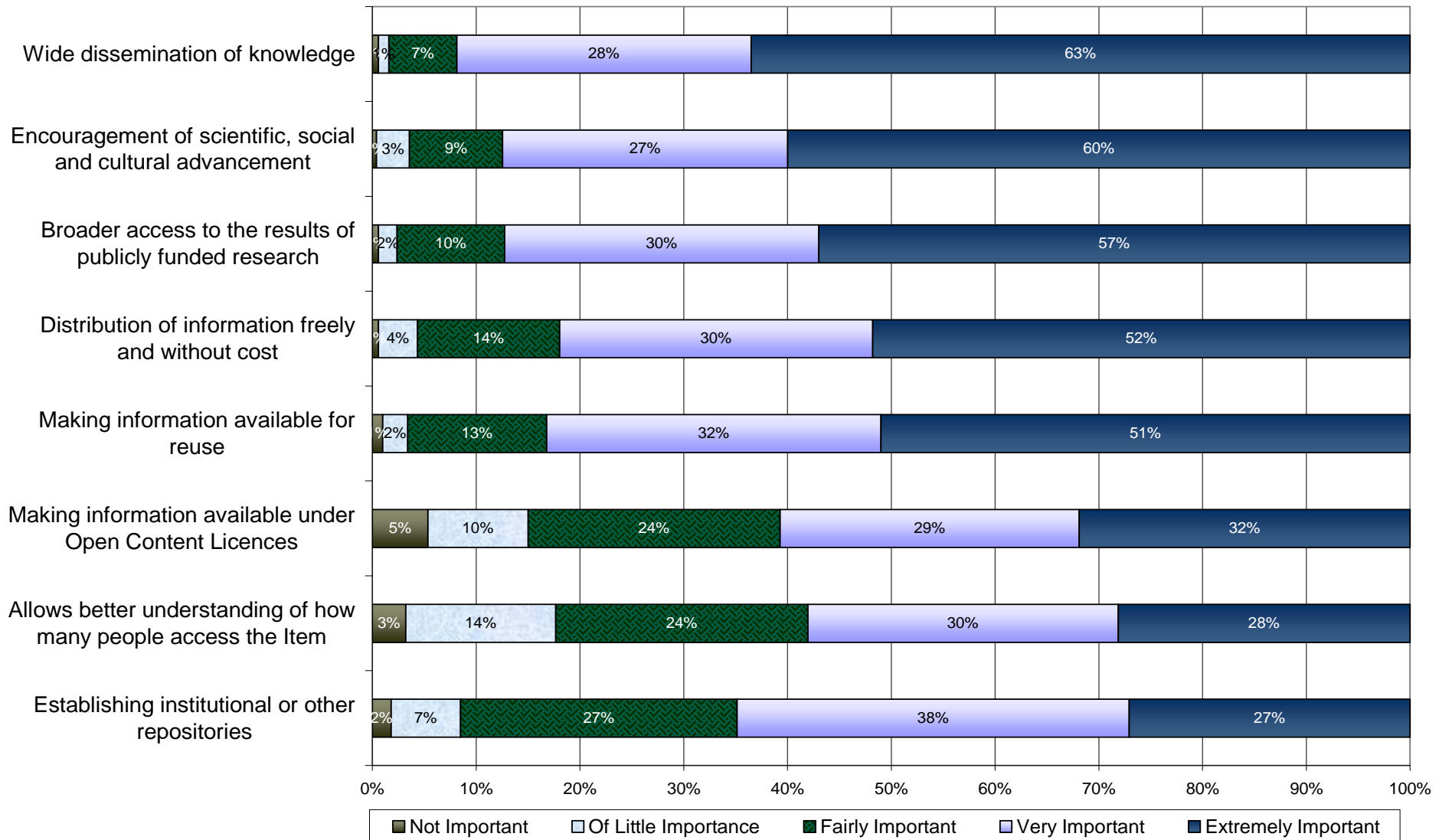
Author Survey

- nationwide survey of attitudes and practices of Australian academic authors towards the publication and dissemination of their research
- sought information about:
 - authors' experiences with publishing agreements
 - perceptions of open access and commercial publishing
 - understanding of copyright ownership in published articles
 - involvement with online repositories and open access journals
- 509 participants - from universities, government, industry and other research bodies
- From a range of disciplines:
 - 57% from Science and Technology
 - 25% from medical, health and epidemiology; 19% from biology, chemistry and physics
 - 43% from Arts and Social Sciences
 - 14% from education; 12 % from humanities

