CC & Government Guide
Using Creative Commons 2.5 Australia Licences on Government Copyright Materials

Professor Anne Fitzgerald,¹ Neale Hooper² and Cheryl Foong³

IMPORTANT NOTE:
This Guide deals with copyright law and the Creative Commons 2.5 Australia licences only

This Guide deals with the licensing of government copyright materials for distribution and reuse under Creative Commons (CC) 2.5 Australia licences. It should be noted that copyright materials may be subject to a restrictions on access and/or reuse, for a range of reasons, such as to:

- protect personal information, as required by privacy laws;
- maintain confidentiality;
- comply with obligations imposed by contract or legislation;
- protect public security; or
- meet administrative requirements.

Version 3.0, an updated version of the CC Australia licences, was released in June 2010. Changes introduced by version 3.0 include:

- addition of ‘no endorsement’ language that states a person should not use CC licensed material to improperly assert or imply an association or relationship with the licensor or author;
- inclusion of language in the BY-SA licence to make it possible for derivatives to be licensed under a Creative Commons Compatible License;
- clarification of how moral rights and collecting society royalties are dealt with under CC licences; and
- addition of language to ensure that the licences comply with the requirements of Australian consumer protection law.

See http://creativecommons.org.au/learn-more/licences/version3 for more information.

This Guide is not a substitute for obtaining your own legal advice.

The CC & Government Guide is licensed by Professor Anne Fitzgerald, Neale Hooper and Cheryl Foong under a Creative Commons Attribution 3.0 Australia licence. To view a copy of this licence, visit http://creativecommons.org/licenses/by/3.0/au/.


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1 Who should read this?

This Guide has been developed for government departments and agencies that make their copyright materials available for access, use and reuse. It provides practical step-by-step guidance for agencies and their officers on licensing and use of government copyright materials under Creative Commons 2.5 Australia (CC) licences.

In Australia, as in other countries worldwide, there is a growing awareness at the government level of the advantages of using open content licences when distributing or providing access to their copyright materials, to give effect to their policies on open access and reuse of public sector materials. CC licences are an internationally recognized suite of open content licences which can be used by governments as a simple and effective mechanism to support the distribution and reuse of their copyright materials, particularly where it is released in digital form online or on DVD or CD.

This Guide covers:

- copyright law basics and how copyright applies to government materials;
- the importance of whole of government Intellectual Property (IP) standards and policies;
- open access practices and the benefits of open access practices when adopted by governments; and
- how CC licences can be used by agencies to achieve open access to government material.

This is a step-by-step Guide. When proceeding through this Guide at each step, consider what is a suitable licence for the material that your agency is considering for licensing. The relevant whole of government IP policies and standards, and your agency’s legislation, IP policies and guidelines, will indicate the issues you need to consider in deciding which of the six Creative Commons (CC) licences is to be selected and applied (see “3 Intellectual Property Policies and Standards” for more details).

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4 For the purposes of this Guide:
   a. the terms “government” or “governments” include state, territory and federal governments, government departments, and public authorities and agencies.
   b. the term “agency” is used to cover both a government department and a government agency.

5 It is also intended to be useful to the Australian public more generally, and anyone dealing with government about PSI (including researchers).

IMPORTANT NOTE: This Guide deals with copyright law only

This Guide deals with the licensing of government copyright materials for distribution and reuse under Creative Commons (CC) licences. It is important for government agencies to note that government copyright materials may be subject to restrictions on access and/or reuse, for a range of reasons, such as to:

- protect personal information, as required by privacy laws;
- maintain confidentiality;
- comply with obligations imposed by contract or legislation;
- protect public security; or
- meet administrative requirements.

This Guide is not a substitute for your agency obtaining its own legal advice.

Colour codes

Important points to note are highlighted in pink boxes.

Where appropriate, examples of open access recommendations and practices have been included in blue boxes.

Further explanations of certain terms or issues are provided in yellow boxes.
2 Government Material / Public Sector Information

In Australia, governments generate and collect a vast amount of material and information – much of which is protected by copyright. Government copyright materials may be produced by their employees and contractors, as well as other entities that are commissioned or directed by government to produce materials for an agency.

The terms ‘government material’ and ‘public sector information (PSI)’ are used here in a broad sense to include material that is:

- created within government by government employees;
- commissioned by government from non-government parties (usually under a contractual arrangement); or
- prepared by non-government parties and lodged with government under a statutory obligation or regulatory direction.

PSI covers a vast range and amount of material including policy documents and reports of government agencies, public registers, legislation and regulations, meteorological information, scientific research databases, statistical compilations and datasets, maps and geospatial information and numerous other data and products produced by government for public purposes.7

The management of these informational works is one of the most significant issues for government in the current era.8 During the last decade much attention has focused on policies and practices to enable PSI to be more readily accessed and used,9 as governments have come to appreciate that significant social, cultural and economic benefits stand to be gained from doing so.10 As Senator Kate Lundy observed at the 2009 Free and Open Source Software for

7 Ibid, p 1 (online version).
Geospatial Conference, “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.”

3 Intellectual Property Policies and Standards

Any distribution of government copyright materials must be informed by and comply with relevant laws, policies, standards and other requirements which govern access to and reuse of PSI. Your agency needs to be aware of and comply with, all applicable requirements, some which will have general or whole of government application whilst others may apply only to your agency.

The following are examples of IP policies and standards which should be considered by agencies:

- Federal government agencies - Statement of IP Principles for Australian Government Agencies (Whole of Government IP Principles)\(^\text{12}\)
- Queensland government agencies Queensland Government Enterprise Architecture framework 2.0 (QGEA 2.0)\(^\text{13}\)

Appendix I of this Guide contains select excerpts of these policies and standards, and a list of State and Territory policies, standards and reports. This list is not intended to be definitive and there may also be other laws, policies and principles applicable to your agency’s material, including some specifically applicable to your agency only, and which are not considered in this Guide. It is important to identify all laws, policies and standards that apply to you and your agency and act in compliance with them in licensing your agency’s copyright materials.

4 Open Access

There is a growing trend in Australia and overseas for governments to provide greater access and grant more generous reuse rights to PSI. It is through the greater levels of reuse of PSI that its potential may come to be realised.

What is Open Access?

The advent of the internet and digital technologies has enabled information to be accessed and disseminated far more easily than ever before. For the public sector, the new technologies

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have brought about changes not only in the volume and kind of information that is generated and how it is produced, but also in how – and by whom – it is used.

In this context, the term open access encompasses two aspects:

- the dissemination of PSI broadly and freely across the internet in a timely fashion;\(^\text{14}\)
- access to PSI on terms and in formats that clearly permit and enable use and reuse by any member of the public.\(^\text{15}\)

**Why Open Access?**

Governments generate a vast and important flow of PSI. The value of PSI increases when restrictions on access and reuse are removed and it is made available in common digital formats downloadable from internet websites.\(^\text{16}\)

As well as contributing to social and economic development, advancing education, research and innovation, PSI use and reuse enhances public health and safety, creates opportunities for engagement between government and citizens, fosters transparency of governance and promotes democratic ideals. It is an essential foundation of an informed, participatory society and provides a foundation for evidence-based policy and decision-making, for example, in the planning and delivery of health and social welfare programs.\(^\text{17}\)

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**Worldwide developments in Open Access practices**

**International: The OECD PSI Recommendation**\(^\text{18}\)

On 30 April 2008, the Organisation for Economic Cooperation and Development (OECD) Council adopted the *Recommendation for the Enhanced Access and More Effective Use of Public Sector Information*, which included these two principles:

- **Openness.** 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

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\(^\text{15}\) Digital Economy Future Directions – Final Report, p 12.


example where protected by copyright, or the application of national access legislation and rules.

**Access and transparent conditions for re-use.** 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.

### International Developments in Open Access to PSI

During the last few years, international and government bodies around the world have recognised the benefits of open access to PSI and have promoted more openness around government information. In 2008, the OECD released a global statement recommending improved access to PSI. The US and UK governments have developed data portals to provide open access to their government data.²⁹ In Australia, various government bodies including the Australian Bureau of Statistics, Geoscience Australia and the Bureau of Meteorology have released data under CC licences. These are but a few examples.²⁰

### Worldwide developments in Open Access practices

#### United States: data.gov

In May 2009, the Data.gov portal was launched as part of the Obama administration’s Open Government Initiative.²¹ The portal provides access to datasets generated and held by the US federal government.²² Data.gov enables US federal government datasets to be accessed from the “raw” data catalogue and mined using tools to which links are provided from the website.

The purpose of the website is to:

- increase public access to high value, machine readable datasets generated by the Executive Branch of the Federal Government.²³

A clear goal of the initiative is to promote participatory democracy through greater engagement between government and its citizens. As the website states:

> public participation and collaboration will be one of the keys to the success of Data.gov.

Data.gov enables the public to participate in government by providing downloadable Federal datasets to build applications, conduct analyses, and perform research.²⁴

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²¹ See [http://www.data.gov](http://www.data.gov). The portal was developed by the Federal CIO Council as an interagency Federal initiative. For more details see [http://www.data.gov/faq](http://www.data.gov/faq).

²² See [http://www.data.gov/about](http://www.data.gov/about).

²³ Ibid.

²⁴ Ibid. In January 2010, the UK Government launched a somewhat parallel open access initiative of its PSI portal data.gov.uk (see later discussion at p 31 of this Guide, *United Kingdom: data.gov.uk*).
5 Copyright

What is copyright?

Copyright is a set (or “bundle”) of legal rights that attach to an original work when it is created.25 These rights permit the owner of copyright to control the doing of certain acts in relation to their material (such as making copies of it) and to prevent others from using the material without their permission. The rights of a copyright owner are referred to as “exclusive rights” because they enable the copyright owner to exclude others from engaging in the same acts in relation to the copyright material.

Copyright is a property right that can be owned by individuals, organisations and governments. It can be sold or licensed in the same way that other forms of property can be.

As a general rule, copyright lasts for the duration of the life of the person who has created the material, plus a further 70 years.26 However, where copyright is owned by government, government (“Crown”) copyright generally applies for 50 years from the year the work was first published.27

What does copyright protect?

Copyright only protects original works, that is, works which:

- have not been copied from an earlier work; and
- possess the requisite level of originality under law.

A work will meet the originality threshold if it has been produced through the exercise of independent intellectual effort.

In general, copyright may protect a very wide range of original works in different formats, including:

- tables;
- compilations of data (such as datasets and databases);
- written materials (“literary works”) such as reports, accounts, documented observations etc;
- photographs and other pictures (“artistic works”);
- sound recordings; and
- video and multimedia works.28

25 Copyright comes into existence automatically when an original work is created. There is no need to register copyright or comply with any formalities.
26 This duration applies to published literary, dramatic, artistic (apart from photographs) and musical works where the author is living and identified. Anonymous works or works published after the death of the author (except for computer programs) have a copyright term of 70 years from publication. See Copyright Act 1968 (Cth), s 33.
27 See Factsheet 1, paragraph 3 at page 16 below. See generally Copyright Act 1968 (Cth), Part VII.
28 Copyright in original literary, dramatic, musical and artistic works is protected under Part III of the Copyright Act 1968 (Cth). Copyright in subject-matter other than works, i.e. sound recordings, cinematograph films, television broadcasts and sound broadcasts, and published editions of works is protected under Part IV.
Some complexities may arise in assessing whether a data compilation is sufficiently original to attract copyright protection under law. Data compilations are considered more fully below (see “Data compilations and datasets – copyright protects the arrangement of material”).

Important note: Copyright protects expressions, not facts or ideas

A general principle of copyright law is that copyright protects the material form in which ideas, information or facts are expressed and not the ideas, information or facts themselves.

Data compilations and datasets – copyright protects the arrangement of material

In Australia, copyright may protect compilations of data, such as datasets or databases, provided that the compilation meets the originality threshold required by law. A compilation is protected as a literary work. The protection extends only to the particular way the data is presented in the data compilation. Copyright does not apply to the data itself.

Compiled data is not always simply raw data or information – a compilation may also include written materials, reports, diagrams, tables and graphs. These items may be protected by copyright as independent works (for example, a written report will be protected in its own right as a literary work).

An important distinction lies between copyright in discrete data items and copyright in a database as a whole. In the latter, copyright serves to protect the arrangement of the collected components. Copyright interests may co-exist independently in components contained within the database and in the database itself, and may be owned by different parties. Article 5 - Compilations of Data (Databases) of the World Intellectual Property Organization (WIPO) Copyright Treaty states that:

Compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, are protected as such. This protection does not extend to the data or the material itself and is without prejudice to any copyright subsisting in the data or material contained in the compilation.

The law surrounding the protection of data compilations is still developing in Australia. However, where an author or authors of a compilation can clearly be identified and it can be shown that the compilation is original in the sense that it is the product of some “independent intellectual effort” or the exercise of “sufficient effort of a literary nature” or involves a “creative spark” or the exercise of “skill and judgment”, then it is likely to be protected by copyright.

The originality test was once considered to be satisfied if substantial labour or expense had been...
Government (“Crown”) copyright

Ownership of copyright by government is dealt with in Part VII of the Copyright Act 1968 (Cth). The Copyright Act provides that the government owns copyright in literary, dramatic, musical and artistic works, sound recordings and films that is made or first published in Australia “by, or under the direction or control of the Commonwealth or a State”.35

“by, or under the direction or control of”

The meaning of the phrase “by, or under the direction or control of, [the Crown]” was considered by the Full Federal Court in Copyright Agency Limited v State of New South Wales [2007] FCAFC 80, which made it clear that governments will own copyright not only in works produced by their employees but in works produced by a more extensive (but not clearly defined) group:

[122] “By” is concerned with those circumstances where a servant or agent of the Crown brings the work into existence for and on behalf of the Crown. “Direction” and “control” are not concerned with the situation where the work is made by the Crown but with situations where the person making the work is subject to either the direction or control of the Crown as to how the work is to be made. In the copyright context, that may mean how the work is to be expressed in a material form.

[123] Direction might mean order or command, or management or control (Macquarie Dictionary Online). Direction might also mean instructing how to proceed or act, authoritative guidance or instruction, or keeping in right order management or administration (Oxford English Dictionary Online).

[124] Control might mean the act or power of controlling, regulation, domination or command (Macquarie Dictionary Online). Control might also mean the fact of controlling or of checking and directing action, the function or power of directing and regulating, domination, command, sway: Shorter Oxford English Dictionary (5th ed, Oxford University 2002).

[125] Thus, when the provisions refer to a work being made under the direction or control of the Crown, in contrast to being made by the Crown, the provisions must involve the concept of the Crown bringing about the making of the work. It does not extend to the Crown laying down how a work is to be made, if a citizen chooses to make a work, without having any obligation to do so.36

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33 Desktop Marketing Systems Pty Ltd v Telstra Corporation Ltd [2002] FCAFC 112 at [409].
34 See dicta by the High Court in IceTV Pty Limited v Nine Network Australia Pty Limited [2009] HCA 14 (Gummow, Hayne and Heydon JJ at [187]-[188]) which casts some doubt on the low originality requirement in Desktop Marketing v Telstra [2002] FCAFC 112. See also the application of the principles in IceTV v Nine Network to telephone directories in Telstra Corporation Ltd v Phone Directories Company Pty Ltd [2010] FCA 44. Gordon J held at [5] that copyright did not subsist in Telstra’s Yellow Pages and White Pages directories because the computer generated compilation had failed the authorship requirement. This decision is currently on appeal.
35 Copyright Act 1968 (Cth), ss 176-178.

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The operation of these provisions can be displaced by a written agreement between the government and the person who created the copyright material which states that copyright is to belong to that person or some other party specified in the agreement (not the ‘Crown’).  

Governments own copyright in a vast range of written and other materials. 

Crown copyright lasts for 50 years from the end of the calendar year in which the copyright item is first published or is made. 

As the Copyright Act does not generally differentiate between the rights of government as copyright owner and the rights of private parties who own copyright, government can exercise the same range of rights in their copyright materials as non-government entities. 

