



Australian Government

Department of Communications and the Arts

Guidelines on licensing public sector information for Australian Government entities

June 2018



Disclaimer

The material in these guidelines is of a general nature and should not be regarded as legal advice or relied on for assistance in any particular circumstance or emergency situation. In any important matter, you should seek appropriate independent professional advice in relation to your own circumstances.

The Commonwealth accepts no responsibility or liability for any damage, loss or expense incurred as a result of the reliance on information contained in these guidelines.

Copyright

© Commonwealth of Australia 2016



The material in this discussion paper is licensed under a Creative Commons Attribution—4.0 International license, with the exception of:

- the Commonwealth Coat of Arms
- this Department's logo
- any third party material
- any material protected by a trademark, and
- any images and/or photographs.

More information on this CC BY license is set out at the creative commons website: www.creativecommons.org ([Click here to go to the Creative Commons 4.0 International license](#)). Enquiries about this license and any use of this discussion paper can be sent to: copyright@communications.gov.au.

Attribution

Use of all or part of these guidelines must include the following attribution:

© Commonwealth of Australia 2016

Using the Commonwealth Coat of Arms

The terms of use for the Coat of Arms are available from the It's an Honour website (see [Click here to go to the "its an honour" website](#) and click 'Commonwealth Coat of Arms').

Introduction

The Australian Government is encouraging greater ‘open’ access to its information. Increasing access to the Government’s information and data will afford industry and the wider community greater opportunities to facilitate value-added transformation of the material—that is, the creation of new products and services—with social and economic value to the community.

On 3 May 2010 the Government released its response to the Government 2.0 Taskforce’s report *Engage: Getting on with Government 2.0*. The Government response is available on the [Department of Finance website](#). The central recommendation in response to the report was a Declaration of Open Government by the Australian Government.

The Government response included new policy on the copyright licensing of public sector information (PSI) by Commonwealth entities. The Government has agreed in principle to a default position that PSI should now be released free of charge under a Creative Commons ‘BY’ licence (otherwise known as the ‘Attribution Licence’).

The Department of Communications and the Arts has updated these guidelines to assist entities with their implementation of the Government’s policy. Non-corporate entities subject to the *Public Governance, Performance and Accountability Act 2013* (PGPA) are expected to comply with these guidelines. Corporate entities, previously subject to the *Commonwealth Authorities and Companies Act 1997*, may also consider these guidelines as an expression of good practice.

General instructions

Entities are now required to make licensing decisions about whether to use Creative Commons licences (or other open content licences) when publicly releasing their PSI. Use of more restrictive licensing arrangements for new material should be reserved for special circumstance only.

Decisions will also need to be made about some existing or legacy material. For this purpose, legacy material means PSI that has been released previously under licensing arrangements that are not Creative Commons licences or other open content licences. One example is Commonwealth copyright material that has been released with a Commonwealth Copyright Administration (CCA) copyright notice. The CCA (formerly within the Attorney-General’s Department) had been responsible, on behalf of most entities, for responding to public requests to further use text based material subject to Commonwealth copyright. In January 2011 the CCA was disbanded, and individual Commonwealth entities were required to make licensing decisions at the time when material is first publically released, and in the case of legacy material, when requests for further use are received by that entity. Entities also now have a statutory obligation to publish more information under the reforms to the *Freedom of Information Act 1982* (FOI Act), effective from 1 May 2011. In particular, the FOI Act contains an Information Publication Scheme which will cover the publication of PSI under the Guidelines. This means the use of appropriate licensing will need to be considered more often.

Determining whether the material is Public Sector Information

The first step for an entity is to determine whether the material is PSI for the purpose of the policy. In this respect, PSI can be thought of as material with the essential purpose of providing Government information to the public. A wide interpretation should be given to material in which the Commonwealth owns the copyright. However, material with the essential purpose of artistic expression (e.g. an art work held by a public institution or a film that does not provide Government information) is unlikely to be treated as PSI for the purpose of the policy. Examples of PSI for the purpose of the Government's policy:

- Text-based publications
 - Government created reports
 - Policy papers
 - Budget papers
 - Government-produced books providing Government information
 - Text-based information on Government websites
 - Hansard
 - Explanatory Memoranda
 - Parliamentary reports
 - Official records of Parliamentary debates
 - Template forms
- Legislation and legislative instruments
- Forms of data
 - Spatial data
 - Statistics
 - Data products, databases
 - Maps
 - Administrative data
- Audio-visual material that contains Government information
 - Compact discs (CDs)
 - DVDs
 - Videos
- Visual material that constitutes Government information
 - Photographs included in a Government publication
- Certain material collected, preserved, and/or held by cultural institutions
 - Archival material that constitutes Government information

In selecting an open licence for PSI in data-sets, entities should consider whether copyright actually subsists in that data.

Examples of material unlikely to constitute PSI for the purpose of the Government's policy:

- Material held by cultural institutions for the value of its expression (e.g. a novel subject to third party copyright ownership, an artistic work such as a painting or sculpture that was created pursuant to Government funding or that has been preserved by a public institution)
- Software (Creative Commons licences do not contain terms relating to the use of source or object codes. There are other open content licenses specifically designed for software that may be considered if the Commonwealth owns copyright in the software and the author entity determines that providing open access to the underlying code is appropriate. See for example the licenses available through the Free Software Foundation and the Open Source Initiative.