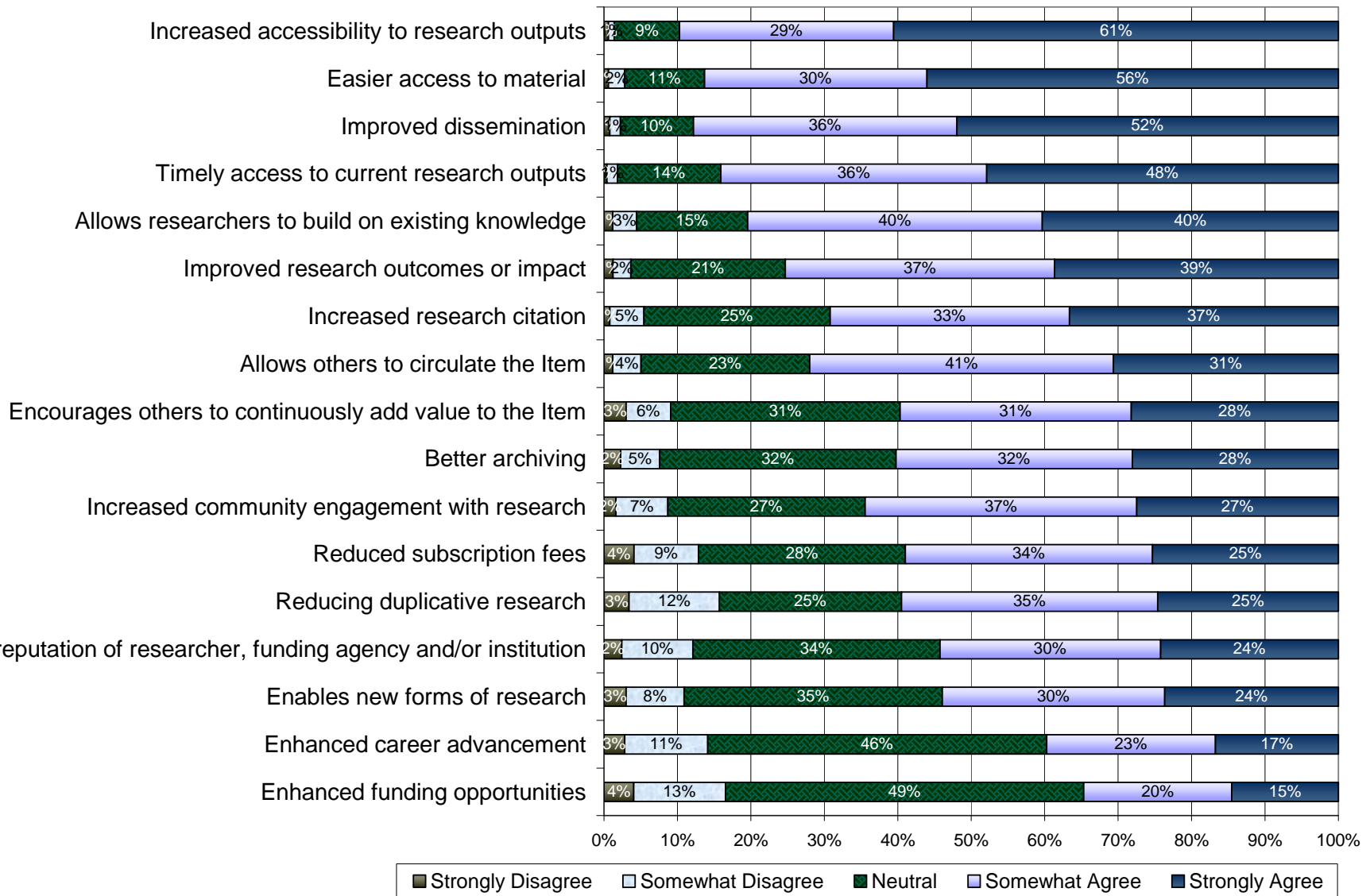
Author Survey

- broad support for key elements of open access
 - wide dissemination of knowledge (63 % - extremely important; 28% - very important)
 - encouragement of scientific, social and cultural advancement (60 % - extremely important; 27% - very important)
 - broader access to the results of publicly funded research (57 % - extremely important; 30% - very important)
 - 92 % of authors see repositories as “fairly”, “very” or “extremely” important as an element of open access (bottom line)
- found broad agreement on the benefits of open access
 - increased accessibility to research outputs (61% - strongly agree)
 - easier access to material (56% - strongly agree)
 - Improved dissemination (52% - strongly agree)

Important elements of OA



Benefits of OA



Authors' preference for open access in repositories

The great majority of authors (93%) are in favour of institutions having a limited, non-exclusive licence to make academic publications available in a non-commercial, publicly accessible, online institutional repository

Author Suggestions for Repositories

In favour of academics granting institutions a limited non-exclusive license to place Items in a non-commercial, publicly accessible, on-line institutional repository

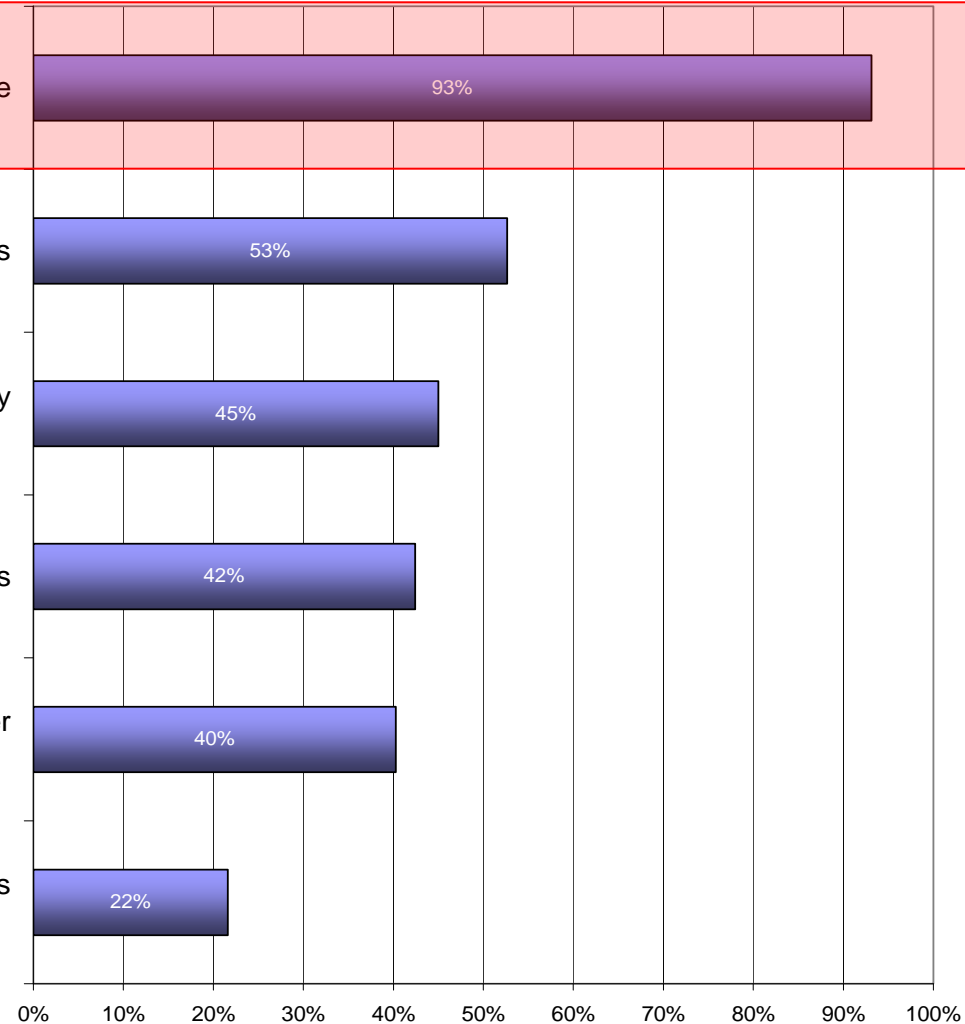
University or institution promote or facilitate open access

Deposited an Item in an institutional or other repository to make it freely available online

Search for Items within institutional repositories

Direct students to use institutional repository or repositories of another institution

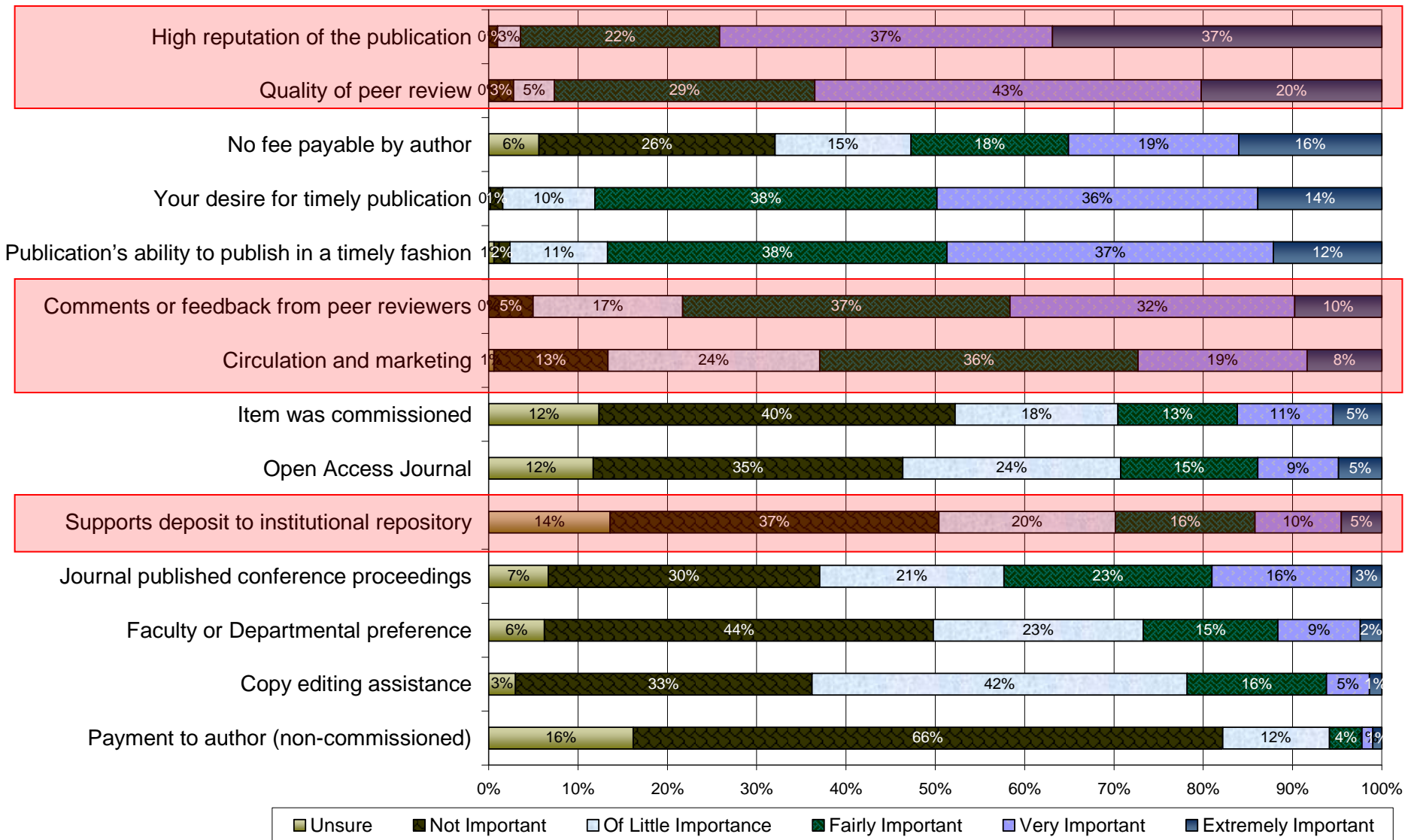
Institutional repository provide information on number of times item has been viewed or downloaded