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**Important note: Copyright should not be used for ulterior purposes**

It seems to be widely acknowledged that at least part of the original rationale for government copyright ownership was to promote the accuracy and integrity of official government publications.

While government, as copyright owner, enjoys the same exclusive economics rights as other copyright owners, the nature and purpose of government copyright means that these rights should not be exercised in a way that restricts the flow of PSI.

Copyright should not, as a general practice, be relied upon by governments for secondary purposes not directly related to the exercise of Crown copyright (such as to restrict access to government documents containing confidential or otherwise sensitive information).

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**Crown Copyright should not be used to restrict access and control use in light of FOI**

In *Commonwealth v Fairfax* (1980) 147 CLR 39, Mason J of the High Court of Australia granted an interim injunction to restrain the publication of certain documents produced by the Department of Defence and the Department of Foreign Affairs on the basis that publication would infringe copyright. However, the case has been criticised as a “poor exercise of government copyright…because it was essentially used for an ulterior purpose, that of preserving the confidentiality of documents.”

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37 *Copyright Act 1968* (Cth), s 179. For further discussion, see “5.1 Copyright ownership” at p 16 below.


39 *Copyright Act 1968* (Cth), ss 180, 181.

40 Section 182 specifically states that, apart from the provisions in Part VII of the *Copyright Act 1968* (Cth) (in ss 176-181) relating to the subsistence, duration and ownership of copyright, the provisions of Part III and Part IV of the Act apply.


The Copyright Law Review Committee (CLRC), in its Issues Paper on Crown Copyright,45 sought submissions on whether Crown copyright should be used as a means of restricting access and controlling use in light of privacy laws and Freedom of Information (FOI) legislation.

The Australasian Legal Information Institute (AustLII) in its submission stated that:

There are other public interests that governments, Courts and Tribunals may need to protect, particularly in relation to judgments, including privacy, commercial confidences and national security. Copyright is simply an inappropriate instrument to protect these interests, even if it has been so used in the past. They should be protected by specific actions or legislation which include appropriate defences, not by copyright. In particular, where Courts and Tribunals do not consider that certain judgments should be published at all, or only published in any anonymised form, because of privacy considerations, privacy laws should provide this protection.46 [emphasis added]

Factsheet 1 on the following 4 pages can help you to determine whether copyright subsists in an item of PSI which you are assessing for open access by applying a CC licence.

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This factsheet can help you to determine whether copyright subsists in public sector material which your agency is assessing for applying a Creative Commons (CC) licence.

This factsheet should be used in conjunction with our guide:
Fitzgerald, Anne M. and Hooper, Neale and Foong, Cheryl (2010) Using Creative Commons 2.5 Australia licences on Government Copyright Materials http://eprints.qut.edu.au/32519/ (see in particular, the 'Checklist for applying a Creative Commons licence to government material').

1. Identify the material (metadata record)

| Type of material (e.g. text, image): |  
|-------------------------------------|---|
| Title of material: |  
| Format (e.g. PDF): |  
| Where is the material located? |  
| From which government agency did the material originate? |  
| For enquiries regarding the material, contact: |  
| Date created: |  
| Other relevant information: |  

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2. Is the material in one of the categories to which copyright can apply?

Is it:

- a written/text document (e.g. report)?
- a table?
- a map?
- a photograph?
- a visual image?
- a sound file?
- a film or video?
- a multimedia work?
- data compilation, dataset or database?  

If YES to any of the boxes above, the material is in a category to which copyright applies.

Go to Question 3.

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1. Copyright protection applies to a data compilation, dataset or database provided it meets the originality threshold required by law.
3. When was the material created/compiled?

☐ Less than 50 years ago

For government material, if YES - Crown copyright is likely to apply (Go to Question 4).

For non-government material, if YES - copyright is likely to apply (Go to Question 4).

☐ More than 50 years but less than 70 years ago

For government material, if YES - Crown copyright will have elapsed and the work is in the public domain (copyright no longer applies).

Where the material is in the public domain, you may apply a Creative Commons Public Domain Certification http://creativecommons.org/choose/publicdomain-2 to certify that the material is already in the public domain.

Check the date the work was made or first published. Crown copyright expires 50 years after the work is made or first published. BUT copyright continues if the work has not been published.

For non-government material, if YES - copyright is likely to apply. (Go to Question 4)

☐ More than 70 years ago

For government material, if YES - Crown copyright does not apply, as the copyright term has elapsed. BUT copyright continues if the work has not been published.

For non-government material, if you answered YES - copyright may apply, or the copyright term may have elapsed. You need to discover when exactly the material was created.

Where the material is in the public domain, you may apply a Creative Commons Public Domain Certification http://creativecommons.org/choose/publicdomain-2 to certify that the material is already in the public domain.
4. Was it created/compiled in Australia?

☐ Yes — copyright protection under Australian law is likely to apply.

☐ No — if the work was created in a country that is a member of the Berne Convention or the World Trade Organization, copyright will usually be protected under Australian law.

For more information about the CC licences, see http://creativecommons.org/licenses.
For more information about Creative Commons and Government in Australia, see http://creativecommons.org.au/government.

2 See http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm
5.1 **Copyright ownership**

<table>
<thead>
<tr>
<th>Important note: Check if there is an existing agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>The basic ownership rules that follow apply unless there is an agreement (contract) to the contrary between the employer and employee, the commissioner and the independent contractor, or the author and another interested party.</td>
</tr>
</tbody>
</table>

The basic principle of copyright ownership is that the author or creator of the copyright material is the first owner of copyright.

**Ownership of databases**

In the case of databases and datasets, the author will usually be the person(s) who has compiled the information. (See “Ownership of material created by employees” below if data is compiled for the government agency by its employees.)

**Ownership of material created by employees**

Generally an employer owns copyright in materials that are created or compiled by their employee in the ordinary course of the employee’s duties and in pursuance of the terms of employment. Factors that may be relevant to whether materials are created or compiled “in pursuance of the terms of employment” are:

- whether the employee was engaged to perform the task that results in the materials being created;
- whether the employee creates the materials with the understanding and intention that the employer will own copyright; and
- whether the materials were created or compiled during the employee’s usual work hours (or by contrast, in the employee’s own time).

If the employing institution is a government agency, the government (which may be the Commonwealth, a State or a Territory) will own copyright.47

**Ownership of material created by an independent contractor**

Copyright in materials created or compiled by an independent contractor under a contract for services is owned by the independent contractor, unless there is a written agreement to the contrary between the party who has commissioned the material to be produced and the independent contractor.

Such a contract may provide that:

- any copyright material created or compiled by the independent contractor will be owned by the party who has commissioned the material; or
- copyright is assigned to the party who has commissioned the material.

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47 See “Government (“Crown”) copyright” at p 11 above.
However, even where copyright in the material produced under the contract belongs to the independent contractor, it will often be possible to imply a licence so that the party who has commissioned the material will be able to use it for the purpose for which it was commissioned.

**How can you tell whether someone is an employee or an independent contractor?**

Generally, an employee is someone who is working under a *contract of service* for an employer. An independent contractor is someone who is engaged under a *contract for services* and is in business on their own account.

When ascertaining whether a person is an employee or independent contractor, it is important to consider the totality of the relationship between that person and the person or institution that is employing or contracting them. One relevant factor is whether or not there is a right of control by the employer over the employee’s manner of doing the work.

Other factors that may indicate the existence of a contract of service for an employee are:

• a regular salary;
• holiday leave;
• PAYE tax deductions;
• the provision of equipment and resources; and
• the provision of an office space.

Factors that may indicate a contract for services for an independent contractor are:

• the person is engaged to carry out a specific task;
• the person is paid a lump sum;
• the person is not required to give their services exclusively; and
• the person has autonomy as to how and when the work is performed.

**Important note: Apply a CC licence only if your agency has authority**

Your agency should enter into appropriate arrangements for copyright ownership with any person or organization that provides material to it. Before applying, on behalf of your agency, a Creative Commons licence to the material, you must make sure that you have the necessary authority from your agency to do so (i.e. government (the Crown) is the copyright owner or government has permission from the copyright owner to apply the CC licence), and also you as an officer have authority to apply the licence.

See further “6.5 Legal application: How to use Creative Commons?” at page 43 for other restrictions on applying CC.
Copyright Assignment

Even though the creator of a work owns copyright in that work at first instance, they may transfer copyright ownership to another person through an assignment.

Usually, a person will assign copyright in return for something else, such as payment or the provision of a service.

An assignment must:
- be in writing; and
- be signed by the person who is transferring the copyright (the “assignor”).
Fact sheet 2

Who owns copyright?

Instructions

This fact sheet can help you determine who owns copyright in the government copyright material your agency is assessing for applying a Creative Commons (CC) licence.

This fact sheet should be used in conjunction with our guide:
Fitzgerald, Anne M. and Hooper, Neale and Foong, Cheryl (2010) Using Creative Commons 2.5 Australian Licences on Government Copyright Materials http://eprints.qut.edu.au/3259/1 [see in particular the Checklist for applying a Creative Commons licence to government materials].

Start at the green question box and, following the arrows that correspond with your answer, make your way through the pink and blue quiz boxes until you reach a red or purple licence box. That box will tell you who owns copyright.

For more information about the CC licences see http://creativecommons.org/licenses. For more information about Creative Commons and Government in Australia, see http://creativecommons.org.au/government.

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Start here!

- Does this person who created the material work for or with your agency?
  - Yes: Is the person your agency’s employee or an independent contractor?
  - No: The person is a third party

Independent contractor

- Was the material created in the course of employment?
  - Yes: Your agency owns copyright (subject to a written contract to the contrary)
  - No: Is there a written contract?
    - Yes: The employee owns copyright
    - No: The third party or independent contractor owns copyright

The third party or independent contractor owns copyright

- Is there a written contract?
  - Yes: Check the contract terms. The contract may specify who owns copyright.
  - No: Your agency owns copyright

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Note: Your agency holds copyright on behalf of the legal owner, the Crown (the government).
5.2 The rights of copyright owners

Copyright confers on the copyright owner the exclusive proprietary right to do a range of acts in relation to the copyrighted work. The copyright owner also has the exclusive right to authorise the doing of any of those acts by someone else, whether by sale (assignment) or by licence.48

The economic rights of a copyright owner of a literary, dramatic or musical work are the rights to:

- reproduce the work in a material form;
- publish the work;
- perform the work;
- communicate the work to the public;
- make an adaptation of the work (for example, a translation); and
- control rental of the work, where the work is a computer program or is reproduced in a sound recording.49

For artistic works, the exclusive rights are the rights to:

- reproduce the work in a material form;
- publish the work; and
- communicate the work to the public.50

The right to communicate to the public is an important right in the online environment. “Communicate” is defined to mean:

Make available online or electronically transmit (whether over a path, or a combination of paths, provided by a material substance or otherwise) a work or other subject matter.51

Making a copyright work available online or through a computer network will be an exercise of the copyright owner’s right to communicate the work to the public.52

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49 Copyright Act 1968 (Cth) s 31(1).
50 Copyright Act 1968 (Cth) s 31(1).
51 Copyright Act 1968 (Cth) s 10(1).
5.3 Copyright licensing

A copyright licence is a permission from the copyright owner that allows someone to exercise one or more of the exclusive rights of the copyright owner in relation to the copyright material.53 A licence does not assign (transfer) ownership of copyright to another person – it simply grants permission to exercise certain rights.

A licence can be exclusive or non-exclusive. Under an exclusive licence, the licensee (i.e. the recipient of the licence) is the only person who can use the material in the way or ways covered by the licence (even to the exclusion of the copyright owner).54 A non-exclusive licence merely provides the right to exercise one or more of the copyright owner’s rights in the work but not to the exclusion of the copyright owner or other licensees.55

A licence can be limited in terms of:

- the length of operation (for example, the licence may grant permission for a one-time use only or it may grant permission to use the material for a period of say six months);
- the rights granted (for example, the licence may grant permission to exercise the right of reproduction only or it may grant permission to exercise multiple rights);
- the geographical region in which the rights may be exercised (for example, the licence may operate worldwide or only within Australia); or
- the purposes for which the rights may be exercise (for example, the licence may provide that it allows non-commercial use only).

A licence can be contractual or non-contractual. A contractual licence operates like a standard contract – in exchange for permission to exercise the relevant rights, the licensee agrees to do or give something in return (at law this is called “consideration”). A non-contractual licence is essentially a bare permission to exercise the rights granted (a “bare licence”). A copyright owner can still place restrictions on a bare licence, but the licensee is not contracting to fulfill any additional obligations.56 There are also standard-form open content licences that can be adopted by organisations or individuals, the most common of these being Creative Commons licences.

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53 For more on the exclusive rights of the copyright owner, see “5.2 The rights of copyright owners” at p 20 above.
Worldwide developments in Open Access practices

Australia: Government Information Licensing Framework (GILF)

One of the most influential projects in Australia in recent years has been the Queensland Government Information Licensing Framework Project (GILF Project).\(^\text{57}\) It grew out of a project commissioned by the Queensland Spatial Information Council (QSIC) in 2006 to develop a legal framework to support the sharing and reuse of spatial and other information within and across the various levels of government and between government and the private sector.

The focus of the GILF project was the development of a licensing model to be applied to PSI, the objective being new standardised information licensing arrangements which could be recommended for use with all kinds of Queensland government information to enable enhanced, on-demand access to PSI.\(^\text{58}\) The licences used under GILF consist of the six Creative Commons licences, and Restrictive Licences developed by applying the model clauses and schedules in the Restrictive Licence template used for PSI which is subject to restrictions such as privacy, confidentiality or statutory constraints.\(^\text{59}\)

5.4 Why a copyright-based licensing approach?

Adoption of a copyright-based, licensing approach for PSI (as opposed to a no-copyright dedication to the public domain)\(^\text{60}\) has some distinct advantages that are not readily achievable otherwise.

What is the “public domain”?  

From a copyright law perspective, the concept of “public domain” traditionally connoted materials that were not subject to copyright protection, whether because copyright had expired or because the materials did not qualify for copyright in the first place.

During the last decade however, the concept of public domain has been recast more broadly to mean “open” knowledge and content – that is materials that can be accessed, reused and redistributed openly by users, including materials protected by copyright that are made available for access and reuse under open content licences such as Creative Commons licences.\(^\text{61}\)

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\(^{60}\) For example, the Creative Commons Zero (CC0) Protocol. See [http://creativecommons.org/choose/zero](http://creativecommons.org/choose/zero). For an outline of the various cogent reasons why the use of CCO is not supported see “5.5 Use of Creative Commons Zero (CC0) to be avoided” at page 28 below.

The most readily identified benefits of this copyright-based licensing approach are that it:

• enables governments to achieve their open access (OA) policy objectives;
• ensures that information about the provenance of PSI is distributed along with the PSI; and
• avoids government and citizens being locked out (through pricing or technical barriers) from accessing and using materials produced with public funding.

Each of these points is explained further below.

Supports government's open access policy objectives (first point)

It is increasingly apparent that restrictions on access to and reuse of PSI are due less to the subsistence and ownership of copyright in government materials than to the failure to adopt a clear policy position on access and reuse. A related problem is the lack of established practices, such as proper licensing and use of interoperable file formats, supporting open access and reuse.

A broader and more robust information commons

Submissions to the Copyright Law Review Committee’s Crown Copyright review made the point that the management of copyright to enable dissemination and reuse of PSI should not simply revolve around considerations about the subsistence of copyright. Professor Brian Fitzgerald’s submission stated:

Ten years ago the question would simply have been whether the Crown should or should not have copyright. Many advocating for no copyright would have been seeking open access to information. However, today we know more about the intricacies of open content licensing. It is arguable that a broader and more robust information commons can be developed by leveraging off copyright rather than merely “giving away” material. [emphasis added]

Government policy may support unrestricted access to PSI and encourage users to copy and widely distribute these materials, provided that the copies circulated are accurate, or, if altered, are not misrepresented as being the original versions released by government. For such materials, the continued recognition of copyright is regarded as central to ensuring the integrity and authenticity of PSI, so that the public can be aware of the status of each publication.62

Distribution of PSI under copyright licensing conditions provides governments with a means of ensuring the integrity and authenticity of their materials, whether by terminating the licence or bringing an action for copyright infringement if materials are misused or misrepresented.63


New South Wales government’s so-called “copyright waivers”

Fully a decade before the implementation of CC licences in Australia, the advantages of a copyright-based licensing approach were recognised by Australian governments which issued general copyright licences to promote the widespread accessibility of judicial and legislative materials. Under what are (somewhat misleadingly) referred to as “copyright waivers”, the New South Wales government granted general licences, initially just for legislation (1993) but later extended to judgments (1995), authorising any publisher to “publish and otherwise deal with” these materials, subject to compliance with specified conditions.

