Who Owns What? Licensing of Government Data

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Managing rights to open up government data – the Australian experience in using Creative Commons licences on public sector copyright materials (2004 – 2010)

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International Open Government Data Conference
Washington DC
17 November 2010
Sam the Koala and David Tree
Victorian bushfires, February 2009
Vale Sam
Federal Budget Papers

BUDGET STRATEGY AND OUTLOOK

BUDGET PAPER NO. 1
2010-11

CIRCULATED BY

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FOR THE INFORMATION OF HONOURABLE MEMBERS
ON THE OCCASION OF THE BUDGET 2010-11

11 MAY 2010

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ISBN 978-0-642-74595-0

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How CC came to be applied to PSI in Australia – a chronology

- **1990s:** Cutler, Wainwright – digital content strategy proposals
- **2001:** Office of Spatial Data Management (OSDM) access and reuse policy
- **2004:** Launch of Creative Commons in Australia (managed by Professor Brian Fitzgerald, QUT)
- **2004:** Launch by Queensland Government of Spatial Information Licensing Project
- **2005:** CC Australia and Qld Government begin discussing possibilities for use of CC on Government copyright materials
- **2005:** *Unlocking the Potential: Digital Content Industry Action Agenda, Strategic Industry Leaders Group report to the Australian Government* (Cutler)
- **2007 – 2010:** GILF project continues as a Queensland Government-QUT collaboration, developing knowledge about and models for use of CC on PSI
- **2007 on:** Australian Bureau of Statistics (ABS), Geoscience Australia (GA), Bureau of Meteorology (BoM) implement open access and adopt CC licensing; National Library of Australia; Australian Broadcasting Corporation; various State and local government initiatives
- **2008:** *OECD Ministerial Seoul Declaration on the Future of the Internet Economy* - OECD Recommendations on publicly funded research (2006) and Access to PSI (2008)
- **2008:** Venturous Australia report on National Innovation System (Cutler Report)
- **2009:** *Australia’s Digital Economy, Future Directions* (Department of Broadband, Communications and the Digital Economy)
- **2009:** EDIC Report (and Victorian Government’s response (2010))
- **2009:** Government 2.0 Taskforce (2009), “Engage: Getting on with Government 2.0” (December 2009) and Government’s response
- **2009:** New Zealand (draft) Government Open Access Licensing Framework (NZGOAL) published – approved 2010; UK *Power of Information* report
- **2009 – 2010:** Freedom of Information/Right to Information reforms – State and Federal legislation
Government (Crown) Copyright

- Vast amounts of government copyright materials
- Copyright applies to:
  - Informational works
  - Research outputs (reports, papers, databases)
  - Cultural materials
- Public Sector Information (PSI) in a broad sense includes material that is:
  - created within government by government employees;
  - produced externally by recipients of government funding; or
  - prepared by non-government parties and lodged with government under a statutory obligation or regulatory direction.
Copyright in data compilations

• Copyright applies to data compilations if they are sufficiently **original**
  – Copyright does not apply to mere facts/information or trivial/obvious/mundane arrangements of data
  – Copyright must apply to original data databases – TRIPs and WIPO Copyright Treaty
  – For copyright to apply, there must usually be originality provided by some independent intellectual creation/creative spark/application of skill and judgment
  – No special legal protection for non-original data collections (cf European Database Directive)
Creating information flows

• Complexity of information pathways:
  – within government – among departments, agencies, different levels of government; between government and community:
    • from government to community; from community to government to community; from local to national to global

• Problem of “licence logjams”
  – Copyright has been relied on by governments to control access (to prevent flow of information or to preserve commercial rights);
  – Often, there is no licence, so access/use/reuse rights are unknown – high transaction cost of negotiating new licences
  – Where licences exist, terms are incomprehensible or inconsistent

• Promoting the flow of information requires appropriate policy frameworks and licensing practices
Open Access to PSI

- Creating a commons of public sector materials
  - New conceptualisation of “public domain” – insisting on no rights constrains thinking about public domain
  - Public domain is not just a no rights “wasteland [or] dump on the outskirts of respectable culture” (Bollier, *Viral Spiral*)
  - Something of value in its own right – open knowledge and content that can be accessed, reused and distributed
  - Encompasses materials that are copyright-protected and made available for access and reuse under open source software and open content licences
Open Access to PSI