Authors' decisions about where to publish

- In making a decision about publishing, reputation of the publication, impact and quality of peer review rank more highly than that the publication is an open access journal or permits deposit of the item into an open access (institutional) repository
- Timely publication is also an important factor (50% say it is extremely important or very important)

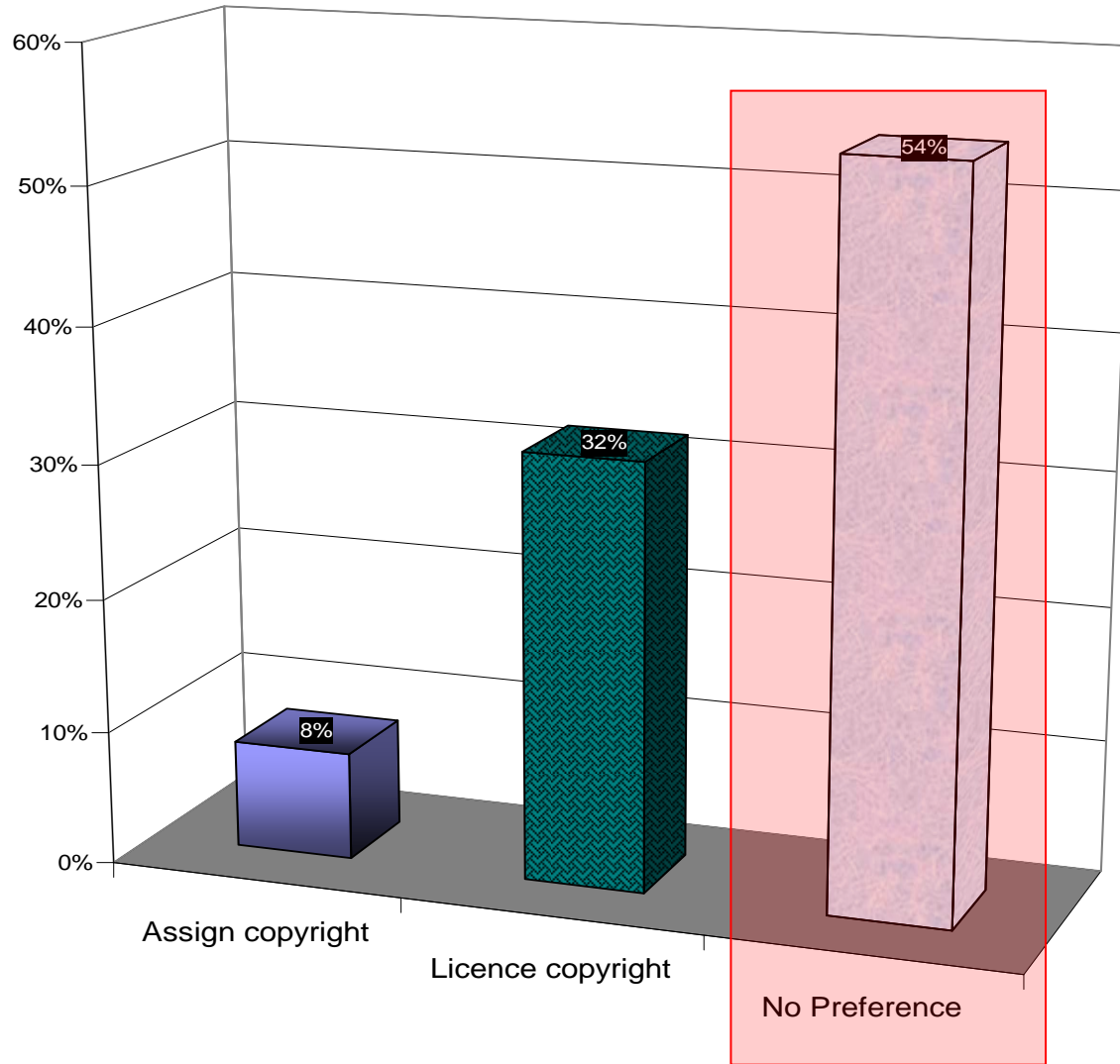
Authors Decision to Publish



Assignments and licences

- The majority of authors (63%) enter into publishing agreements that assign copyright to the publisher [Note – survey of publishing agreements puts assignment at over 90%]
- What do authors prefer?
 - 8 % prefer assignment
 - 32 % prefer to retain rights to make their works available by open access, by means of a licence with the publisher
 - 54 % had no preference between assignment and licence