- Artistic works that are Commonwealth copyright
 - Paintings and drawings
 - Sculptures
- Photographs exhibited as a work of artistic expression
- Confidential material
- Material that has national security and strategic interest implications
- Material that contains personal information
- Material that is commercially sensitive
- Material that is culturally sensitive.

Other relevant reasons for not treating material or data as PSI may include the incompleteness of material or data, such that it may be materially misleading.

Guidelines for new material to be released

The practice of many entities over recent years has been to apply a standard copyright notice to their hard copy publications and websites asserting Commonwealth copyright, providing permission for certain limited uses and directing requests for all other uses to the CCA within the Attorney-General's Department. Entities will no longer be able to follow this approach. Implementation of the Government's policy requires a decision to be made at the time of publication (that is, release) about how members of the public, companies, other governments—both in Australia and overseas may use that copyright material. The author entity (that is, the entity responsible for creating, procuring or funding the creation of the material in which the Commonwealth owns copyright) is best placed to determine the use that others may make of it. As the CCA is now defunct, the CCA will not be able to make licensing decisions on behalf of other entities nor advise entities on a case-by-case basis of how they should license their materials.

While the Government's new policy provides that the default or starting position is that PSI should be released free of charge under a Creative Commons 'BY' licence (the most liberal Creative Commons licence), entities should only apply Creative Commons 'BY', or any other licence, to particular PSI following a process of due diligence and on a case by case basis.

First, entities should become familiar with the Creative Commons licences and how this suite of licences differs from other licences. For example, Creative Commons licences are standard format licences. They are in effect ready-made contracts for the use of copyright material, the legal terms of which have been determined by the Creative Commons organisation for use by anyone and cannot be varied. Entities should be aware that there are different versions of the Creative Commons licences and entities should always use the most up to date version (as at September 2016 it is version 4.0). Entities should also appreciate that the 'BY' licence is only one of the six different licences released by Creative Commons Australia; the other licences contain increasingly higher levels of restriction on use. Information on the six Creative Commons licences is available at the [Creative Commons website](#). Further explanation of the Creative Commons licences is provided in the revised Australian Government Intellectual Property Manual on the [Department of Communications and the Arts' website](#).

Secondly, entities should be aware that other forms of open content, standard format licences are also available and may be used where an entity has determined that the Creative Commons 'BY' licence (or other Creative Commons licence) is not suitable for the material in question. Such decisions are to be made within entities.

In some limited circumstances, entities may also need to consider the use of a more restrictive, non-open content licence, which will further restrict permitted uses of the material, where it is genuinely necessary to do so in order to protect the material or the Commonwealth's interests.



Thirdly, entities should be aware that there are publicly available diagnostic tools that will assist in making licensing decisions. For example, a 'Choose a Licence' tool is available through the [Creative Commons website](#). In addition to using diagnostic tools, there may be a need to obtain specialist legal advice when making licensing decisions.

Finally, there are a number of practical issues that entities need to consider before releasing their PSI under a Creative Commons or other open content licence. Some of these issues are:

1. The Creative Commons BY licence, like all the Creative Commons licences, is irrevocable (that is, the copyright owner—here the Commonwealth—cannot withdraw the licence once it has been applied to the material). Further, the licence will apply until the copyright protection expires (typically in 50 years after publication). Is there a need for the licence to only last for a certain period of time?
2. Does the PSI contain third party copyright material? If so has the third party copyright owner consented to publication of the material under the proposed Creative Commons or other open content licence?
3. Is there a need for ongoing Commonwealth control of the material? For example, in relation to commercially sensitive information.

After conducting this due diligence process for each PSI item to be released, entities are to release the item according to licensing terms which best suits its needs.

Guidelines for legacy material

As described above, under the policy, legacy material means PSI that has been released previously under licensing arrangements that are not Creative Commons licences or other open content licences. While it is for each entity to determine how to handle their legacy material, re-licensing needs to be done on a case by case basis following a request using the principles described above.

Where text based material has been released previously with a CCA copyright notice, the Government will adopt the following process. The 'old' copyright notice provides a contact number for the CCA (previously within the Attorney-General's Department) for requests to make broader use of the material in question than those set out in the notice. Since January 2011, enquires to this contact number have been redirected to the author entity. The author entity needs to determine how to re-license that particular publication. The author entity may also choose to re-release that publication under an appropriate licence following a process of due diligence (including identification of any third party material).

Another option would be for your entity's copyright notice (if you use one that contains a Creative Commons licence) to state that the licence only applies to the Commonwealth copyright material and that permission needs to be sought from relevant third party copyright owners where non-Commonwealth copyright material is used in a publication. In this way one copyright notice could be used to cover all material published via your entity's website.

However, the preferable option is to re-licence legacy material on a case by case basis, following a process of due diligence.

Please note that these guidelines will be reviewed from time to time to ensure currency of information.

Finalised by Copyright Law and Policy Section, Department of Communications and the Arts, June 2018.