Open access to government data can dramatically increase the value created from the data both socially and economically [and] the society as a whole benefits from access to the data

Senator Kate Lundy at the Free and Open Source Software for Geospatial Conference, Sydney, 2009
Creative Commons (CC)

BY: Attribution – attribute the author

Noncommercial: no commercial use

No Derivative Works: no changes allowed

ShareAlike: changes allowed, but only if you put the new work under the same licence
Creative Commons (CC)

- Attribution
- Attribution-ShareAlike
- Attribution-Noncommercial
- Attribution-Noncommercial-ShareAlike
- Attribution-NoDerivatives
- Attribution-Noncommercial-NoDerivatives
CC is a direct, copyright-based licence

Legend
W : Copyright Work
DW : Derivative Work
A : Original Author
B, C, D, E : Downstream Recipients of Licensed Copyright Work

Direct Licensing Model
E.g. Creative Commons
(Copyright-based licence)

Indirect Licensing Model
(Daisy Chain Model,
Combined Contract-Copyright model with sub-licensing)
Creative Commons (CC)

- Advantages of this approach for government and publicly funded research bodies:
  - mirrors the fundamental justification for recognising copyright in government materials
  - supports government’s open access policy objectives
  - clear statement about the source of the data (attribution/provenance) – increased user confidence
  - avoids financial and technical lock-up of taxpayer-funded materials
  - permitted uses are consents/permissions to do acts within the scope of the copyright owner’s exclusive rights
Creative Commons (CC)

• Advantages of CC for use by government:
  – enforceability of licence
    • *Jacobsen v Katzer* (US Court of Appeals for the Federal Circuit, 2008)
  – explicit statement of reuse rights
  – universal recognition of symbols – overcomes language barriers
  – discoverability of digital objects (search engines and new services eg ccmixter)
  – enables legal remix and mashup
OECD PSI Recommendation

- **the “Openness” principle** states:
  - “Maximising the availability of public sector information for use and re-use based upon **presumption of openness as the default rule to facilitate access and re-use.** Developing a regime of access principles or assuming openness in public sector information as a default rule wherever possible no matter what the model of funding is for the development and maintenance of the information. Defining grounds of refusal or limitations, such as for protection of national security interests, personal privacy, preservation of private interests for example where protected by copyright, or the application of national access legislation and rules.”

- **the “Access and transparent conditions for re-use” principle** states:
  - “Encouraging broad non-discriminatory competitive access and conditions for re-use of public sector information, eliminating exclusive arrangements, and removing unnecessary restrictions on the ways in which it can be accessed, used, re-used, combined or shared, so that **in principle all accessible information would be open to re-use by all.** Improving access to information over the Internet and in electronic form. Making available and developing automated on-line licensing systems covering re-use in those cases where licensing is applied, taking into account the copyright principle below.”
Venturous Australia

Recommendation 7.7

• Australia should establish a **National Information Strategy** to optimise the flow of information in the Australian economy.

The fundamental aim of a National Information Strategy should be to:

− **maximise the flow of government generated information, research, and content** for the benefit of users (including private sector resellers of information).

Recommendation 7.8

• Australian governments should adopt international standards of open publishing as far as possible. Material released for public information by Australian governments should be released under a **creative commons** licence.
Government 2.0 Taskforce Report


Central recommendation: A declaration of open government by the Australian Government

Recommendation 6: Make public sector information open, accessible and reusable [chapter 5, p 58]

6.1 By default Public Sector Information (PSI) should be:
   - free
   - based on open standards
   - easily discoverable
   - understandable
   - machine-readable
   - freely reusable and transformable.

6.2 PSI should be released as early as practicable and regularly updated to ensure its currency is maintained.

6.3 Consistent with the need for free and open reuse and adaptation, PSI released should be licensed under the Creative Commons BY standard as the default.
Government’s response to Gov 2.0 Taskforce report


• Generally accepted Gov 2.0 Taskforce’s recommendations (12 out of 13)
  – agreed in principle to Recommendation 6, including:
    • 6.3 Consistent with the need for free and open reuse and adaptation, PSI released should be licensed under the Creative Commons BY standard as the default.