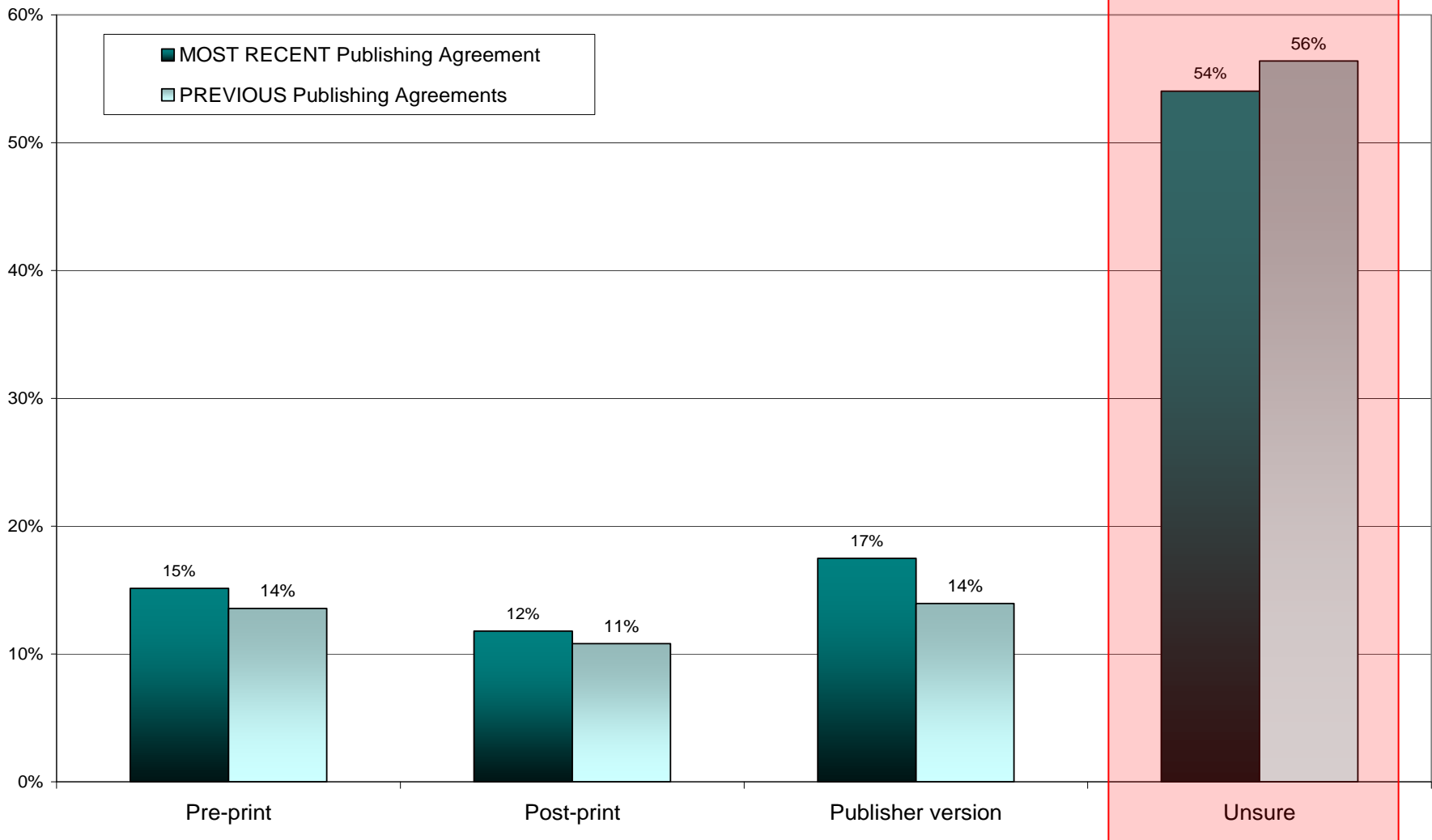
Preferences – Assignment or Licence



Uncertainty about rights to deposit in repository

- Over 50 % of authors were unsure whether they were permitted to deposit into a repository under
 - their past publishing agreements; or
 - their most recent publishing agreements
- Uncertainty found for all versions: pre-/post-print and publisher's version

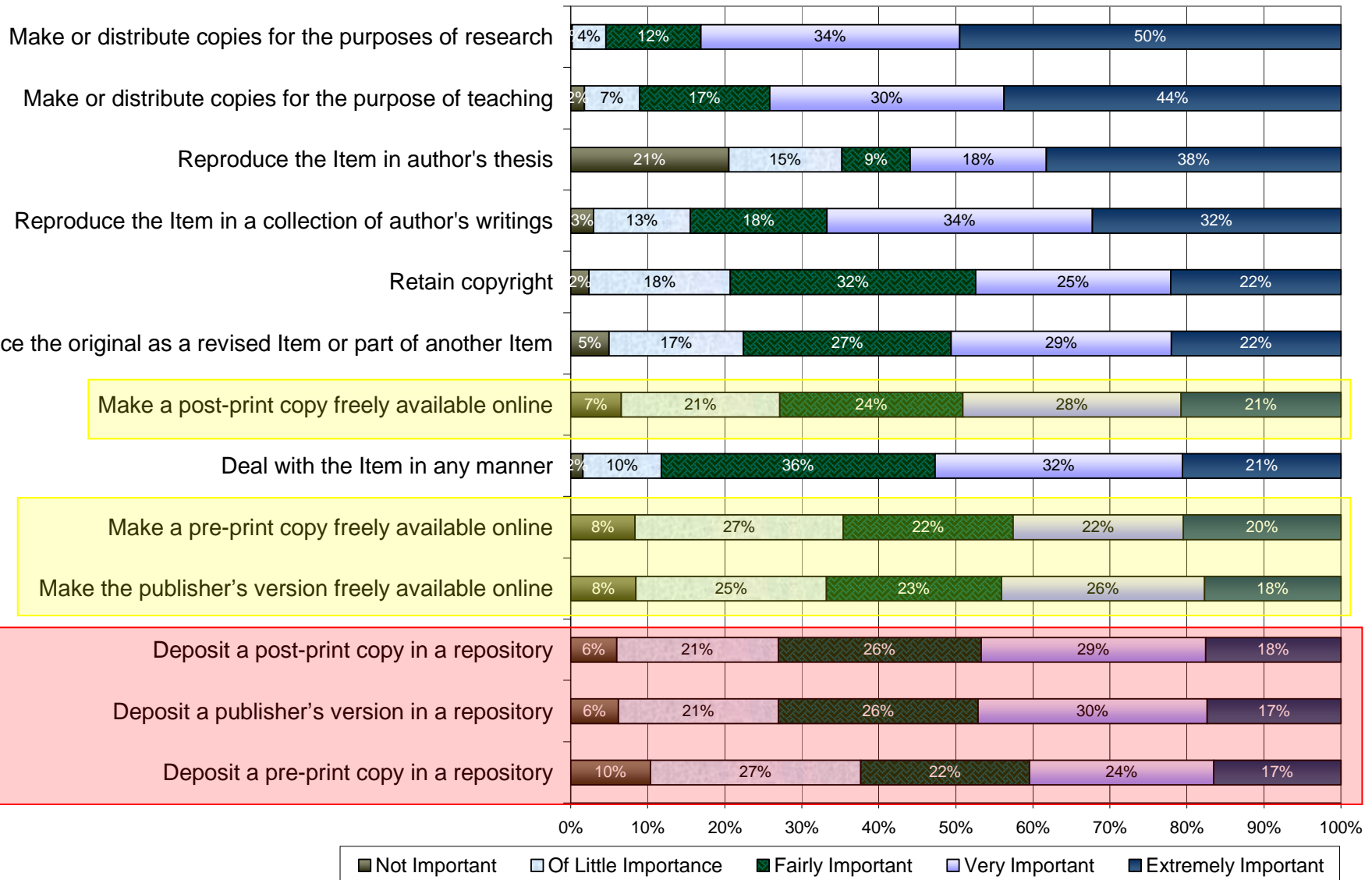
Publishing Agreements – Right to Deposit