Importantly, the New South Wales government did not relinquish or abandon its copyright interests in the licensed materials. Rather, the notices published in the Government Gazette make it clear that copyright continues to reside with the New South Wales government but that it will not be enforced if the material is published or otherwise dealt with in accordance with the authorisation. In publishing the materials, publishers are prohibited from indicating (directly or indirectly) that their publication is an official version of the material and must ensure that it is “accurately reproduced in proper context and [is] of an appropriate standard”.

While publishers are granted extensive rights to publish legal materials, the government retains rights which can be exercised to ensure the accuracy and integrity of the published versions of its material, through the express reservation of the right to revoke, vary or withdraw its permission if the conditions of the grant are breached.

Provenance and attribution (second point)

For much PSI, it is important that information about its origin, quality, currency and significance continues to be displayed on or in association with it, for example, by means of a metadata description accompanying the document or accessible via hyperlink. The credibility a user gives to information (whether generated by the public sector or otherwise) relates directly to who has created it and how, and what the information represents.

Ensuring that the provenance of PSI is properly documented is even more important for authoritative or official materials and in circumstances where correct attribution of ideas and


64 New South Wales and the Northern Territory.
66 These “waivers” did not, in reality, waive copyright, but rather provided broad permissions (licences) under the copyright system.
68 The Hon John Hannaford MLC, Attorney General, Notice: Copyright in judicial decisions, NSW Government Gazette No.23 (3 March 1995) p. 1087.
69 Clause 2, Notice: Copyright in legislation and other material, NSW Government Gazette No. 110 (27 September 1996) p. 6611; and Clause 2, Notice: Copyright in judicial decisions, NSW Government Gazette No.23 (3 March 1995) p. 1087.

Professor Anne Fitzgerald, Neale Hooper and Cheryl Foong

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information is a prerequisite to its public release, such as with scientific research results.\textsuperscript{70} Using copyright-based licence conditions to ensure that provenance and attribution information is retained with PSI not only enhances its reliability but also significantly improves its discoverability by search engines.

**Avoids financial and technical lock-up of taxpayer-funded materials (third point)**

PSI is produced at taxpayers’ expense. Yet if PSI is distributed without any copyright-based controls as to its reuse,\textsuperscript{71} a recipient is free to incorporate the PSI into a new work and then prevent others (via legal and technological controls) from accessing that new work and, consequently, the PSI.\textsuperscript{72} The creator of the new work will own copyright in that work and may assert their rights against all other parties, including the government, notwithstanding that the work has been produced by drawing on, and incorporates, PSI.\textsuperscript{73}

It is desirable to avoid creating a situation where government and taxpayers are precluded from accessing and using PSI that has been produced at public expense and released without any legal or technical encumbrance. Retaining copyright in PSI and distributing it under open content licences such as Creative Commons ensures that PSI released by government continues to be freely available for access and reuse, even where it has been included in a value added commercial product or locked up behind technological measures.

Importantly, copyright preserves the openness of PSI and avoids the situation which would see governments and citizens alike having to obtain permission and pay for the pleasure of using their publicly funded democratic and cultural heritage.


\textsuperscript{71} Alternatively, restrictions could apply under a contract between the government and a particular recipient or could apply generally under legislative provisions. However, contractual controls are much more onerous to apply, because they must be applied anew with each new user of the PSI to ensure privity of contract.

\textsuperscript{72} The newly created independent work may consist primarily of PSI which has been value added, for example, through features which better organise the base material and make it more easily searchable, or may consist largely of new materials produced by third parties.

\textsuperscript{73} David Bollier explains: “[A]s Anne Fitzgerald, Brian Fitzgerald, and Jessica Coates of Australia have pointed out, “putting all such material into the public domain runs the risk that material which is essentially a public and national asset will be appropriated by the private sector, without any benefit to either the government or the taxpayers.” For example, the private sector may incorporate the public-domain material into a value-added proprietary model and find other means to make the information private. …. Open-content licenses offer a solution by ensuring that taxpayer financed works will be available to and benefit the general public”": David Bollier, *Viral Spiral: How the Commoners Built a Digital Republic of Their Own*, The New Press, New York, 2008, pp 192-193, available at [http://www.viralspiral.cc/download-book](http://www.viralspiral.cc/download-book) accessed on 5 March 2010.
5.5 Use of Creative Commons Zero (CC0)

Having identified in 5.4 above the advantages for government of adopting a copyright-based licensing approach for PSI, it is apparent there are limitations in adopting the opposite approach of a ‘no-copyright’ dedication of PSI to the public domain that is represented by Creative Commons Zero (CC0).\textsuperscript{74} None of the identified advantages of a copyright-based licensing approach are secured or delivered by use of CC0.

Caution is required in using CC0 because it is:

- not part of the suite of Australian CC licences;
- inconsistent with Australian law on moral rights – CC0 defaults to a licence with the same effect as CC-BY, and so it is far less confusing simply to use CC-BY;
- contrary to the Australian governments’ Intellectual Property (IP) policies (at federal and state levels);\textsuperscript{75}
- inconsistent with the research Code of Conduct which is mandatory for (Australian) National Health and Medical Research Council (NHMRC) funded research; and
- inconsistent with well-established science norms, particularly with respect to correct attribution, no false attribution, and the integrity of research results.

5.6 Current licensing practices

Currently, the prevailing practice is for short copyright notices to be displayed – if at all – on government websites.\textsuperscript{76} Government bodies sometimes endorse these short statements as being succinct and easy for users to read. In reality, however, these statements often lack sufficient detail or clarity for users to understand what they are permitted to do with the material.

A survey of 130 New South Wales government websites conducted in mid-2006 found there to be a diversity of licensing approaches and no uniform whole-of-government policy on copyright notices.\textsuperscript{77} Eleven per cent of websites had no copyright notice at all, 8% had a basic one and a further 8% displayed “All rights reserved” statements or stated that there was to be “no reproduction without express permission”, requiring users to obtain written permission to reproduce the content on the website for any purpose.\textsuperscript{78} A total of 52% of websites conveyed “either no or few explicit permissions” other than those provided for in the Copyright Act.\textsuperscript{79}

\textsuperscript{74} See http://creativecommons.org/choose/zero.
\textsuperscript{75} See Appendix I: Intellectual Property Policies and Standards at page 78 for a list of select policies, standards and reports relevant to the management of government intellectual property in different Australian jurisdictions.
\textsuperscript{76} See for example, the Australian Government Attorney General’s Department website “Copyright” page at http://www.ag.gov.au/www/agd/agd.nsf/Page/About_the_DepartmentCopyright accessed on 1 June 2010.
\textsuperscript{77} In 2005, the NSW Premier’s Department published Intellectual Property Management Framework for the NSW Public Sector, which recommends that copyright notices “should also make clear any automatic copyright permission the agency wishes to provide, any restrictions on use of the material, and how to obtain any further copyright permissions”, p 27, available at http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0004/1012/Intellectual_Property_05.pdf.
\textsuperscript{79} Ibid, at para 2.4.2.
These disparate and unclear practices do not properly facilitate Open Access to PSI.

**Telling users what they **cannot** do restricts the flow of PSI**

Where a copyright notice is displayed on government websites and other materials, the statement typically addresses what the user **cannot** do and requires them to seek express permission (sometimes in writing) to do anything beyond the very circumscribed range of permitted activities.

A very real advantage of using open content licences drafted along the model found in the CC licence suite is that they expressly tell users what they **can** do with the licensed material.

This advantage of using open content licensing has been noted by the Australian Bureau of Statistics (ABS):

> An open licensing framework clarifies the responsibilities and obligations of ABS users in using, sharing and reusing ABS data. This will in turn create an environment which will optimise the flow of ideas and information of social and economic benefit.80

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**Important note: Display a clear copyright licensing statement**

Any government agency that intends to provide open access to PSI should display a copyright licensing statement on its website or database and should attach a copyright licensing statement to its datasets.

The statement should assert copyright and name the copyright owner. Then, licensing terms granting access and reuse rights to the work can be included with the statement, in such a way that they can be understood by all recipients of the work. Copyright licensing statements are explained below under "6.5 Legal Application: How to use Creative Commons?" at page 43.

Creative Commons licences, with their standard set of icons that are easily recognisable worldwide, provide an excellent licensing framework for data sharing. Creative Commons licences are considered more fully below.

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6 Enabling Open Access: Creative Commons

6.1 Open (content) licensing

Open licences provide a broad permission to the public to reuse the materials (or PSI) that are subject to the licence. However, they also allow the copyright owner to retain some control over how the materials may be reused. For example, if a copyright owner chooses to license their material under a Creative Commons Attribution Non-Commercial licence, users may only reuse the licensed material for any purpose that is not commercial. They must seek further permission from the copyright owner to use the material for a commercial purpose.

The emergence of open content licensing models has made it much simpler for copyright owners to license their material to a wide range of people, especially where it is distributed over the internet.81 The last few years have seen an increasing appreciation of open content licences to grant access to copyright-protected PSI.82

The benefits of open licensing include:

- allowing others to circulate the licensed work freely and widely;
- not forcing others to seek permission every time they wish to use or circulate a copy of the licensed material, which can be time consuming;
- encouraging others to continuously add value to the work; and
- encouraging others to create new works based on or derived from the original work.83

Open content licences can be seen as both the legal expression of a policy supporting access and reuse and the means of implementing the policy.84

There are a number of standard-form open licences in use, the most common being the suite of Creative Commons licences.85 Most open licences can be accessed online and can be easily attached to copyright material.

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84 Anne Fitzgerald et al, Enabling Open Access to PSI with CC (2010), p 12.
85 For a more complete list and more information on open licences, see http://www.opendefinition.org/licenses?head=4712a6a96f10cc9d008b83d615f0fd01c5d75a2c at 5 September 2007.
Creative Commons licences can be applied to most copyright materials (excluding computer software). The licences consist of:

- a legal code;
- a short “human readable” summary of the legal code;
- a digital code that can be understood by computers; and
- a set of icons that can be recognised internationally independent of language.

**Important note: Do not use CC to license software**

Creative Commons licences should not be used for software, as they do not mention source or object codes. You should consider using existing licences which are designed specifically for use with software, for example the GNU General Public License (GPL).86

**Worldwide developments in Open Access practices**

**United Kingdom: data.gov.uk**

On 21 January 2010, the UK Government achieved its commitment to open up government information by launching the data.gov.uk beta website.87 The site provides a single access point to over 2,500 central government datasets that have been made available for free re-use.88

Data available through data.gov.uk will be re-usable both commercially and non-commercially, on terms and conditions aligned with and interoperable with any Creative Commons Attribution 3.0 Licence. These terms and conditions are also machine-readable.

### 6.2 Creative Commons licences

Creative Commons (CC) licences provide a way to give permission in advance to the world at large to use material protected by copyright. The licence attaches to the material so that it moves with the material. A copyright owner only needs to give permission once, rather than having to respond to numerous separate requests from those seeking permission to use the material.

A CC licence gives users rights in relation to material protected by copyright, subject to certain conditions as selected by the licensor. The baseline rights granted are the rights to copy, distribute, display and perform the copyright work.89

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86 See further [http://www.gnu.org/licenses/gpl-howto.html](http://www.gnu.org/licenses/gpl-howto.html).
89 Clause 3(a) – (d), Legal Code, Creative Commons Attribution 2.5 Australia licence.
Where one or more elements of a database or a compilation attract copyright, a CC licence can be used to license that copyright to users. For example, if your agency wishes to license photos contained in an article but not the text, you may do so by specifying that the CC licence is to apply to the photos only.

The conditions that may be imposed in a Creative Commons licence are:

- **Attribution** (BY) – this applies to every Creative Commons licensed work and means that whenever the work is copied or redistributed the author/creator must be reasonably credited;
- **Non-Commercial** (NC) – the work can be used for non-commercial purposes only;
- **No Derivatives** (ND) – only exact copies of the work (not derivative works based on the original work) can be made, displayed, distributed and performed; and
- **Share-Alike** (SA) – users may distribute derivative works, but only under a licence identical to the one that governs the original work.

These four sets of conditions, together with the baseline permissions, can be combined to create six licences:

- Attribution 2.5 (BY)  
  <http://creativecommons.org/licenses/by/2.5/au/>
- Attribution No Derivatives 2.5 (BY-ND)  
  <http://creativecommons.org/licenses/by-nd/2.5/au/>
- Attribution Non-Commercial 2.5 (BY-NC)  
  <http://creativecommons.org/licenses/by-nc/2.5/au/>
- Attribution Non-Commercial No Derivatives 2.5 (BY-NC-ND)  
  <http://creativecommons.org/licenses/by-nc-nd/2.5/au/>
- Attribution Non-Commercial Share Alike 2.5 (BY-NC-SA)  
  <http://creativecommons.org/licenses/by-nc-sa/2.5/au/>
- Attribution Share Alike 2.5 (BY-SA)  
  <http://creativecommons.org/licenses/by-sa/2.5/au/>

For example, an Attribution-Share-Alike (BY-SA) licence allows others to use the licensed material as long as they credit the creator of the material and they license any derivative material that they create under the same type of licence. The only conditions that are incompatible and may not feature in the same licence are the No Derivatives and Share-Alike
terms (because the Share Alike term applies to derivative works). Some care needs to be exercised in an agency selecting a CC licence with a Share-Alike term as it may lead to an unintended limiting or restricting effect which may reduce the scope for innovation.

See the compatibility charts on page 45 of this Guide, which summarises how a derivative work (derived from material licensed under one of the different CC licences) or a collective work may subsequently be licensed.

**Important note: CC BY as a default licence for PSI**

The Creative Commons 2.5 Attribution licence is the most practical of the Creative Commons licences for PSI as it is generally considered the most "open" of all the Creative Commons licences.

Where a user wishes to combine different CC licensed works to form a new work (a "derivative work") or a "mash up", only CC-BY licensed material is compatible with all the other CC licences.

**Engage: Getting on with Government 2.0**

In the Government 2.0 Taskforce’s final report, Engage: Getting on with Government 2.0, the Taskforce made several recommendations, including that PSI should be “licensed to permit free reuse and transformation by others”, using machine readable licences that “conform to some international standard such as Creative Commons”.

The Taskforce proposed that CC BY should be the default licence applied when distributing PSI in which the government owns copyright, as well as PSI containing third party material, subject to negotiation with the copyright owners. Further, it recommended that Crown copyright works should be automatically licensed under a CC BY licence at the time when government records become available for public access under the Archives Act 1983 (Cth).

The Federal Government’s response to the Government 2.0 Taskforce final report supports the use of CC BY as the default licence for PSI.

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90 For more information about Creative Commons licences, see [Creative Commons site](http://www.creativecommons.org.au) and [Creative Commons FAQ](http://wiki.creativecommons.org/Frequently_Asked_Questions).

91 Available at Creative Commons Frequently Asked Question.

92 The term "mash up" is primarily used to describe a remix of digital data: see Mashup on Wikipedia at [http://en.wikipedia.org/wiki/Mashup_%28web_application_hybrid%29](http://en.wikipedia.org/wiki/Mashup_%28web_application_hybrid%29) accessed on 11 March 2010. In the context of government data, see Mashup Australia’s About page at [http://mashupaustralia.org/about/#mashup](http://mashupaustralia.org/about/#mashup) accessed on 11 March 2010.