• Government’s response was released under a Creative Commons Attribution (CC BY) 2.5 Australia licence
Adoption of CC licensing in Australia

- Australian Bureau of Statistics
- Geoscience Australia
- Bureau of Meteorology
- IMOS (Integrated Marine Observing System)
- Polar Information Commons (June 2010)
- ANU – IP Policy (July 2010)
- Australian Information Commissioner (November 2010)
- Department of Broadband, Comms & Digital Economy: National Broadband Network Implementation Study (May 2010)
- Treasury: Federal Budget Papers (May 2010)
- Australian Parliament (June 2010)
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The Bureau of Meteorology recommends using the Creative Commons Licence for water information because it:

- provides a legally binding public notice about how your organisation's information may be used
- will provide a consistent and transparent legal framework for all water information resources
- contains strong limitation of liability and warranty clauses
- is an established de-facto international standard for licensing electronic information
- is free and costs little or nothing to implement
- requires attribution of the information author.

Creative Commons licences are widely used across the Internet by individuals, companies and governments. For example, Wikipedia and Flickr both use Creative Commons Licences. The Australian Bureau of Statistics has licensed the majority of the information on its website under the Creative Commons Licence. Geoscience Australia has licensed numerous datasets, including its Australian Mines Atlas and MODIS data, under the Creative Commons Licence.

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The Creative Commons Licence is available in plain English text and a full legal code. The Licence requires the Bureau's websites to link to the text and the code.

Attributing water information suppliers and use of the Creative Commons Licence

The Bureau of Meteorology wants to ensure that water information suppliers are correctly attributed for their information. The Bureau's Australian Water Resources Information System (AWRIS) is being designed to correctly capture and publish attribution details of organisations providing water information. It will also say whether an organisation has agreed to license their information under the Creative Commons Licence.
Part 4

Section 14. "Open Content" Licensing by Member

14.1 Subject to this Section, Section 20 and the rights of any third party in respect of the matter, a Member who Creates copyright matter which is owned by the University is granted a perpetual, irrevocable, worldwide, non-exclusive licence in respect of the copyright to grant licences to third parties over the copyright matter:

- (a) being an open content licence of the form maintained by the Creative Commons Corporation; or
- (b) being an open source licence in respect of Software, of the form maintained by the Open Software Initiative or the Free Software Foundation; or
- (c) in any other form of open content licensing determined from time to time in writing by the Vice Chancellor.
Chapter 01: Executive Summary

Download The NBN Implementation Study Report
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Chapter 1 - Executive Summary - NBN Implementation Study Report.rtf (46.8MB)
Chapter 1 - Executive Summary - NBN Implementation Study Report.rtf.zip (3.8MB)

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Welcome to the Polar Information Commons (PIC) Rights Badging Tool. This tool allows you to use the Creative Commons tools to create a graphic badge. This badge asserts that digital content is available in the Polar Information Commons (PIC) with minimal restrictions and in adherence with community guidelines or norms of behavior for ethical data sharing.

Launch the application if you are a return user, or read below for a quick introduction to what it can do for you.

Launch Rights & Badging Tool

Polar Information Commons Rights and Badging API

The badging tool uses the PIC API to help you create badges for your data. See the Polar Information Commons Rights and Badging API guide for more information.

Open Sharing of Data

Open data is a central tenet of the International Council of Science, the Committee on Data for Science and Technology (CODATA), and the Polar Information Commons. Open data help us understand and predict rapid polar change and help ensure wise management of resources, improved decision support, and effective international cooperation on resource and geopolitical issues.

Use this tool to easily communicate to others that your data are available for reuse in diverse legal environments, and under what terms and conditions.
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- License Requiring Attribution

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* URL
Example url

* Type
Dataset

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Description

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Sam the Koala and David Tree
Victorian bushfires, February 2009
Policies and Principles on Access To and Reuse of Public Sector Information: a review of the literature in Australia and selected jurisdictions

Professor Anne Fitzgerald

The full economic, cultural and environmental value of information produced or funded by the public sector can be realised through enabling greater access to and reuse of the information. To do this effectively it is necessary to describe and establish a policy framework that supports greater access and reuse among a distributed, online network of information suppliers and users. The objective of the literature review is to identify materials published in Australia and elsewhere dealing with policies, principles and practices relating to access to and reuse of public sector information.

http://www.aupsi.org/publications/reports.jsp

References


References


- Building the Infrastructure for Data Access and Reuse in Collaborative Research (OAK Law Project) [http://www.oaklaw.qut.edu.au/reports](http://www.oaklaw.qut.edu.au/reports)