Authors' rights

- majority of authors do not insist on a licence with publisher – over 50% think it is too much trouble to negotiate with publishers
- almost 50 % do not understand the terms of a publishing agreement but sign it anyway – many do not understand the difference between an assignment and a licence
- comments indicated that authors are prepared to assign copyright in order to get published
- authors regard the retention of rights to make and distribute copies for teaching and learning as being of greatest relevance to them (85% - extremely or very important)
- BUT, 63 – 73 % of authors regard it as “fairly”, “very” or “extremely” important for authors to retain rights to deposit into repositories or to make it freely available online (pre-print/post-print/publisher’s version); 53% said it was “very” or “extremely” important to be able to deal with it in any manner

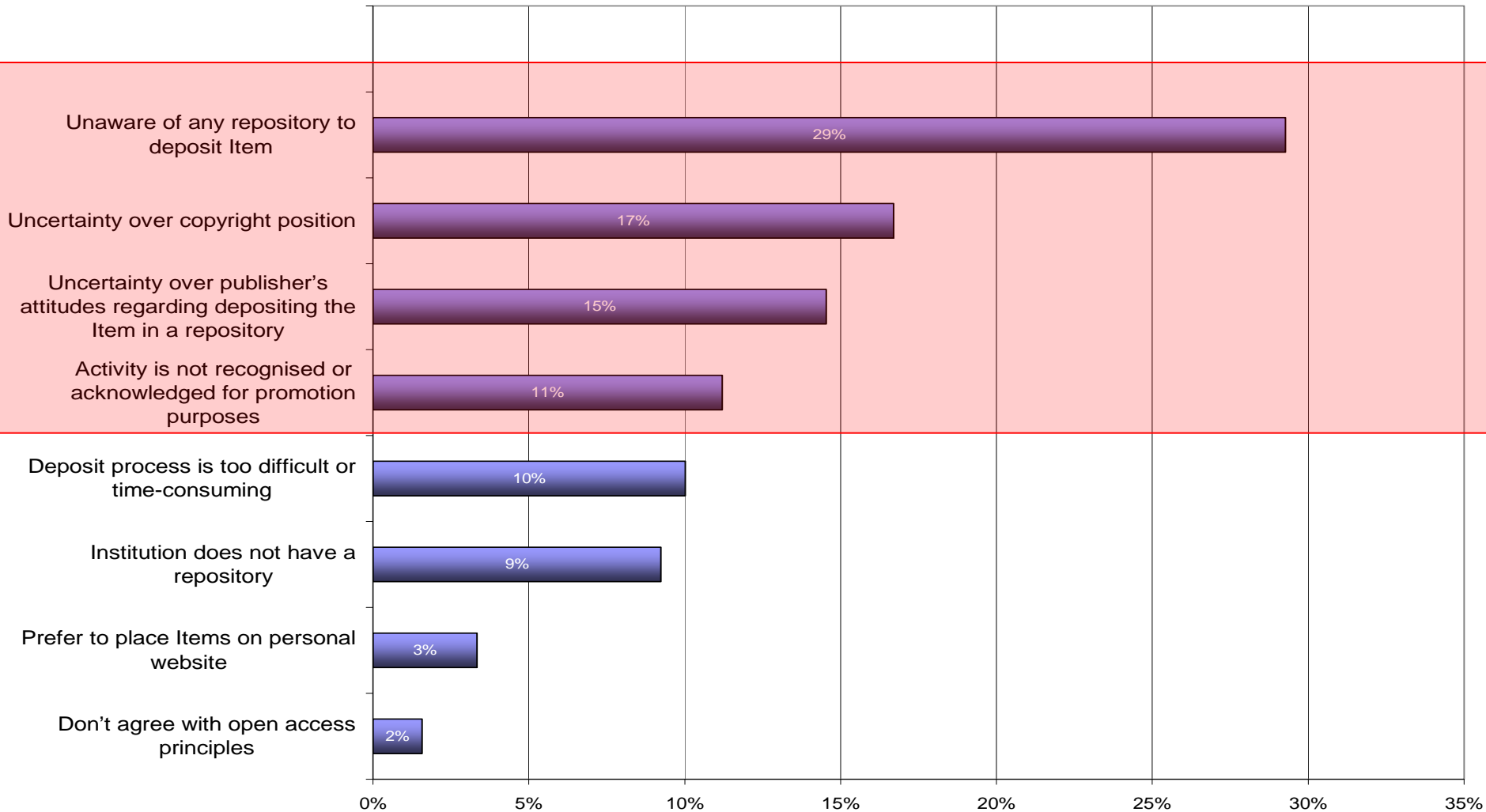
Relative Importance of Rights for Authors to Retain



Reasons for not depositing

- author's lack of knowledge about where to deposit their work (29%)
- concern about publisher's attitude towards deposit of work into repository (15%)
- concern about author's copyright position (17%)
- authors unsure how depositing promotes their work, profile, employment or career (11%)