93 See “6.4 Advantages of Creative Commons licensing” – Enable legal remixing of copyright materials at p 38 below.


95 Ibid, p xv and 58.

96 Ibid, p 59.

The flowchart in Appendix II provides a brief overview on how to choose which CC licence to apply for your agency’s purposes.

6.3 How Creative Commons licences operate

In the context of licensing PSI, there are three important aspects of Creative Commons licences to bear in mind. These are that the licences:

- terminate automatically upon breach of any licence term (point one);
- do not provide for termination at the licensor’s convenience (point two); and
- do not preclude the imposition of fees and charges for the licensed PSI (point three).

Termination on breach (point one)

If a user of material licensed under a CC licence breaches the terms of the licence, the licence and the rights granted under it terminate automatically. Therefore, in the absence of an ongoing licence to use the copyright material, the ordinary principles of copyright law come into operation.

This means that, following termination for breach, any unauthorised use of the copyright material by the licensee may be an infringement of copyright that is subject to civil and criminal penalties.

Do not provide for termination for convenience (point two)

The grant of rights under a CC licence is perpetual, lasting for the full duration of copyright. CC licences do not contain an express provision which entitles the licensor to terminate the licence solely for the licensor’s convenience, although the licensor reserves the right to release the work under a different licence or to stop distributing it at any time.

Some commentators have contended that the absence of a right to terminate for convenience means that CC licences are irrevocable. For most practical purposes, the issue of termination for convenience is unlikely to arise where government has distributed PSI under a CC licence to give effect to a policy position supporting open access to government materials. The question of revocation of CC licences will usually only arise in the event that government changes its policy, either generally or in relation to a specific copyright work or category of materials, or if the distribution of the PSI in question is found to be illegal or to raise national

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98 Available at http://creativecommons.org.au/factsheets/licensing-flowchart under a Creative Commons Attribution 2.5 Australia licence, http://creativecommons.org/licenses/by/2.5/au.
99 Clause 7(a), Legal Code, Creative Commons Attribution 2.5 Australia licence.
100 CC licences are legally enforceable. See “6.4 Advantages of Creative Commons licensing” - Enforceability at p 37 below.
101 Clauses 3 and 7(b), Legal Code, Creative Commons Attribution 2.5 Australia licence.
102 Such termination for convenience clauses are commonly found in Australian federal government contracts, but are much more rarely used by State and Territory governments.
103 Clause 7(a), Legal Code, Creative Commons Attribution 2.5 Australia licence.
security concerns. An operational response to a shift in policy of this kind would be for the government agency to cease distributing the material or to continue making it available under altered licence conditions, although any material that has already been distributed under the original licence would continue to be so.

A bare (non-contractual) licence can be revoked at any time, provided that adequate notice of revocation is given to any licensee. Accordingly, where a CC licence takes effect as a bare licence, it may be revoked at any time by the government agency (the licensor) that has applied the licence to its material, upon giving reasonable notice to the licensee. What period of notice will be “reasonable” will depend upon the circumstances in each case but might range from a period of some weeks to several months or more.

**Trumpet Software v Ozemail: A bare licence can be revoked**

In *Trumpet Software v Ozemail* [1996] FCA 560, the plaintiff had distributed its internet connection Trumpet Winsock computer program as shareware available for free download from FTP (file transfer protocol) sites, under a bare licence which permitted those who obtained a copy to use it for a specified period for assessment and to pass on the entire program (including the same terms of use) to other users. As is the case with CC licences, the licence granted to users of Trumpet Winsock operated directly from the plaintiff to each user.

Heerey J rejected the defendant’s assertion that the method of distribution of Trumpet Winsock as shareware gave rise to a licence which could not be revoked, even if reasonable notice of termination was given. While Heerey J countenanced that it may be the case “that a bare licence not supported by consideration can still only be revoked on giving the licensee reasonable notice”, he said it would be without foundation to hold that such a licence could not be revoked at all.

The basis for the contention that CC and other open source/content licences are irrevocable seems to owe more to the practical difficulties of recalling works that have been widely distributed to users other than those who are the immediate recipients of the work from the licensor, than to the lack of legal grounds for revocation. Notwithstanding the earlier impracticalities of seeking to give notice of revocation to all the distributed recipients of a copyright work, in the internet era the core features of CC licences assist in locating copies of licensed works and notifying users of changed conditions of use. All CC licences include provision for the identification of the licensor and Digital Code, which enable the web

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104 Both of these options are provided for in Clause 7(b), Legal Code, Creative Commons Attribution 2.5 Australia licence.
105 Clause 7(b), Legal Code, Creative Commons Attribution 2.5 Australia licence.
107 In this respect, CC licences operate in a similar fashion to the general “waivers” of copyright in judgments and legislative material issued by the New South Wales government: Notice: Copyright in judicial decisions, NSW Government Gazette No.23 (3 March 1995) p. 1087; and Notice: Copyright in legislation and other material, NSW Government Gazette No. 110 (27 September 1996) p. 6611. For further discussion, see “New South Wales government’s so-called ‘copyright waivers’” above at p 19.
108 See P Johnson, “Dedicating” Copyright to the Public Domain, (2008) 71(4) Modern Law Review 587 at pp 605-606. Johnson (at p 606) comments that six months’ notice was considered reasonable where the licensee had spent substantial sums in reliance upon the licence (*Dorling v Honnor Marine* [1963] RPC 205), but a reasonable notice period might be considerably less where the licensee had expended less.
109 His Honour cited *Computermate Products (Aust) Pty Ltd v Ozi-Soft Pty Ltd* [1988] 20 FCR 46 at 49.
110 *Trumpet Software Pty Ltd v OzEmail Pty Ltd* [1996] FCA 560.
111 Note that this reasoning is implicit in the argument put forward by the defendants in *Trumpet Software Pty Ltd v OzEmail Pty Ltd* [1996] FCA 560 that the shareware licence granted by the plaintiff to users of its Trumpet Winsock software was irrevocable.
location of licensed works to be discovered by search engines such as Google and Yahoo. Consequently, it is not difficult to locate copies of CC-licensed works on the web and to notify the administrators of websites where they are displayed that the licence has been or will be terminated.

While the issue of revocability of CC licences may be a theoretical rather than a practical concern, if a licence granted by a government over PSI were to be revoked, the licensee may still be entitled – under the estoppel doctrine – to continue using the material. To successfully raise estoppel, the licensee would need to show that they had, in reliance on the CC licence, altered their position such that it would now be unreasonable (unconscionable) for the government agency/licensor to withdraw permission to use the licensed material. Where the licensee has relied on the terms of the CC licence to their detriment, the doctrine of estoppel would prevent the licensor from resiling from the representations made in the licence about how it will exercise its rights as copyright owner.

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**The Commonwealth v Verwayen: Estoppel can be raised against a government**

It is established in Australian law that estoppel can be raised against a government. In the leading case, *The Commonwealth v Verwayen* [1990] HCA 39, (1990) 170 CLR 394, members of the High Court of Australia applied the doctrine of estoppel, holding that the Commonwealth could not avail itself of a defence that a tort action was statute barred when it had earlier made representations to the plaintiff that it would not rely on that defence.

Fees and charges – upfront payment for licensed material (point three)

A government agency may wish to impose a statutory charge or fee for the provision of CC licensed PSI for cost recovery purposes. Licensing PSI under a CC licence does not

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113 Estoppel could also be raised on the basis of the express statements in the New South Wales government’s “waivers” of copyright in legislation and judgments that “[t]he State will not enforce copyright in any judicial decision [or legislative material] to the extent that it is published or otherwise dealt with in accordance with this authorisation”: Clause 3, *Notice: Copyright in judicial decisions*, NSW Government Gazette No.23 (3 March 1995) p. 1087; and Clause 3, *Notice: Copyright in legislation and other material*, NSW Government Gazette No. 110 (27 September 1996) p. 6611.

114 Mason CJ at p 413, Deane J at pp 446-51; Dawson J at pp 455-63.

preclude the government from charging a fee at the time that the PSI is made available to the user. However, the government information provider will not be able to prevent the licensee from sharing the CC licensed work with others for free. Therefore cost recovery will only occur at that point of access, but not from other downstream recipients.

For example, the government agency could make a digital file available for access on a website where it can be viewed but not copied by a user; however, if the user wants to proceed to download a licensed copy of the file for use and reuse, they may be required to pay a charge or fee. Here, the downloaded digital material can be licensed by the government to the user under a CC licence – including a CC BY-NC licence – notwithstanding that the government obtains payment from the licensee. The licensee may then share that material with others under the terms of that CC licence.

**A CC licence applies to the licensee, not the licensor**

The terms of the CC licence describe the scope of the permission granted to the licensor, not the licensor's rights in relation to the copyright material. There is no restriction on the licensor making the material available to the licensee under a CC BY-NC licence and requiring payment before providing the material even though the licensor is prohibited from using the licensed material for commercial purposes.

### 6.4 Advantages of Creative Commons licensing

CC licences have several advantages for governments that are managing their copyright to give effect to open access policy objectives. These advantages can be attributed to the following qualities of CC licences (and are discussed in detail below):

- the enforceability of the licences;
- that the licences contain an explicit statement of reuse rights;
- that the licences can include a clear statement that information is sourced from government;
- the universal recognition of the CC symbols;
- the discoverability of digital objects;
- that the licences enable legal remixing of copyright materials; and
- that the licences enable the monitoring of usage levels.

#### Enforceability

In Australia, it was established in the case of *Trumpet Software v OzEmail* [1996] FCA 560 that non-contractual (bare) licences were enforceable (see above). Notwithstanding (or perhaps because of) the widespread use of CC and other open content and open source licences, there have been relatively few cases in which their validity and enforceability have been tested in court.

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116 The ability to share the licensed material is a baseline right in all the CC licences. See for example, Clause 3, Legal Code, Creative Commons Attribution 2.5 Australia licence, available at [http://creativecommons.org/licenses/by/2.5/au/legalcode](http://creativecommons.org/licenses/by/2.5/au/legalcode) (also reproduced in Appendix III).

Professor Anne Fitzgerald, Neale Hooper and Cheryl Foong
The most authoritative consideration to date of the effectiveness of open licences is the decision of the United States Court of Appeals for the Federal Circuit in *Jacobsen v Katzer* in August 2008. In this case, it was held that the defendant had gone beyond the scope of the open licence and thereby infringed copyright. From this decision, it is clear that open licences such as CC licences will be upheld by the courts, even though they are applied to copyright materials distributed for no financial reward, and that failure to comply with the licence conditions may be an infringement of copyright, for which the usual remedies will apply. CC licences have also been enforced in the Netherlands, Bulgaria and Norway, and treated as valid in court cases in Spain.

**Explicit statement of reuse rights**

Government agencies can use CC licences to clearly communicate to users what they are permitted to do with the licensed PSI without having to seek individual permissions or to engage in time-consuming negotiation of licensing conditions. Unlike the static websites of the web 1.0 era, CC licences can be included not only on each of the individual pages of a website but also on every digital object or file downloaded from the site.

### Case Study: Australian Bureau of Statistics

On 18 December 2008, the Australian Bureau of Statistics (ABS) implemented CC licensing on its website and began making an extensive range of its statistical information products available online under a Creative Commons Attribution 2.5 Australia licence. Implementation involved adding to the footer on every page of the ABS website an updated Copyright Statement, Disclaimer notice, CC symbols, information on how to attribute material sourced from the ABS website and a hyperlink to the CC licence. In effect, ABS makes its website material openly available, on the condition that users acknowledge ABS as the source of the data.

In explaining the reason behind the adoption of CC licences, Siu-Ming Tam, senior executive officer of the ABS, emphasised the importance of a simple, easily understood licensing model to facilitate enhanced and innovative reuse such as through mash-ups in which different layers of information are combined:

33. The recent advent of Web 2.0 technologies increases the potential to use, share and 'mix and match' ABS data sets to add value to ABS information. 'Mash ups' are an excellent example of how the value of a product may be significantly enhanced by including different layers of information with statistical information. To facilitate this, and other innovative uses of ABS data, the ABS needs to have an internationally recognised licensing framework for accessing, using and reusing its statistical information.
49. One of the hallmarks of a democracy is freedom to choose one’s own affairs. Choice requires decisions and in turn good decision making requires information. Therefore, open access to statistical information is fundamental to a democracy.

52. Most recently, the introduction of Creative Commons licences, an internationally recognised licensing framework, onto the ABS website provides clarity on responsibilities and obligations on users of ABS statistics when using, sharing and reusing ABS information. It is our belief that this initiative will facilitate an environment for creativity, innovation, and the development of value added products, all of which will lead Australia to be a better place for its citizens.121

Clear statement that information is sourced from government – increased user confidence

The amount of information accessible online is increasing exponentially, and is of variable quality and reliability. A clear advantage for government in applying CC licences to PSI is that the source or provenance of the material is made clearly apparent to users.122 This is an important and practical factor for users online when trying to assess the character of information and determine the confidence they can have in the information’s quality and accuracy.

Conversely, if the provenance of information is not stated in clear and transparent terms, the degree of confidence a user may have in it will diminish, reducing the likelihood that - and the extent to which - the information will be used or relied upon.123

Another advantage of adopting a standard practice of applying CC licences to copyright material is that it prospectively avoids the problem of so-called “orphan” copyright works, for which it is not possible to identify or locate the copyright owner in order to obtain permission to use the material. With respect to PSI, the problems currently encountered with orphan works could be virtually eliminated in the future if metadata - including the name of the creator/s of the work and the copyright owner/s, and licensing permissions - were to be attached to or embedded in copyright works at the time they are created and before distribution.

The symbols used to indicate the terms of CC licences have the advantage of being widely recognised and understood, irrespective of the language in which the Licence Deed or Legal Code is written, or the location of the licensor. This is a particularly important advantage for works distributed online in digital form. When a government agency applies a CC licence and related symbols to a public sector work, the terms on which the work can be used are readily apparent to users, independently of their jurisdiction or language.

122 All CC licences require that attribution be given to the author, or other party designated for the purposes of attribution.
123 The crucial role played by clearly stating the source or provenance of licensed information in facilitating the flows and reuse of the information is strongly affirmed in the report, by Dr Prodromos Tsiavos, Case Studies Mapping the Flows of Content, Value and Rights across the Public Sector, March 2009 (available at www.jisc.ac.uk/contentalliance) which contains an analysis of seven UK case studies of publicly funded e-content initiatives.
Discoverability of digital objects

CC licences are designed for the web 2.0 environment. Each of the CC licences is expressed in machine readable Digital Code (or Licence Metadata) which is used to “tag” the digital object (or file), as well as the web page that links to it. Unlike the static copyright notices typically found on government websites, the Digital Code of CC licences is included in the digital object and travels with it, facilitating the distribution and discoverability of CC licensed works. As observed in the (draft) New Zealand Goal Open Access Framework:

Distribution and discoverability is increasingly significant in the digital age as it facilitates, among other things, machine-based indexing and searching of CC-licensed works by reference to the Digital Code’s metadata.124

The machine-readable Digital Code enables CC-licensed materials to be indexed and retrieved by search engines such as Google, along with the licensing information. The inclusion of an express statement of user permissions with the digital file – both in the form of the human-readable Licence Deed and the machine-readable Digital Code – means that a user is immediately provided with information about what they can and cannot do with the material, which can be verified by checking with the licensor.

Enable legal remixing of copyright materials

A significant impediment to the efficient sharing and reuse of PSI is the diversity of licensing practices and the lack of consistency or compatibility of the rights granted to users. Incompatibility of licence terms creates a legal logjam and presents a major obstacle to the ready flow of PSI. Although it may be possible, technologically, to obtain access to, and to mix and match (mash up or remix) various information inputs or products, this does not mean that such remixing or reuse of the information inputs or products is lawful.125

Where there are different reuse rights attaching to the various components of a remixed or mashed work, the lowest common denominator principle applies: the most restrictive reuse rights applying to any one of the inputs will govern what can be done with the whole of the remixed or mashed work, irrespective of whether it is intended to be used only by the person who has produced it or licensed to other parties for downstream use. When licensing the remixed work, the person who has created it would only be able lawfully to license or grant the lowest common denominator rights of reuse. This can have a severely limiting effect on the scope of the reuse of remixed information products, representing a significant impediment to reuse of PSI.

