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SEBASTIANO FARO

ITTIG-CNR, Florence, Italy

Open Access to publicly funded research results: the case of legal information

In 2004 the OECD issued a *Declaration on access to research data from public funding* on behalf of OECD Committee for Scientific and Technological Policy at Ministerial Level as an incentive to develop international and national policies for free access to public funded research.

The National Institutes of Health (NIH) is the largest funder of medical research in the world, and the largest funder of non-classified research in the U.S. federal government. NIH asks every scientist who receives an NIH research grant, and who publishes the results in a peer-reviewed journal, to deposit a digital copy of the article in PubMed Central (PMC), the online digital library maintained by the NIH. PMC will then provide free online access to its copy some time after the article is published in a journal, the length of the delay to be determined by the author. This policy took effect on May 2, 2005.

In January 2006 the European Commission published the Study on the Economic and Technical Evolution of the Scientific Publication Markets of Europe. The Study made a number of recommendations to improve the visibility and usefulness of European research outputs. The first recommendation is the following:

Research funding agencies have a central role in determining researchers' publishing practices. Following the lead of the NIH and other institutions, they should promote and support the archiving of publications in open repositories, after a (possibly domain-specific) time period to be discussed with publishers. This archiving could become a condition for funding.

These are only three of possible examples able to highlight the issue of national and international policies which are supporting free access to publicly funded research results. At present, this issue is hotly debated at different level (e.g. a bill regulating the issue, the Federal Research Public Access Act [FRPAA], is currently going through Congress in the U.S.).

Different reasons are usually brought to affirm the relevance of mentioned policies. For example, some researchers claim that accessible results of publicly funded research improve the visibility and the usefulness of research outputs and allow to ensure the quality of research work; moreover, open results guarantee independent reviews of research work which is used to support new laws and regulations; finally, this type of information could be considered as a public good as it is supported by public funds and the open access could be considered as a political instrument in strengthening a democratic society.

Different models able to realize these policies have been identified, such as: open access publishing, traditional publishing with eventual open access, e-print deposit; e-press; e-availability of research data as a by-product of research process and blended approaches.

The paper aims at discussing the legal framework of these policies. Firstly, science policies will be introduced and briefly discussed. Then copyright legislation and legal regulation of funding activities by public bodies will be considered in order to identify reasonable legal foundations of open and free access policies. In addition to this, the concept of public goods and their specific regulation will be considered. A special attention will be devoted to free access to legal literature and legal data collections whereas they represent outputs of public funded research, considering their specific features and public interests involved in their spreading.