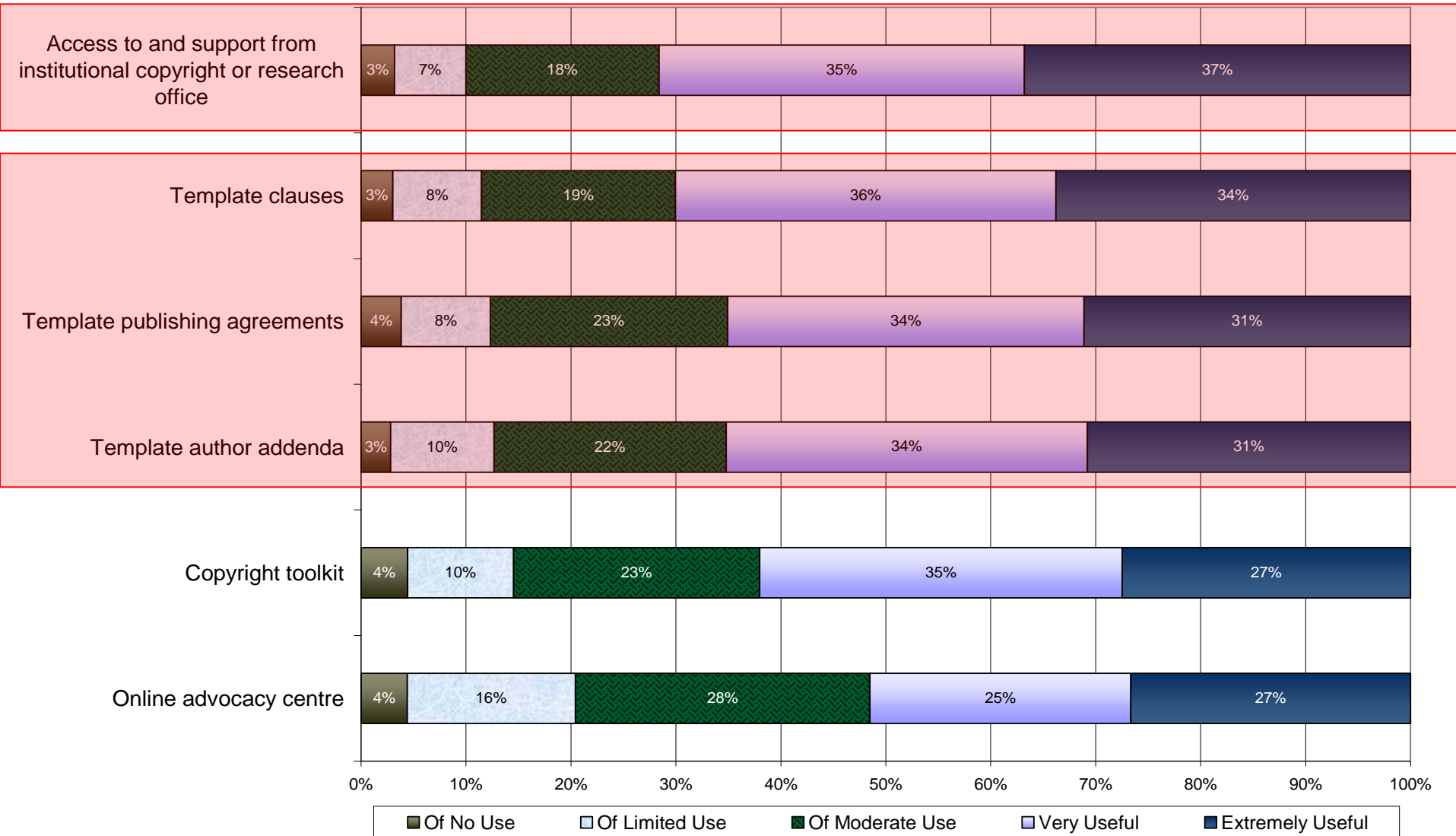
Reasons for Not Depositing



What academic authors want

- access to and support from their institution's copyright or research office on copyright issues
 - for 72% this is “very useful” to “extremely useful”
- template clauses, publishing agreements and addenda to publishing agreements
 - 65 to 70% regard these as “very useful” to “extremely useful”
- copyright toolkit
 - for 62% this is “very useful” to “extremely useful”
- online advocacy centre
 - for 52% this is “very useful” to “extremely useful”

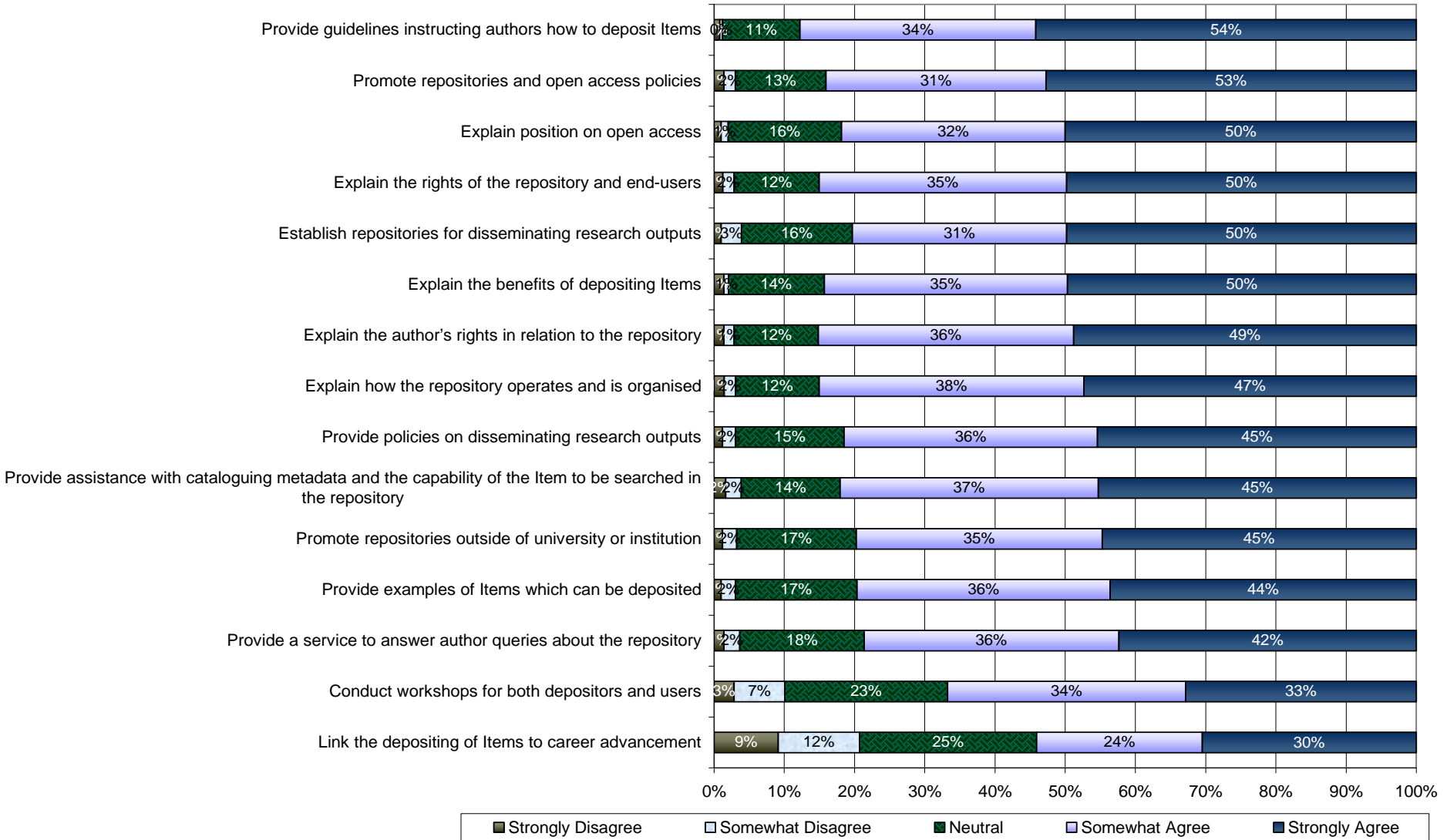
What Academic Authors Want



Institutional support

- Institutions should provide authors with clear information on
 - open access policy and principles
 - rights of academic authors, repositories and end users
 - how repositories will disseminate their works
 - types of works which can be deposited into repositories
 - differences between pre-print, post-print and publisher versions
- Institutions should assist authors in
 - identifying rights and open access issues in publishing agreements
 - negotiating with publishers about the retention of rights to deposit and make article available in repository