The use of numerous different licences, often with inconsistent or incompatible terms, has been identified in numerous reviews as an impediment to effective flows of PSI. Open

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125 On the importance of being able to remix from among a wide range of existing materials, see Dr T Culter, The Role of Cultural Collections in Australia’s Innovation System, keynote address presented at the State Library of Victoria, 23 October 2009, pp 3-4. Dr Culter introduces the term “combinatorial innovation” to refer to remix.
content licences such as Creative Commons are a legally effective and efficient way in which to promote globally compatible reuse rights for copyright material, including PSI.

<table>
<thead>
<tr>
<th>Inconsistent licensing practices impede the flow of PSI</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GILF:</strong> The Government Information Licensing Framework (GILF) project was instigated by QSIC specifically to address the recurring problems in accessing and sharing spatial information among government agencies and utility service providers during and after natural disasters due to the fragmented, inefficient and confusing arrangements for information access and reuse.</td>
</tr>
<tr>
<td><strong>NGISS:</strong> The National Government Information Sharing Strategy (NGISS) identified several existing barriers to information sharing, including “information management practices that restrict sharing capability” and recommended the development of “appropriate governance arrangements for information sharing [which are] clearly defined and applied consistently across government.” In particular, NGISS recommended that the governance documentation should include “instructions regarding information conditions of use e.g. copyright; licensing etc” and referred to the GILF as one of the tools to be used in establishing clear governance arrangements for shared information.</td>
</tr>
<tr>
<td><strong>NZGOAL:</strong> The draft New Zealand Open Access and Licensing Framework (NZGOAL) observed that there are at least three broad categories of licensing in place across New Zealand government departments and that these “various and inconsistent licensing practices” were a cause of “confusion, uncertainty and criticism” by members of the public.</td>
</tr>
</tbody>
</table>

**Monitoring levels of usage**

With the increasing sophistication of online search capabilities it is now practicable for licensors to monitor the level of usage of their material licensed in the online world. This ability largely removes the need for licensors to continue to seek to impose a reporting obligation on a licensee to record and report back on the number of licences granted over a specified period. In practice, the accuracy of any usage or customer details reports was largely dependent upon the licensee’s diligence and record keeping ability.

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126 In Queensland, the problems of accessing and sharing spatial information were highlighted by Cyclone Larry which devastated large areas of northern Queensland in 2005; in Victoria, the 2009 bushfires poignantly demonstrated the criticality of real time, spatially-related information to enable effective emergency response management.


129 Ibid, pp 6 and 19.

130 Ibid.


Now, the licensor can simply do an internet search for the licensed material, largely eliminating the need for detailed reporting conditions.
6.5 Legal application: How to use Creative Commons?

Permission to apply a Creative Commons licence

Before your agency may legally apply a Creative Commons licence to the material in question, the following matters need to be considered.

A. Consent of copyright owner

Ensure that your agency owns copyright or has the consent of the copyright owner to attach the licence.133

Does your agency own copyright?

Has your agency obtained the consent of the copyright owner to apply a Creative Commons licence to the material?

☐ If the answer is YES to either question – can apply a Creative Commons licence.

☐ If the answer is NO to both questions – cannot apply a Creative Commons licence.

B. Material already licensed

If the material has already been licensed by the copyright owner to another party, you need to ensure that the terms of the licence do not preclude your agency from subsequently applying a Creative Commons licence to the material.

This may be the case where the material has been licensed under an exclusive licence which means that only the licensee has the rights to use it.

Exclusive licence vs Non-exclusive licence

A copyright licence can be exclusive or non-exclusive.

An exclusive licence grants the relevant rights to the licensee only, and the licensor (copyright owner) cannot then grant the same rights to anyone else (for example, under a CC licence) or exercise those rights themselves. An exclusive licence must be in writing.

A non-exclusive licence gives permission to the licensee to exercise the relevant rights, but also allows the copyright owner to grant the same permission to others and to continue to exercise those rights themselves.

133 If you are unsure who the copyright owner is, see “5.1 Copyright ownership” at p 18 above.
Fact sheet 3: Can a Creative Commons licence be used on government copyright material that has already been licenced to a third party?

Instructions

Where government copyright material has already been licenced to a third party, this fact sheet can help you to determine whether your agency can apply a Creative Commons licence to the material.

This fact sheet should be used in conjunction with our guide Fitzgerald, Anne M, and Hooper, Neale and Foong, Cheryl (2013) Using Creative Commons 3.0 Australia Licences on Government Copyright Material. [online] Available at: http://creativecommons.org.au/laws/gov/govmix.html (See in particular, the Checklist for applying a Creative Commons licence to government material).

Start at the green question box and following the arrows that correspond with your answer, make your way through the pink and blue questions until you reach a red or purple licence box. That box will indicate the right licence for you or indicate more details are required.

For more information about the CC licences, see http://creativecommons.org/licenses. For more information about Creative Commons and Government in Australia, see http://creativecommons.org.au/government.
Material includes a substantial part of another party’s material

Your agency may wish to include another party’s material or a substantial part of that party’s material in or with its PSI in order to create a “collective work” or a “derivative work”, which your agency seeks to license under a CC licence.

What is a “collective work”?  
A collective work is created where you take another party's material in its complete and unaltered form and include it with your agency's material.134

What is a derivative work?  
A derivative work is created where you:

• take a substantial part (not all) of another party's material and include that other party's material with your agency's material; or

• adapt/modify another party's material.135

First of all, you must obtain permission from the copyright owner to include their material or a substantial part of their material with your agency’s material. What you may do subsequently with the collective work or derivative work (e.g. making it available under a CC licence), will depend on the terms (e.g. scope) of the permission.

What is a “substantial part”?  

Diagrams/photographs  
Each individual diagram or photograph will constitute an individual work in itself. Therefore, if a diagram or photograph has been reproduced in its entirety, it is likely to be a substantial part and the permission of the copyright owner will be required if you wish to license the diagram/photograph under a Creative Commons licence.

Text  
If the whole text of a work (for example an entire article) is reproduced in the material, this will be a

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134 See Legal Code, Creative Commons Attribution 2.5 Australia licence (available in Appendix III), clause 1 – Definitions:

a. "Collective Work" means a work, such as a periodical issue, anthology or encyclopaedia, in which the Work in its entirety in unmodified form, along with a number of other contributions, constituting separate and independent works in themselves, are assembled into a collective whole. A work that constitutes a Collective Work will not be considered a Derivative Work (as defined below) for the purposes of this Licence.

135 See Legal Code, Creative Commons Attribution 2.5 Australia licence (available in Appendix III), clause 1 – Definitions:

b. "Derivative Work" means a work that reproduces a substantial part of the Work, or of the Work and other pre-existing works protected by copyright, or that is an adaptation of a Work that is a literary, dramatic, musical or artistic work. Derivative Works include a translation, musical arrangement, dramatisation, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be adapted, except that a work that constitutes a Collective Work will not be considered a Derivative Work for the purpose of this Licence. For the avoidance of doubt, where the Work is a musical composition or sound recording, the synchronization of the Work in timed-relation with a moving image ("synching") will be considered a Derivative Work for the purpose of this Licence.
substantial part and you will require the permission of the copyright owner in order for your agency to be able to license that work under a Creative Commons licence.

However, if anything less than the whole of the text of a work has been included, an assessment needs to be made as to whether this will constitute a substantial part of the work. It is likely that such assessments will need to be determined upon a case-by-case basis. As a general rule, whether something is a substantial part or not is determined by taking into account the quality of the part taken (as opposed to its quantity) and the importance the part taken bears in relation to the work as a whole (for example whether it is an essential or material part of the work).

If you are in any doubt as to whether the part of the text that has been included in the material is a substantial part or not, you should always seek the permission of the copyright owner before applying a Creative Commons licence to the text.

**Sound recordings, cinematograph films and sound and television broadcasts**

If a whole sound recording, cinematograph film, sound broadcast or television broadcast has been included in the material, this will constitute a substantial part and you will require the permission of the copyright owner before a Creative Commons licence can be applied by your agency to the recording, film or broadcast.

However, if something less than the whole of the sound recording, cinematograph film or sound and television broadcast has been included, an assessment will need to be made as to whether this constitutes a substantial part of the work. The factors discussed above in relation to a substantial part of text should be applied. However, you should note that this is an uncertain area of the law and if you are in any doubt, you should consider obtaining the permission of the copyright owner before applying a Creative Commons licence.

In this situation, where a “substantial part” of another party’s material is involved, different scenarios may apply. For example, the other party may:

1. make their material available under a CC licence;
2. give you permission to include their material with your agency’s material;
3. give you permission to include their material with your agency’s material and to release the collective work under a CC licence; or
4. give you permission to include their material with your agency’s material and to make both -
   - the collective work; and
   - their discrete copyright work,
   available under a CC licence.

Each of these scenarios is explained below.
1) Other party’s material available under a CC licence

Where the other party’s material is already available under a CC licence, you may use the material in accordance with the terms of that licence.

(A) Derivative works

If your agency is seeking to create a derivative work by using its material with the other party’s CC licensed material, the compatibility chart below\textsuperscript{136} shows which of the six CC licences may be applied by your agency to the derivative work.

<table>
<thead>
<tr>
<th>CC licensing compatibility chart</th>
<th>Terms that can be used for a derivative work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other party’s material licensed under</td>
<td>BY</td>
</tr>
<tr>
<td>BY</td>
<td>Green</td>
</tr>
<tr>
<td>BY-NC</td>
<td>Green</td>
</tr>
<tr>
<td>BY-NC-ND</td>
<td>Green</td>
</tr>
<tr>
<td>BY-NC-SA</td>
<td>Green</td>
</tr>
<tr>
<td>BY-ND</td>
<td>Green</td>
</tr>
<tr>
<td>BY-SA</td>
<td>Green</td>
</tr>
</tbody>
</table>

The green boxes indicate licence compatibility. That is, you may use an equivalent or more restrictive CC licence for the derivative work (i.e. those at the top row aligned with the green boxes). If you wish to license the derivative work under a less restrictive CC licence (i.e. those at the top row aligned with the clear/white boxes), your agency will need to obtain permission from the other party to do so.

In making the derivative work available, your agency should acknowledge the use of that other party’s material and attribute that party, in the way it has indicated, in accordance with the terms of the licence.

(B) Collective works

However, if the CC licence applied by the other party to its material carries a No Derivatives term (ND), your agency may only include the material as is and cannot alter the material or take parts only of the material.\textsuperscript{137} In this case, your agency may only include the other party’s material in its unaltered form with your agency’s material to create a collective work (but you may not create a derivative work).

<table>
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<td>BY-NC-ND</td>
<td>Green</td>
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<tr>
<td>BY-NC-SA</td>
<td>Green</td>
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<tr>
<td>BY-ND</td>
<td>Green</td>
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<tr>
<td>BY-SA</td>
<td>Green</td>
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</tbody>
</table>

\textsuperscript{136} Available at Creative Commons Frequently Asked Question \url{http://wiki.creativecommons.org/Frequently_Asked_Questions} (under CC BY 3.0).

\textsuperscript{137} That is, only exact copies of the work (not derivative works based on the original work) can be made, displayed, distributed and performed. See “6.2 Creative Commons licences” at p 29 above.
Where the other party’s material is included by your agency in a collective work, the collective work may be licensed by your agency under an equivalent or more restrictive CC licence (i.e. those at the top row aligned with the green boxes). If you wish to license the collective work under a less restrictive CC licence (i.e. those at the top row aligned with the clear/white boxes), your agency would need to obtain permission from the other party to do so.

While the collective work may be released under the CC licences indicated by the green boxes, the other party’s material is still licensed, as a discrete copyright work, under the terms of the CC licence applied by the other party. Therefore, your agency must specify which CC licence applies and attribute that material in the way indicated by the other party.