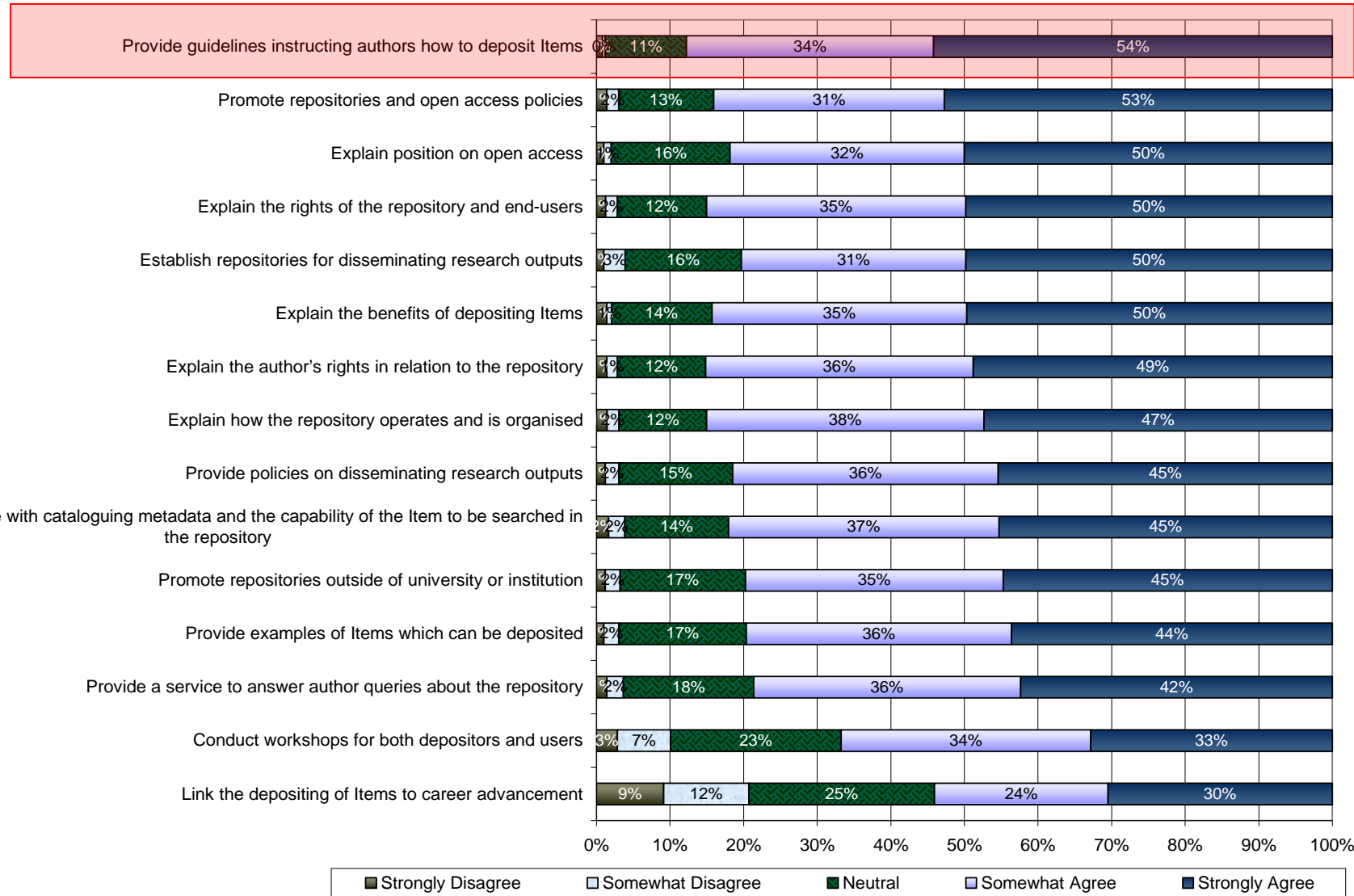
Support from Institutions



Practical Guides

- 54% of authors strongly agreed that Institutions should provide guidelines instructing authors how to deposit into repository
 - guides for both authors and publishers are required, covering issues of copyright ownership, open access, rights involved in depositing into an open access repository
 - institutions must still provide practical assistance and support to authors

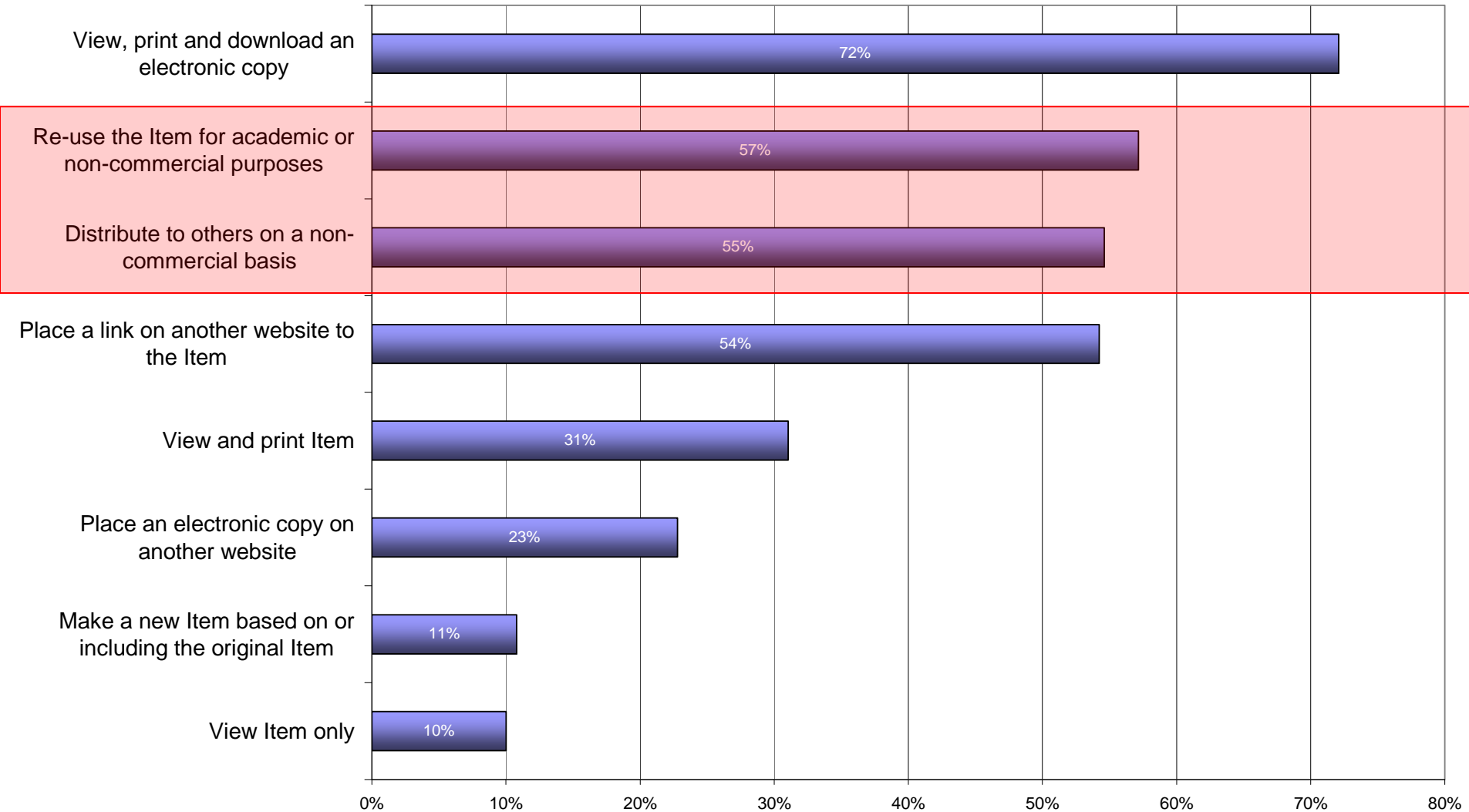
Practical Guides



End-user rights

- majority of authors want end users to have rights to
 - view, print and download a copy (72%)
 - reuse the work for academic and non-commercial purposes (57%)
 - be able to distribute it to others on a non-commercial (research) basis (55%)
 - link to the item from another website (54%) [SEE NEXT SLIDE]

Preferred End-User Access Rights



Conclusions

- many authors do not understand the difference between copyright assignment/ exclusive licences/ non-exclusive licences
- publishing agreements are more closely scrutinised by those in Arts & Social Sciences than those in Science & Technology
- Authors with less than 10 years publishing experience would be encouraged to deposit if it was linked to career advancement
- Authors with more than 10 years publishing experience are not concerned about depositing being linked to career advancement
- Need for different strategies to promote depositing into repositories to different author groups

The Issues...

- there is a lack of understanding about legal rights - copyright in particular
- many authors sign publishing agreements without understanding them
- many authors do not understand the difference between assigning and licensing copyright
- authors want continued rights in their own work and are willing to allow others to share and use their work, but they do not understand that their own mismanagement of their copyright may preclude this

The Solution?

Effective copyright management

- by authors
- by publishers [both open access and closed access journals]

Copyright Management

Publishers:

- take copyright licence, not assignment
- work with the interests of authors/users – not against them
- consider open licensing your journal contents [i.e. Creative Commons]

Authors:

- retain copyright where possible, grant a licence to publish
- understand your rights and be proactive about managing them
- consider open licensing your work [i.e. Creative Commons]

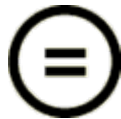
Creative Commons

<http://www.creativecommons.org.au>

A licence which allows open access to material but which may impose restrictions on how that material is used: [Can have different combinations]



Non-Commercial



No Derivatives



Share Alike



All licences require attribution of creator/author:



Work is “badged” with pictorial licence – eg:

[Expressed in 3 ways – (1) “Human readable” terms; (2) Legalese; (3) Machine readable code]

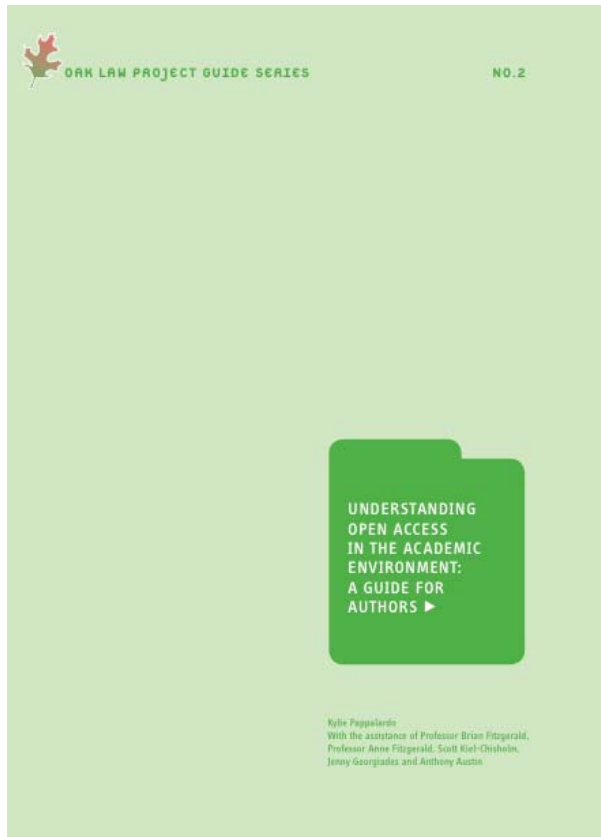
Our materials

- The OAK Law Project has developed a series of tools and guides to respond to the concerns of authors and to assist institutions and publishers in supporting their authors:
 - OAK List
 - *Understanding Open Access in the Academic Environment: A Guide for Authors*
 - Copyright toolkit
 - Sample Publishing Agreement (licence to publish)

OAK List

- <http://www.oaklist.qut.edu.au>
- online collaboration tool that tracks and manages publishers' stated positions on open access and digital repositories
- fully interoperable with the SHERPA RoMEO List
- searchable by authors, publishers and repository managers

“Understanding Open Access in the Academic Environment: A Guide for Authors”



- OAK Law Project
- published June 2008
- available online at:
<http://www.oaklaw.qut.edu.au>
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Author Guide

- explains:
 - what is OA?
 - institutional repositories
 - OA journals
 - funding bodies and their role in OA
 - what do publishers think about OA? – publisher/author relationship
 - copyright law basics
 - using copyright law to enable OA
 - granting rights to end-users
 - Creative Commons licences

Copyright Toolkit for Academic Authors

- designed to:
 - assist authors in understanding the copyright issues surrounding their work;
 - help authors to clarify what legal interests all the different parties – the author, their co-authors, their funding body, their institution and their publisher – have in the work;
 - provide a clear picture of the flow of rights and interests in the work as it travels from conception to publication to dissemination
 - assist authors in making key decisions about how to deal with copyright in their work so that they retain the rights they want for future use

(draft) Sample Publishing Agreement

<http://www.oaklist.qut.edu.au/copyright/>

- based on a retention of copyright by author – can be adapted for different situations
- author grants to publisher an exclusive licence to publish the work and a non-exclusive licence to do other things (eg copy the work)
- author retains the right to post the work online, re-use the work for other purposes, etc
- publishers can adopt this sample agreement (with appropriate changes)
- authors can present the sample agreement to publishers as an alternative to the publisher's standard agreement (with usually requires full assignment of copyright to publisher)



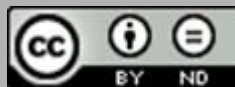
OAK LAW PROJECT REPORT NO. 1

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CREATING A LEGAL FRAMEWORK FOR COPYRIGHT MANAGEMENT OF OPEN ACCESS
WITHIN THE AUSTRALIAN ACADEMIC AND RESEARCH SECTOR

Professor Brian Fitzgerald
Dr Anne Fitzgerald
Professor Mark Perry
Scott Kiel-Chisholm
Erin Driscoll
Dilan Thampapillai
Jessica Coates



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Copyright Guide for Research Students: What
you need to know about copyright before
depositing your electronic thesis in an online
repository

Damien O'Brien and Dr Anne Fitzgerald with the assistance of Professor
Brian Fitzgerald, Scott-Kiel Chisholm, Jessica Coates and Kylie
Pappalardo



Open Access to Knowledge (OAK) Law Project
<http://www.oaklaw.qut.edu.au>

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Queensland University of Technology

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OAK LAW PROJECT



LEGAL FRAMEWORK FOR
e-RESEARCH PROJECT

BUILDING THE
INFRASTRUCTURE
FOR DATA ACCESS
AND REUSE IN
COLLABORATIVE
RESEARCH:

AN ANALYSIS OF
THE LEGAL CONTEXT.

Dr Anne Fitzgerald and Kylie Pappalardo.
Assisted by Professor Brian Fitzgerald,
Anthony Austin, Dr John Abbott,
Brendan Cosman, Damien O'Brien and
Bill Singleton (Allens Arthur Robinson).



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OAK Law – Legal Framework for e-Research publications

<http://www.oaklaw.qut.edu.au/reports>

- **OAK Law Project**
 - Author Survey Report (2008)
 - Review of Publishing Agreements and Open Access Policies
http://www.oaklist.qut.edu.au/files/OAK_Law_Review_and_Analysis_v1_20080212.pdf
 - OAK Law Project Report No. 1 – “Creating a Legal Framework for Copyright Management of Open Access within the Australian Academic and Research Sector” (2006)
 - Guide to Developing Open Access Through Your Digital Repository (2007)
 - Copyright Guide for Research Students (2007)
 - OAK List (2007)
 - Building the Infrastructure for Data Access and Reuse in Collaborative Research : A Legal Analysis (2007)
- **Legal Framework for e-Research Project**
 - e-Research Survey Report (2007)
 - Building the Infrastructure for Data Access and Reuse in Collaborative Research: A Legal Analysis (2007)
 - Practical Data Management: A policy and legal guide (2008)
- **“Legal Framework for e-Research: Realising the Potential” (2008)**
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