**Example scenario 1 (B):** Your agency licensing a collective work containing its material and material by another party available under a less restrictive CC licence:

```
[Diagram]

X

Y

Other party’s material (X)
(e.g. licensed under CC BY)

Your agency should state that this part (X) of the material is available under a different licence.

[E.g. – “X is licensed by Other Party under a Creative Commons Attribution 2.5 Australia licence.”]

Collective work (X + Y)
(e.g. licensed under CC BY-NC)

An equivalent or more restrictive CC licence can be applied by your agency to the collective work. Then attribute “Y” to your agency in the way required by your agency and also attribute “X” to the other party also (see adjoining other party’s material box).

[E.g. – “This work is licensed under a Creative Commons Attribution Noncommercial 2.5 Australia licence.”]

2) Other party’s permission limited to inclusion with your agency’s material

Another party may permit your agency to include their material with your agency’s material to create a collective/derivative work. However, they may not want your agency to make their material available as part of the collective/derivative work under a CC licence (or any other licence).

If the other party’s permission is limited to inclusion with your agency’s material and does not approve the subsequent CC licensing of that collective/derivative work, then your agency will need to obtain further permission to release the work under a CC licence.

Therefore, in practice, wherever practicable it is far more efficient to obtain a sufficiently broad permission, in the first instance, to cover various possible future uses of the material.
3) **Other party’s permission limited to release as part of a collective or derivative work under CC**

Here, the other party has provided a specific and limited authority for its material to be included as part of a collective or derivative work, and for the collective or derivative work to be licensed only under a specific CC licence. No approval is given for the other party’s material (see “X” in the diagram below) to be taken, in whole or in part, from the collective or derivative work, and then to be licensed, separately or in combination with another party’s material, under a CC licence or any other form of licence.

If the other party has expressly permitted your agency to include their material with your agency’s material and to license the resulting collective or derivative work under a CC licence, then your agency may license that collective or derivative work under the specified CC licence.

However, whilst the other party may have permitted your agency to license their work as part of a collective or derivative work under a CC licence, the other party still owns copyright in their work (see “X” in the diagram below).

Your agency is not permitted to make the other party’s original work available, as a discrete or separate copyright work, under a CC licence. Further approval would be necessary before your agency could license the other party’s work separately.

**Example scenario 3: Licensing a collective or derivative work.**

![Diagram](image)

- **Other party’s material X**
  - The other party should be attributed (in the way indicated by that party) for their contribution to the collective or derivative work. Their work may not be taken or extracted, in whole or in part, from the collective or derivative work.
  - [E.g. – “© Other Party (2010). Not to be extracted or licensed separately.”]

- **Collective or derivative work X + Y (e.g. if permitted to license under CC BY)**
  - A Creative Commons BY licence can be applied to the collective work.
  - [E.g. – “This work is licensed under a Creative Commons Attribution Noncommercial 2.5 Australia licence.”]
4) Permission to release both collective work and discrete copyright work under CC

If the other party has expressly permitted your agency to include their work with your agency’s material to create a collective work, and also to make their discrete copyright work available under a CC licence, then the collective work, including the discrete copyright work of the other party, may be released under that CC licence.

While you should attribute the other party as licensor of their material in the way the other party indicated, there is no need to exclude their work from the application of the CC licence. However, to avoid any doubt, you may wish to specify that the material is available under the same CC licence.

Example scenario 4: Licensing the entire collective work under a CC licence

These are mere illustrations of the types of permission you may obtain from another party. This Guide cannot cover every possible type of permission that may be given to you.

In essence, what you may do with another party’s material, and what you may do with the resulting work which includes that other party’s material depends on the scope of the permission from that party.

Important note: Be specific about what you are licensing

You should be specific about what you are licensing under Creative Commons when you apply a Creative Commons licence to your agency’s material. Which elements of the material are you licensing (all or only some)?
**Fact sheet 4**

**Can a Creative Commons licence be used where the copyright material includes material owned by a third party?**

**Instructions**

Where government copyright material contains material owned by another party (i.e. a third party), this fact sheet can help you to determine whether your agency can apply a Creative Commons licence to the material.

This fact sheet should be used in conjunction with our guide: Fitzgerald, Anne M. and Hooper, Neale and Foong, Cheryl (2010) Using Creative Commons 2.5 Australia Licences on Government Copyright Material http://eprints.cut.edu.au/121/ (see in particular, the Checklist for applying a Creative Commons licence to government material).

Start at the green question box and, following the arrows that correspond with your answer, make your way through the pink and blue questions until you reach a red or purple licence box. That box will indicate the right licence for you or what other permissions are needed.

For more information about the CC licences, see http://creativecommons.org/licenses; for more information about Creative Commons and Government in Australia, see http://creativecommons.org.au/government.

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**Diagram:**

1. **Start here!**
   - Does your agency’s material include third party material (i.e. material owned by another party)?
     - Yes: Is the third party material protected by copyright?
       - Yes: Is a substantial part of the third party’s copyright material included in your agency’s work?
       - No: You cannot apply a Creative Commons licence to the third party’s material.
         - (You need to obtain permission from the third party to apply a CC licence.)
         - The material may be licensed under a Creative Commons licence.
             - Does your agency have permission to include the third party’s copyright material with your agency’s work?
               - Yes: Does your agency have permission to make the derivative/collective work available under a CC licence?
                 - Yes: You have to obtain permission to include the third party’s material with your agency’s work.
                 - No: You have to obtain permission to include the third party’s material with your agency’s work.
               - No: You have to obtain permission to include the third party’s material with your agency’s work.
         - No: The material may be licensed under a Creative Commons licence.
             - Does your agency have permission to include the third party’s copyright material with your agency’s work?
               - Yes: Does your agency have permission to make the derivative/collective work available under a CC licence?
                 - Yes: You have to obtain permission to include the third party’s material with your agency’s work.
                 - No: You have to obtain permission to include the third party’s material with your agency’s work.
               - No: You have to obtain permission to include the third party’s material with your agency’s work.
     - No: You cannot apply a Creative Commons licence to the third party’s material.
       - (You need to obtain permission from the third party to apply a CC licence.)
       - The material may be licensed under a Creative Commons licence.
         - Does your agency have permission to include the third party’s copyright material with your agency’s work?
           - Yes: Does your agency have permission to make the derivative/collective work available under a CC licence?
             - Yes: You have to obtain permission to include the third party’s material with your agency’s work.
             - No: You have to obtain permission to include the third party’s material with your agency’s work.
           - No: You have to obtain permission to include the third party’s material with your agency’s work.
         - No: The material may be licensed under a Creative Commons licence.
             - Does your agency have permission to include the third party’s copyright material with your agency’s work?
               - Yes: Does your agency have permission to make the derivative/collective work available under a CC licence?
                 - Yes: You have to obtain permission to include the third party’s material with your agency’s work.
                 - No: You have to obtain permission to include the third party’s material with your agency’s work.
               - No: You have to obtain permission to include the third party’s material with your agency’s work.
Copyright licensing statement

A simple summary of the CC licence terms is easily accessible online as a “human-readable summary” if the page is appropriately linked to the material. A government agency which is licensing material under a CC licence may wish to provide an up-front and more explicit statement of the terms of the licence. This may be done by displaying a simple summary of the terms in a prominent place (e.g. at the point of access on the webpage) or by attaching the summary to the material itself. For example, the statement may appear on the cover page of a report. It can also be included in the metadata fields of the material and the Creative Commons licence. In addition, if applicable to a website in general, this statement should be available in the website’s “Copyright” page.

Therefore, before applying a CC licence to the material, you need to decide what copyright licensing statement your agency will use to notify others of the basic attribution requirement and of any other terms of the licence which may apply.

How detailed the copyright licensing statement should be depends on whether the material:

1. is not conveyed electronically or is conveyed electronically but can be used offline (e.g. a file that can be downloaded) (“Offline Material”); or
2. is released electronically (e.g. contained in a website) and is likely to be used primarily online (“Online Material”).

For further guidance on minimum markings, copyright licensing statements and attribution statements for each of the six CC licences see Table 1 (see Appendix IV at page 87).

Attribution

Each of the six CC licences contains an attribution condition. It is a core requirement of all of the CC licences that users who reproduce and use the work under the licence give attribution to the author or another party that is nominated in the licence. The attribution clause also requires that the CC-licensed work not be falsely attributed to another person (that is, another person cannot be falsely named as author) and not be changed or altered in a way that would prejudice the honour or reputation of its author.

Although the attribution condition is a standard feature of all the CC licences, in circumstances where attribution would be impracticable, authors who distribute their works under CC licences may make it clear that they do not insist on being positively (or expressly) attributed. However, even if positive (explicit) attribution is not required, the attribution clause still enables authors to insist that another person is not falsely attributed as the author and that no changes are made to the CC-licensed work which would detract from their reputation.

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138 See http://creativecommons.org/licenses/by/2.5/au/ accessed on 15 March 2010. See also the Screenshot 5 on p 67 of this Guide.
139 This copyright licensing statement is not to be confused with a copyright notice (e.g. © State of Queensland 2010) applied to copyright works.
140 See for example, Clause 4, Creative Commons Attribution 2.5 Australia, Legal Code.
The attribution condition is set out in Clause 4 of the legal text of each of the Creative Commons 2.5 Australia licences. The following table explains what the attribution clause requires:

**Table 2 – Clause 4 – Restrictions – Creative Commons Legal Code 2.5 Australia**

4. Restrictions. The licence granted in Section 3 above is expressly made subject to and limited by the following restrictions:

<table>
<thead>
<tr>
<th><strong>Clause 4(b)</strong></th>
<th><strong>Plain English meaning</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>If you publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform the Work or any Derivative Works or Collective Works,</td>
<td>If you do any of the following acts with the work or any Derivative Works or Collective Works:</td>
</tr>
<tr>
<td>You must keep intact all copyright notices for the Work.</td>
<td>Any copyright notices placed on the work (including the CC licence) must be kept intact.</td>
</tr>
<tr>
<td>You must also give clear and reasonably prominent credit to (i) the Original Author (by name or pseudonym if applicable), if the name or pseudonym is supplied; and (ii) if another party or parties (eg a sponsor institute, publishing entity or journal) is designated for attribution in the copyright notice, terms of service or other reasonable means associated with the Work, such party or parties.</td>
<td>You must give clear and reasonably prominent credit to:</td>
</tr>
<tr>
<td>If applicable, that credit must be given in the particular way made known by the Original Author and otherwise as reasonable to the medium or means you are utilizing, by conveying the identity of the Original Author and the other designated party or parties (if applicable); the title of the Work if supplied; to the extent reasonably practicable, the Uniform Resource Identifier, if any, that Licensor specifies to be associated with the Work, unless such URI does not refer to the copyright notice or licensing information for the Work;...</td>
<td>If the original author specifies a particular way that credit must be given, then credit must be given in that way. In addition to the requirement of leaving intact existing copyright notices, they are able to require certain things. Namely:</td>
</tr>
<tr>
<td></td>
<td>• They may require that you attribute the work to a certain name, pseudonym or even an organization of some sort.</td>
</tr>
<tr>
<td></td>
<td>• They may require you to associate/provide a certain URL (web address) for the work.</td>
</tr>
<tr>
<td>You may cite the original author (and/or other parties if required to) as reasonable to the medium or means you are using. (e.g. if it is not practicable to immediately list a large amount of contributors to a derivative work – a link to a list of contributors on another page is reasonable.)</td>
<td>In crediting the original author (and/or other...</td>
</tr>
</tbody>
</table>
and in the case of a Derivative Work, a credit identifying the use of the Work in the Derivative Work (e.g., "French translation of the Work by Original Author," or “Screenplay based on original Work by Original Author”).

Such credit may be implemented in any reasonable manner; provided, however, that in the case of a Derivative Work or Collective Work, at a minimum such credit will appear where any other comparable authorship credit appears and in a manner at least as prominent as such other comparable authorship credit.

If you are making a Derivative work or adaptation, in addition to the above, you need to identify that your work is a derivative work, and give credit to the original author e.g., “This is a French translation of the [original work] by [author].” or “Screenplay based on [original work] by [author].”

Credit to the original author may be given in any reasonable manner.

However, at the very least, credit must be given with equal prominence as credit to other contributors to the derivative work or collective work.

### Clause 4(c)

False attribution prohibited. Except as otherwise agreed in writing by the Licensor, if You publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform the Work or any Derivative Works or Collective Works in accordance with this Licence, You must not falsely attribute the Work to someone other than the Original Author.

A person using a Work distributed under a CC licence, a Derivative Work or a Collective Work must not falsely attribute the Work to anyone other than the Original Author, unless they have permission in writing from the licensor to do so.

### Clause 4(d)

Prejudice to honour or reputation prohibited. Except as otherwise agreed in writing by the Licensor, if you publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform the Work or any Derivative Works or Collective Works, You must not do anything that results in a material distortion of, the mutilation of, or a material alteration to, the Work that is prejudicial to the Original Author's honour or reputation, and You must not do anything else in relation to the Work that is prejudicial to the Original Author's honour or reputation.

A person using a Work distributed under a CC licence, a Derivative Work or a Collective Work must not do:
- anything to it that causes it to be distorted, mutilated or altered so as to prejudice the honour or reputation of the Original Author; or
- anything else in relation to the work that is prejudicial to the Original Author’s honour or reputation.

In the interests of clarity and certainty, a government agency should clearly specify how its copyright material should be attributed when the material is reproduced, used and distributed by others. It is advisable to include a clear statement that sets out how the agency requires the material to be attributed, rather than leaving it to users to devise an appropriate attribution statement.
You should include an attribution statement on how to attribute your agency alongside your agency’s copyright licensing statement.

For detailed practical guidance on minimum markings, copyright licensing statements and attribution statements appropriate for each of the six CC licences see Table 1 (Appendix IV at page 87).

**What if there are many different creators to attribute (the “attribution stacking” problem)?**

There may potentially be a multitude of contributors to highly collaborative works (such as large data collections). Where each of the hundreds or even thousands of contributors make their individual contributions available under CC licences, it may be impracticable to expressly attribute all of them in the combined work. The need to give attribution to a very large number of contributors of individual CC-licensed works is referred to as “attribution stacking”.

Government agencies that license their materials using CC licences should consider whether the material will be combined with numerous other CC-licensed works. If attribution of a large number of CC-licensed works is likely to be problematic, there are various potential solutions which can be used to avoid the problem of attribution stacking.

**Potential solutions**

The attribution condition in CC licences enables the licensor to specify how they are to be attributed and how the work is to be identified. The CC licences do not require attribution to take any particular form and, in fact, the licensor may waive or dilute the attribution requirement by expressly indicating that positive attribution is not required. In other words, it is a matter for the licensor to indicate what form of attribution/wording, if any, is required.

Therefore, the problem of attribution stacking can be resolved using one or both of the following methods:

(a) collective attribution;
(b) creating a list or database of all contributors to the material;
(c) waiver/dilution of attribution requirement.

**(a) Collective Attribution**

The first solution is the collective attribution of contributors as a single group or class. For example, if the material or datasets are produced by the employees of a particular government agency, it may well be appropriate practice in most cases to simply attribute the agency as a whole, rather than each individual contributor. In such a case, contributors should, at most, require attribution which:

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142 This is particularly likely in relation to scientific, technological or geographical data.
143 See cl 4(b), Creative Commons Attribution 2.5 Australia, Legal Code which provides that “credit must be given in the particular way made known by the Original Author”, available at http://creativecommons.org/licenses/by/2.5/au/legalcode accessed on 30 March 2010.
144 This practice followed would be informed by the applicable department policy on the manner of recognising the contributions of departmental employees.

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1. identifies the agency as a whole as the data source; and  
2. contains the agency’s URI that contains licensing information for the data.

Where such attribution requirements are established, the agency’s CC licensing statement could, for example, state:

Where a user of this dataset combines some or all of it with other data sources to produce an end product, service or piece of research, the only attribution that [name of agency] requires from the user is a statement to the effect that [name of agency] is a source of data for the user’s product, service or research, together with, where reasonably practicable, a link back to the [name of agency’s] original data source.

A user who develops a web application that combines the CC-licensed dataset with other data sources will then be able to comply with the attribution requirement by attributing it as follows:

This application uses data sourced from [name of department/agency].

The [name of department/agency] could then be deep-linked back to the agency’s webpage on which the original data source can be found.

(b) List/database of contributors

A second solution is to create a list or database of all contributors to the material. For ongoing works, list could be regularly updated. Ideally, the list or database would be made easily accessible online. Users can then use the URL (or other appropriate reference) to the list/database to attribute the many creators, wherever the licensed material is reproduced. The URL can also appear in the Creative Commons metadata field where the creator’s name would usually appear. An example of this approach is the attribution pages on Wikipedia, which contains a huge number of individual CC-licensed contributions.

Example: Wikipedia attribution page

An example of a highly collaborative enterprise is Wikipedia. Text in Wikipedia, much of which is created by various contributors around the world, is licensed under a Creative Commons Attribution-Share Alike 3.0 Unported Licence.

Wikipedia’s terms of use state: :

As an author, you agree to be attributed in any of the following fashions: a) through a hyperlink (where possible) or URL to the article or articles you contributed to, b) through a hyperlink (where possible) or URL to an alternative, stable online copy which is freely accessible, which conforms with the license, and which provides credit to the authors in a manner equivalent to the credit given on this website, or c) through a list of all authors. (Any list of authors may be filtered to exclude very small or irrelevant contributions.)

Attribution of Wikipedia’s contributors is provided in the form of a History page which lists changes made to the relevant entries. See Appendix V for an example of a Wikipedia history page.

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(c) Waiver/dilution of positive attribution requirement

A third solution is for the licensor to minimize or remove any positive attribution requirement from the CC licence when distributing the work.

The attribution clause in all the CC licences states that “credit must be given in the particular way made known by the Original Author and otherwise as reasonable to the medium or means You are utilising.”\(^{148}\) However, the CC licences do not require attribution to take any particular form and the licensor may waive or dilute the attribution requirement by expressly indicating that positive (explicit) attribution is not required.

For example, the licensor may state:

![Creative Commons licence icon](http://creativecommons.org/licenses/by/2.5/au)

This work is licensed under a Creative Commons Attribution 2.5 Australia licence. To view a copy of this licence, visit [http://creativecommons.org/licenses/by/2.5/au](http://creativecommons.org/licenses/by/2.5/au).

You are free to copy, communicate and adapt the work, as long as you keep this copyright licensing statement intact and abide by the other licence terms. However, the author does not require attribution as author of the work.

Where the licensor distributes a work under a CC licence in such terms, a user is not required to positively (explicitly) attribute the author or any other nominated person.

However, even if positive attribution is not required, the copyright owners may still require that the CC-licensed work is not falsely attributed to another person (by naming another person as the author)\(^ {149}\) and that it is not distorted, altered or dealt with such that the author’s reputation is prejudiced.

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Confusing attribution stacking with compilations of different works

Sometimes, the problem of attribution stacking is used as an argument against applying Creative Commons licences to databases and datasets. The argument is that many different data items may be submitted to the database by many different contributors. Some of these contributors will desire individual attribution, some may not, and some may not even want to license their data under a Creative Commons licence. Therefore, a Creative Commons licence cannot be applied to the database.

This argument confuses attribution stacking with a compilation of many different works. The database itself (i.e. the structure and design of the database) may be licensed under a Creative Commons licence quite separately from the items of data included in the database. Where items of data in the database attract copyright protection, they can be licensed individually under Creative Commons licences, as selected by the contributor/depositor of the data. Best practice would be to include a

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\(^{148}\) See cl 4(b), Creative Commons Attribution 2.5 Australia, Legal Code at [http://creativecommons.org/licenses/by/2.5/au/legalcode](http://creativecommons.org/licenses/by/2.5/au/legalcode) accessed on 30 March 2010.

\(^{149}\) This is of crucial importance in the case of many public sector copyright materials, as explained by Judge McGill, Queensland District Court, in a submission to the Copyright Law Review Committee’s review of Crown copyright, submission no 70 at p 2. His Honour noted: “Any judge would be pleased to see his exposition of any particular legal point or principle cited by others, but would I think be less pleased to see it claimed by others as their own.” See Copyright Law Review Committee, *Crown Copyright*, 2005, para 4.71 at p 54, available at [http://www.clrc.gov.au/www/agg/agg.nsf/Page/RWPBB79ED8E4858F514CA25735100827559](http://www.clrc.gov.au/www/agg/agg.nsf/Page/RWPBB79ED8E4858F514CA25735100827559).
system in which contributors are given the option to license their data at the time of deposit into the database. This would allow each individual contributor to select which licence they would like to apply to their data and how they would like to be attributed under the licence. This licence information would stay with the data item within the database and would be communicated to users upon accessing the data. Therefore, the problem of attribution stacking is avoided altogether.

Copyright licensing statement: summary

A clear copyright licensing statement on a CC-licensed work should cover:

- what material is licensed, and under which CC licence;
- a simple summary of the terms of that licence;¹⁵⁰ and
- how users of the material should attribute the Original Author or other nominated person (note that in certain circumstances positive (explicit) attribution may not be required).

¹⁵⁰ This is optional for Online Material (i.e. material that is released electronically and is likely to be used primarily online).

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Can this copyright material be licensed under a Creative Commons Licence?

**Instructions**

This fact sheet can help you determine whether copyright material can be licensed by your agency under a Creative Commons licence.

This fact sheet should be used in conjunction with our guide: Fitzgerald, Anne M. and Hooper, Neale and Foong, Cheryl (2010) Using Creative Commons 2.5 Australia Licences on Government Copyright Material. http://eprints.qut.edu.au/32519/1/ See in particular, the 'Checklist for applying a Creative Commons licence to government materials'.

Start at the green question box and, following the arrows that correspond with your answer, make your way through the pink and blue questions until you reach a red or purple licence box. That will indicate the right licence for you or that a permission is required.

For more information about the CC licences, see http://creativecommons.org/licenses. For more information about Creative Commons and Government in Australia, see http://creativecommons.org.au/government.

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**Diagram**

- **Start here!**
  - Do you know who created the material? Yes
  - Are they a government employee? Yes
  - Do the usual Crown copyright ownership rules apply? (If the material is created by an employee in the usual course of employment, the government will own copyright in the material, unless other arrangements apply)
  - What are the terms of the agreement? Yes
  - Government owns copyright
    - Permission will need to be obtained from the copyright owner before the material can be licensed under Creative Commons
  - Individual owns copyright
    - The material may be licensed under Creative Commons
      - Has the government assigned copyright to another party? Yes
        - Permission will need to be obtained from the copyright owner before the material can be licensed under Creative Commons
      - No
    - No
  - No
  - Is there any agreement between that person and your agency about copyright ownership? Yes
  - No
  - You must find out and make sure you have authority before you may license this material!
6.6 **Technical application: How to apply Creative Commons?**

**Important note: make sure you have authority**

Before you proceed with applying a Creative Commons licence, you must first ensure that you have the necessary level of authority to do so. If you are in any doubt then you need to check with the appropriate officer before proceeding further and applying the licence.

Once you have determined that a Creative Commons licence can be applied to the material, you will need to select which Creative Commons licence is to be applied. For much government material, the most appropriate licence will be the “Attribution” (CC-BY) licence, the least restrictive of the CC licences. Care needs to be taken before applying a Share-Alike licence as it may produce an unintentionally restricted reuse right.

**Attribution.** You let others copy, distribute, display, and perform your copyrighted work — and derivative works based upon it — but only if they give credit the way you request.

It is important to understand that a Creative Commons licence:

- is a licence to the entire world; and
- does not allow the licensor to terminate the licence at their convenience.\(^{151}\)

**Important note: Understand the CC licence terms before applying the licence**

Before choosing the licence to be applied, make sure you understand the licence terms. See “6.2 Creative Commons licences” at p 31 above and also Appendix II – “Which Creative Commons Licence is right for me?”.

This section 6.6 explains step by step how to attach a Creative Commons licence to your agency’s material. The steps below illustrate how to apply a Creative Commons Attribution (CC-BY) licence.

1) **Go to the licence generator on the Creative Commons website**

Go directly to the Creative Commons licensing page at:

<http://creativecommons.org/choose/>

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\(^{151}\) See “6.3 How Creative Commons licences operate” at p 34 above.
2) Answer some simple questions to generate a CC licence

You will be directed to a page where you will be asked to complete a short form (see Screenshot 1 below). By clicking on the answers to questions and inserting some information you can automatically generated a CC licence for use on your agency’s copyright material.

Consider the kinds of uses that your agency wants others to be able to make of the copyright material and click one of the alternative answers to the questions:

- is **commercial use** permitted?
- are **modifications** permitted?

Choose the **jurisdiction** of the licence from among the countries listed in the drop down menu. For Australian copyright owners, the correct choice will invariably be “Australia”, so that the Australian version of the CC licence is applied and the licence is governed by Australian copyright law.

On this page, you will also be given the opportunity to provide some **additional information** (or **metadata**) about the copyright material, by completing the optional fields. You can insert information about:

- the format of the work (choose from the drop down menu);
- the title of the work;
- how the work is to be attributed, by providing the name that users should attribute and the URL that users should link to;[^153]
- the URL of the source work from which the work is derived; and
- a URL where users can obtain information about clearing rights that are not pre-cleared under the CC licence. For example, if the work is licensed under a CC-BY-NC licence, you can insert a URL that takes the user to a website with information about who to contact to obtain permission for commercial use of the material. The website should contain a statement such as:

  For permissions beyond the scope of this licence, please contact:

  Officer Title:
  Address:
  Phone:
  Email:

The information that you insert into these fields will be embedded in the HTML code that is automatically generated for the licence.

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[^153]: For more details on attribution, see *Attribution* at p 52 above.
3) Generating the licence and applying it to a website and the copyright material

Once you have completed the form, click the Select a License button. You will be taken to the following page which has a box containing some HTML code:
From here you can attach the licence to a website or apply it to the copyright material itself, by:

A. choosing one of the CC icons and copying and pasting the HTML code into your agency’s website; and

B. copying and pasting the licence icon and the licence text onto the copyright material.

A. Websites - embedding the HTML code

First, at the top of this page you can choose (by clicking) which one of the CC licence icons you want to appear on your website. All three icons represent the same CC-BY licence, but differ slightly in appearance.

Next, select the HTML code that appears in the box and paste it into your agency’s webpage or website so that visitors are informed of the licensing terms applying to copyright materials on your agency’s site. Alternatively, you can email the HTML code to yourself by clicking on the words “emailed to yourself” and inserting your email address in the field in the pop up box.

For example, if you were posting the material on a WordPress powered website, you would add the HTML code into the post content screen:
This is how the post would look when it is published:

Merely filling in the fields in the standard form (as in Screenshot 1 above) generates HTML code (Screenshot 3), which when embedded into your agency’s website will produce this basic copyright licensing statement:

Example 2 by Australian Government is licensed under a Creative Commons Attribution 2.5 Australia License.

Note that the words “Australian Government” (the text entered in the ‘Attribute work to name’ field) are now linked to http://australia.gov.au/ (the URL entered into the ‘Attribute work to URL’ field).
As discussed above under “Legal Application: How to use Creative Commons?” above, a clear copyright licensing statement should cover:

- what material is licensed, under which licence, and by whom (if positive attribution is required);\(^{155}\)
- a simple summary of the terms of that licence;\(^{157}\) and
- how users of the material should attribute the licensor (the attribution statement).

The basic copyright licensing statement above covers only the first dot point. In order to provide a more extensive copyright licensing statement (i.e. one which summarises the terms of the licence and specifies what type of attribution is required),\(^{158}\) you may insert additional text at the end of the HTML code (see for example, in bold font below) before embedding the code into the website:

```html
<a rel="license" href="http://creativecommons.org/licenses/by/2.5/au/" /><img alt="Creative Commons License" style="border-width:0" src="http://i.creativecommons.org/l/by/2.5/au/88x31.png" /></a><br />
<span xmlns:dc="http://purl.org/dc/elements/1.1/" href="http://purl.org/dc/dcmitype/Text" property="dc:title" rel="dc:type">Example 2</span> by <a xmlns:cc="http://creativecommons.org/ns#" href="http://australia.gov.au/" property="cc:attributionName" rel="cc:attributionURL">Australian Government</a> is licensed under a <a rel="license" href="http://creativecommons.org/licenses/by/2.5/au/">Creative Commons Attribution 2.5 Australia License</a>. In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to Australian Government and abide by the other licence terms. The material should be attributed in the following way:

```

This is how the more extensive copyright licensing statement would look when it is published:

```
Example 2 by Australian Government is licensed under a Creative Commons Attribution 2.5 Australia License. In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to Australian Government and abide by the other licence terms. The work should be attributed in the following way:

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\(^{155}\) See “Legal Application: How to use Creative Commons?” – Copyright licensing statement and Attribution at p 43 above.

\(^{156}\) See “(c) Waiver/dilution of attribution requirement” at p 57, on instances where positive attribution is not required.

\(^{157}\) This is optional for Online Material (i.e. material that is released electronically and is likely to be used primarily online).

\(^{158}\) See “Copyright Licensing Statement” at p 52 above on the type of information that should be included in the copyright licensing statement.
B. Applying the CC licence to copyright works (e.g. text documents)

First, choose one of the three CC licence icons displayed at the top of the page (shown below here). Copy and paste it onto your copyright material to indicate that it is licensed under a CC licence:

or or

Next, so that users can access and read the licence terms, you should:

- copy and paste the URL of the licence terms onto the material; or

- link the licence icons to the URL of the licence terms,

For example, if you are using a Creative Commons Attribution 2.5 Australia licence, the relevant URL would be:

<http://creativecommons.org/licenses/by/2.5/au/>

Users may then access the licence terms by copying the URL into the address bar of their internet browser.

Alternatively, where the licence icons are linked to the URL, users may reach the licence terms by clicking on the licence icon.

The easy-to-read version of the licence terms will appear as below (Screenshot 5). A link is also provided to the full legal code of the licence, which sets out the rights and obligations of the licence more comprehensively.159

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159 See Appendix III: CC BY 2.5 Australia Legal Code
Where the copyright materials are to be used offline (such as in hard copy form), the licence text should be copied onto the work. Under the heading “Offline Work” on the right of the screen, click on the words “add this text”.

**Important note: Summary of licence terms for Offline Material**

Where the licensed material is likely to be used in the offline environment, the licence terms should be summarised in the copyright licensing statement attached to the material (e.g. on the cover page of a report).160

You should also set out what material is licensed by whom, with a brief summary of main licence conditions. Examples of these copyright licensing statements are set out below.

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160 See “Copyright Licensing Statement” at p 52 above and Appendix IV: Table 1 – Creative Commons 2.5 Australia Licences – Minimum Markings, Copyright Licensing Statement and Attribution Statement.
7 Final checklist

This checklist should be used in conjunction with our guide:

Have you:

☐ Considered all relevant laws, whole of government IP policies and standards, and your agency's IP policy or standards?
The relevant laws, policies and standards will provide guidance on access and reuse issues and on licence selection.

☐ Determined whether your agency's material is protected by copyright?
[Go to Factsheet 1]

☐ Ascertained who owns copyright in the material?
[Go to Factsheet 2]

☐ Ascertained whether the copyright material has already been licensed to another party?
[Go to Factsheet 3]
If the copyright material has been exclusively licensed by your agency to another party, the exclusive licensee's permission will be required before a Creative Commons licence can be applied to the material.

☐ Checked whether the material contains a substantial part of another party's copyright material?
[Go to Factsheet 4]
If it does, you should distinguish the third party material from your agency's material and exclude it from the ambit of the Creative Commons (CC) licence, unless your agency has clear entitlement to apply a CC licence to that party's material.

☐ Determined whether your agency's copyright material can be licensed under a Creative Commons licence?
[Go to Factsheet 5]
If the copyright owner is a government agency, subject to compliance with applicable laws, IP policies and standards, there should be no impediments to applying a Creative Commons licence to the material.

If the copyright owner is a non-government party, permission will be required before a Creative Commons licence can be applied to their material.

☐ Decided how the material should be attributed under the Creative Commons licence?
Clearly state how your agency wants to be attributed so that users can give correct attribution when using the material.

☐ If you are authorised by your agency to license the material, visit Creative Commons website http://creativecommons.org, select the appropriate Creative Commons licence (this will usually be the Australian Creative Commons 'By Attribution' 2.5 Licence) and attach it to your agency's material.

Finished! ©Creative Commons AUSTRALIA

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1 Please note that this checklist is limited to copyright restrictions, and does not cover privacy restrictions, confidentiality restrictions, contractual restrictions, statutory restrictions, and administrative restrictions.

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# 8 Factsheets

This factsheet can help you to determine whether copyright subsists in public sector material which your agency is assessing for applying a Creative Commons (CC) licence.

This factsheet should be used in conjunction with our guide:
Fitzgerald, Anne M. and Hooper, Neale and Foong, Cheryl (2010) Using Creative Commons 2.5 Australia licences on Government Copyright Materials [http://eprints.qut.edu.au/32519/](http://eprints.qut.edu.au/32519/) (see in particular, the 'Checklist for applying a Creative Commons licence to government material').

## 1. Identify the material (metadata record)

<table>
<thead>
<tr>
<th>Type of material (e.g. text, image):</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Title of material:</td>
<td></td>
</tr>
<tr>
<td>Format (e.g. PDF):</td>
<td></td>
</tr>
<tr>
<td>Where is the material located?</td>
<td></td>
</tr>
<tr>
<td>From which government agency did the material originate?</td>
<td></td>
</tr>
<tr>
<td>For enquiries regarding the material, contact:</td>
<td></td>
</tr>
<tr>
<td>Date created:</td>
<td></td>
</tr>
<tr>
<td>Other relevant information:</td>
<td></td>
</tr>
</tbody>
</table>
Fact Sheet 1

Is this material protected by copyright?

2. Is the material in one of the categories to which copyright can apply?

Is it:

☐ a written/text document (e.g. report)?
☐ a table?
☐ a map?
☐ a photograph?
☐ a visual image?
☐ a sound file?
☐ a film or video?
☐ a multimedia work?
☐ data compilation, dataset or database?

If YES to any of the boxes above, the material is in a category to which copyright applies.

Go to Question 3.

---

1 Copyright protection applies to a data compilation, dataset or database provided it meets the originality threshold required by law.
Fact Sheet 1

Is this material protected by copyright?

3. When was the material created/compiled?

☐ Less than 50 years ago

For government material, if YES - Crown copyright is likely to apply (Go to Question 4).

For non-government material, if YES - copyright is likely to apply (Go to Question 4).

☐ More than 50 years but less than 70 years ago

For government material, if YES — Crown copyright will have elapsed and the work is in the public domain (copyright no longer applies).

Where the material is in the public domain, you may apply a Creative Commons Public Domain Certification http://creativecommons.org/choose/publicdomain-2 to certify that the material is already in the public domain.

Check the date the work was made or first published. Crown copyright expires 50 years after the work is made or first published. BUT copyright continues if the work has not been published.

For non-government material, if YES — copyright is likely to apply. (Go to Question 4)

☐ More than 70 years ago

For government material, if YES — Crown copyright does not apply, as the copyright term has elapsed. BUT copyright continues if the work has not been published.

For non-government material, if you answered YES — copyright may apply, or the copyright term may have elapsed. You need to discover when exactly the material was created.

Where the material is in the public domain, you may apply a Creative Commons Public Domain Certification http://creativecommons.org/choose/publicdomain-2 to certify that the material is already in the public domain.
Is this material protected by copyright?

Fact Sheet 1

4. Was it created/compiled in Australia?

☐ Yes — copyright protection under Australian law is likely to apply.

☐ No — if the work was created in a country that is a member of the Berne Convention¹ or the World Trade Organization,² copyright will usually be protected under Australian law.

For more information about the CC licences, see http://creativecommons.org/licenses.
For more information about Creative Commons and Government in Australia, see

2 See http://www.wto.org/english/tratop_e/whatis_e/tif_e/org6_e.htm
Fact sheet 2

Who owns copyright?

Instructions

This factsheet can help you to determine who owns copyright in the government copyright material which your agency is assessing for applying a Creative Commons (CC) licence.

This factsheet should be used in conjunction with our guide: Fitzgerald, Anne M. and Hooper, Neale and Foong, Cheryl (2010) Using Creative Commons 2.5 Australia Licences on Government Copyright Materials http://epirnt.qut.edu.au/345/g (see in particular, the ‘Checklist for applying a Creative Commons licence to government material’).

Start at the green question box and, following the arrows that correspond with your answer, make your way through the pink and blue questions until you reach a red or purple licence box. That box will indicate who owns copyright.

For more information about the CC licences, see http://creativecommons.org/licenses. For more information about Creative Commons and Government in Australia, see http://creativecommons.org.au/government.

© Creative Commons Australia

Start here!

Does this person who created the material work in or with your agency?

Yes

Is the person your agency’s employee or an independent contractor?

Your agency’s employee

Independent contractor

No

The person is a third party

The third party or independent contractor owns copyright (subject to a written contract to the contrary)

Note also that special ownership rules apply to certain commissioned photographs, sound recordings and cinematograph films.

Is there a written contract?

No

The employee owns copyright

Yes

Is there a written contract?

No

The third party or independent contractor owns copyright

Yes

Check the contract terms. The contract may specify who owns copyright.

Your agency owns copyright

Was the material created in the course of employment?

Yes

Your agency owns copyright (subject to a written contract to the contrary)†

No

Is there a written contract?

Yes

The employee owns copyright

No

The third party or independent contractor owns copyright

† Note: Your agency holds copyright on behalf of the legal owner, the Crown (the government)
Can a Creative Commons licence be used on government copyright material that has already been licensed to a third party?

Instructions

Start here!

Has the government copyright material already been licensed to a third party?

Yes

Is the licence still in effect?

Yes

Is the licence an exclusive licence?

Yes

Your agency may be restricted from applying a Creative Commons licence to the material

No

No

The material may be licensed under Creative Commons (provided your agency owns copyright or has the consent of the copyright owner)

No

Weren't there any other contractual terms in the licence that might affect whether a Creative Commons licence could be applied to the material?

Yes

Yes

No

For more information about the CC licences, see http://creativecommons.org/licenses. For more information about Creative Commons and Government in Australia, see http://creativecommons.org.au/government.

Creative Commons Australia

Professor Anne Fitzgerald, Neale Hooper and Cheryl Foong
Can a Creative Commons licence be used where the copyright material includes material owned by a third party?

Instructions

Where government copyright material contains material owned by another party (i.e. a third party), this fact sheet can help you to determine whether your agency can apply a Creative Commons licence to the material.

This fact sheet should be used in conjunction with our guide Fitzgerald, Anne M. and Hooper, Neale and Foong, Cheryl (2010) Using Creative Commons 1.0 Australian Licences on Government Copyright Materials http://www.creativemedia.anu.edu.au/see in particular, the ‘Checklist for applying a Creative Commons licence to government material’.

Start at the green question box and, following the arrows that correspond with your answer, make your way through the pink and blue questions until you reach a red or purple licence box. That box will indicate the right licence for you or what other permissions are needed.

For more information about the CC licences, see http://creativecommons.org/licenses for more information about Creative Commons and Government in Australia, see http://creativecommons.org.au/government.

http://creativecommons.org/licenses
Instructions

This fact sheet can help you determine whether copyright material can be licensed by your agency under a Creative Commons licence.

This fact sheet should be used in conjunction with our guide: Fitzgerald, Anne M. and Hooper, Neale and Foong, Cheryl (2010) Using Creative Commons 2.5 Australia Licences on Government Copyright. Materials http://eprints.qut.edu.au/32519/1 See in particular, the ‘Checklist for applying a Creative Commons licence to government material’.

Start at the green question box and follow the arrows that correspond with your answer. Make your way through the pink and blue question boxes until you reach a red or purple licence box. That will indicate the right licence for you or that a permission is required.

For more information about the CC licences, see http://creativecommons.org/licenses. For more information about Creative Commons and Government in Australia, see http://creativecommons.org.au/government.

Can this copyright material be licensed under a Creative Commons Licence?

Start here!

- Do you know who created the material?
  - Yes
  - No

  You must find out and make sure you have authority before you may license this material.

- Are they a government employee?
  - Yes
  - No

  Is there any agreement between that person and your agency about copyright ownership?

- Do the usual Crown copyright ownership rules apply?
  - Yes
  - No

  What are the terms of the agreement?

- The material may be licensed under Creative Commons
  - CC

- Government owns copyright
  - Yes
  - No

- Individual owns copyright
  - Yes
  - No

- Has the government assigned copyright to another party?
  - Yes
  - No

  Permission will need to be obtained from the copyright owner before the material can be licensed under Creative Commons.
Further information

If you require further information about copyright and Creative Commons licensing, the following resources may be helpful:

- Databases and Creative Commons
  <http://sciencecommons.org/old/databases/>
  Please note that Science Commons has superseded these FAQs with a new Database Protocol. However, for our purposes, these FAQs may still be of assistance.

- Creative Commons Australia – Learn More about Creative Commons
  <http://creativecommons.org.au/learn>

- Creative Commons – Before Licensing
  <http://wiki.creativecommons.org/Before_Licensing>

- Creative Commons – Frequently Asked Questions
  <http://wiki.creativecommons.org/Frequently_Asked_Questions>

- Australian National Data Service (ANDS) – Copyright and Data

- Australian National Data Service (ANDS) – Creative Commons and Data

- Australian Bureau of Meteorology – Creative Commons FAQs


- Government 2.0 Taskforce Report, Engage: Getting on with Government 2.0, Appendix D: Troubleshooting concerns about Creative Commons licensing

- Department of Environment and Resource Management – Government Information Licensing Framework (GILF) for Water: Recommended Practice

- A list of Government use of CC Licences worldwide is available at
  <http://wiki.creativecommons.org/Government_use_of_CC_licenses>

Alternatively, if you require further assistance, please contact Creative Commons Australia at info@creativecommons.org.au.
10 Appendices

Appendix I: Intellectual Property Policies and Standards

Select policies, standards and reports which are relevant to the management of government intellectual property in different Australian jurisdictions are outlined below. This is not an exhaustive or definitive list, and there may be other laws, policies or standards relevant to your agency’s activities, which you will need to identify.

Commonwealth Government

Whole of Government: Statement of IP Principles for Australian Government Agencies

The Statement of IP Principles for Australian Government Agencies\(^{161}\) provides a broad policy framework for IP management by Australian Government agencies. It covers issues such as procurement, record keeping, industry development and broader innovation policy, and public access. Agencies are encouraged to develop individual IP management frameworks that reflect their own needs and objectives, consistent with other relevant Australian Government policies and requirements.

IP Principle 11 states:

11. Agencies should encourage public use and easy access to copyright material that has been published for the purpose of:

- informing and advising the public of government policy and activities;
- providing information that will enable the public and organisations to understand their own obligations and responsibilities to Government;
- enabling the public and organisations to understand their entitlements to government assistance;
- facilitating access to government services; or
- complying with public accountability requirements.

This includes all materials which agencies are generally obliged to publish or otherwise allow free public access to. It does not necessarily include materials that have been published for commercial purposes. Nor does it cover materials which are of a sensitive nature, such as information that impacts on national security or information which would destroy the possibility of subsequently obtaining patent protection where such protection is necessary to achieve public benefit.

Permission for public use and re-use of such material should generally be given on a non-exclusive basis. Exclusive licence to use such materials should only be given in exceptional circumstances.

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According to the Commonwealth Attorney-General’s Department, guidance and advice on the IP Principles will be available to agencies soon in the form of an *IP Manual for Australian Government Agencies.*

Other relevant policy and practice guidance is found in:

- the OSDM policy (2001); and
- Australian Bureau of Statistics’ “Good Practice Guide to Sharing your data with others”.

**State and Territory Governments**

**Queensland**

The Queensland government policies and standards outlined below should be read in conjunction with other information management requirements, such as the *Queensland Public Sector Intellectual Property Principles* and *Guidelines,* Information Standard 34: Metadata, and Information Standard 44: Information Asset Custodianship.

**Queensland Government Enterprise Architecture framework 2.0 (QGEA 2.0)**

The Queensland Government Architecture framework 2.0 (QGEA 2.0) is the collection of ICT policies and associated documents that guides agency ICT initiatives and investments to improve the compatibility and cost-effectiveness of ICT across the government. It is designed for use at a whole-of-Government level and at an agency level.

The Queensland Government Enterprise Architecture (QGEA) Government Information Licensing Framework (GILF) Policy (the QGEA GILF Policy) provides under Policy requirement 1 that departments must ensure that government information to be released is licensed with one of the Creative Commons licences or a GILF restrictive licence which supports the GILF policy benefits. Further, Policy requirement 2 mandates that departments make explicit to users the legal uses that can be made of government information.

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Queensland Government Chief Information Office (QGCIO) Information Standards

Queensland Government Chief Information Officer mandates the implementation of the mandatory principles of Information Standards as key whole-of-Government ICT planning requirements. These Information Standards assist Queensland Government agencies by defining and promoting best practice in the acquisition, development, management, support and use of the information systems and technology infrastructure.

Information Standard 33: Information access and use

The mandatory principles contained in Information Standard 33: Information access and use state that, when providing access to and use of Queensland Government information, agencies must ensure:

- information is provided to the public to the maximum extent possible;
- information is exchanged between Queensland Government agencies and other governments;
- information is provided to the maximum extent possible free of charge; and
- information is provided with transparent conditions for use.

Information Standard 46: Use of copyright materials

Information Standard 46: Use of copyright materials highlights certain obligations on the part of Queensland Government agencies under the Copyright Act 1968 (Cth) in relation to third party copyright material. For example, agencies must:

- obtain licences from copyright owners when necessary;
- not do anything which would amount to an infringement of an author's moral rights, and obtain moral right consents when necessary;
- comply with applicable provisions of licences, permissions, consents, etc. on which the agency is relying; and
- obtain necessary copyright approvals from custodial agencies for use of Queensland Government copyright materials.

Information standard 26: Internet

Further, Principle 3 of Information standard 26: Internet provides that agency internet sites must facilitate the routine disclosure and active dissemination of information and provide a
current view of Queensland Government. At a minimum, agency internet site content must, among others requirements:

- include information that falls within the classes of information identified within the agency's publication scheme; and
- present copyright notices in a manner and location that provides customers with reasonable notice of the claim of copyright ownership.

**Victoria**

- Economic Development and Infrastructure Committee (EDIC) Inquiry into Improving Access to Victorian Public Sector Information and Data (2009)\(^{175}\)
- Whole of Victorian Government Response to the Inquiry into Improving Access to Victorian Public Sector Information and Data (2010)\(^{176}\)
- Victorian Auditor-General’s Office, Managing Intellectual Property in Government Agencies (Performance audit report) (July 2005)\(^{177}\)
- Guidelines relating to Victorian Crown copyright (August 1991)
- Victorian State Copyright Management Policy (draft)

**New South Wales**

- Intellectual Property Management Framework for the NSW Public Sector (2005)\(^{178}\)

**Western Australia**

- Government Intellectual Property Policy and Best Practice Guidelines (2003)\(^{179}\)

**South Australia**

- Intellectual Property Policy (2006)\(^{180}\)

**Tasmania**

- Communications Toolkit\(^{181}\) (Internet and electronic communications)\(^{182}\)
- Guidelines for the Administration of Crown Copyright\(^{183}\)
- Information Technology-Related Intellectual Property Policy Principles

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Professor Anne Fitzgerald, Neale Hooper and Cheryl Foong
Appendix II: Which CC Licence is right for me?

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Appendix III: CC BY 2.5 Australia Legal Code

Creative Commons

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b. to create and reproduce Derivative Works;

c. to publish, communicate to the public, distribute copies or records of, exhibit or display publicly, perform publicly and perform publicly by means of a digital audio transmission the Work including as incorporated in Collective Works;

d. to publish, communicate to the public, distribute copies or records of, exhibit or display publicly, perform publicly, and perform publicly by means of a digital audio transmission Derivative Works;

e. For the avoidance of doubt, where the Work is a musical composition:

   i. Performance Royalties Under Blanket Licences. Licensor will not collect, whether individually or via a performance rights society, royalties for Your communication to the public, broadcast, public performance or public digital performance (e.g. webcast) of the Work.

   ii. Mechanical Rights and Statutory Royalties. Licensor will not collect, whether individually or via a music rights agency, designated agent or a music publisher, royalties for any record You create from the Work ("cover version") and distribute, subject to the compulsory licence created by 17 USC Section 115 of the US Copyright Act (or an equivalent statutory licence under the Australian Copyright Act or in other jurisdictions).

f. Webcasting Rights and Statutory Royalties. For the avoidance of doubt, where the Work is a sound recording, Licensor will not collect, whether individually or via a performance rights society, royalties for Your public digital performance (e.g. webcast) of the Work, subject to the compulsory licence created by 17 USC Section 114 of the US Copyright Act (or the equivalent in other jurisdictions).

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Appendix IV: Table 1 – Creative Commons 2.5 Australia Licences – Minimum Markings, Copyright Licensing Statement and Attribution Statement

This table sets out the mandatory minimum markings, and recommended copyright licensing statements and recommended attribution statements. The markings should be included in a prominent position when making PSI available under a Creative Commons licence. The table sets out, in turn, the mandatory minimum markings and the optional copyright and attribution statements for each of the six CC licences.

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Where material is being made available online, licence icons should be hyperlinked to the relevant license URL (e.g. should be hyperlinked to http://creativecommons.org/licenses/by/2.5/au). Also, the name of the agency should be hyperlinked to the agency’s webpage that contains or links to the source material.

184 The authors would like to acknowledge the work on these issues undertaken by Richard Best (Solicitor, The Department of Internal Affairs Te Tari Taiwhenua) who has been directly involved in the New Zealand Government’s NZGOAL project, dealing with access to New Zealand public sector information, including application of Creative Commons licences.

Professor Anne Fitzgerald, Neale Hooper and Cheryl Foong
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¹⁸⁸ If your agency requires an explicit ‘non-endorsement statement’ (i.e. the licensee is not entitled to suggest in any way, by words or by conduct, that your agency endorses the licensee or the licensee’s use of the work) version 3.0 of the Australian Creative Commons licences is to be used.
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191 If your agency already has an appropriate website statement addressing these issues, then this generic statement would not be necessary.
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<td>For Federal government agencies the following wording is suggested:</td>
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<td>Minimum markings</td>
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192 If your agency already has an appropriate website statement addressing these issues, then this generic statement would not be necessary.

193 If your agency requires an explicit ‘non-endorsement statement’ (i.e. the licensee is not entitled to suggest in any way, by words or by conduct, that your agency endorses the licensee or the licensee’s use of the work) version 3.0 of the Australian Creative Commons licences is to be used.

Professor Anne Fitzgerald, Neale Hooper and Cheryl Foong
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**Now use A or B**

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194 If your agency already has an appropriate website statement addressing these issues, then this generic statement would not be necessary.

195 If your agency requires an explicit ‘non-endorsement statement’ (i.e. the licensee is not entitled to suggest in any way, by words or by conduct, that your agency endorses the licensee or the licensee’s use of the work) version 3.0 of the Australian Creative Commons licences is to be used.
6. CC BY-NC-ND (con’t)

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<tr>
<td>For terms of use of Coat of Arms (if permitted) contact the licensor/agency.</td>
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<td>For Federal government agencies the following wording is suggested:</td>
<td>If you include this work in a collection, and publish, distribute or otherwise disseminate that collection to the public, the following attribution to [name of original author] should be used:</td>
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**Use of Coat of Arms:**

**OR**

**(C) Statement with no logo/emblem/trade mark carve out but warning to observe law:**
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Appendix V: Wikipedia revision history page