

Creative Commons and Data

Who should read this?

This guide is relevant to anyone who owns copyright in data compilations or databases and wants to share their data openly, or to anyone who wants to use data under an open content licence.



What is ‘Creative Commons’?

The Creative Commons (CC) project was established in the United States in 2001 with the aim of using open licensing to create a commons of copyright material that could be readily used by others without fear of infringement. It developed a suite of open content licences based on a ‘some rights reserved’ copyright model rather than the traditional ‘all rights reserved’ model. The CC licences have been translated (‘ported’), both linguistically and legally, to 52 jurisdictions around the world. Revised versions of the CC licences are produced every few years, to take into account changes in copyright law and user needs. The current version of the Australian CC licences is version 2.5; work on porting the updated version 3.0 of the licences is underway and version 3.0 of the Australian licences will be published in 2010. In Australia, the Creative Commons office is based at the Queensland University of Technology (QUT). For more information see the Creative Commons website (<http://www.creativecommons.org>) and the Creative Commons Australia (CCau) website (<http://www.creativecommons.org.au>).





CC licences are standardized copyright licences which grant permission to use copyright works, in accordance with the particular standard set of conditions selected by the copyright owner (‘licensor’). The copyright owner retains ownership of their work and licenses others to use the work on liberal terms. Under each of the CC licences, users are granted permission to: reproduce the work, distribute it, display or perform it publicly, make digital public performances of it (e.g. webcasting), and make verbatim copies of the work in a different format. As well as granting permission to users, CC licences reserve part of the copyright to the owner. This means that the recipient of a CC-licensed work is not at liberty to use it completely without restriction, but must respect the rights that have been reserved (or kept) by the copyright owner. In practice, the user of a CC-licensed work will be required to observe conditions that range from simply acknowledging the author of the work to not using it for commercial purposes and not making any derivative works. Each of the CC licences has an attribution condition (BY) which requires that the author or any other named party is attributed in the form specified in the licence, that the work is not falsely attributed to another author and that the work is not altered so as to prejudice the author’s reputation. The licensor may, in addition, choose to license the work under one or more of the following conditions:

- Non Commercial (NC) – the work may only be used for non commercial purposes;
- No Derivatives (ND) – only exact copies of the work can be copied, shared or used; derivative works based on the original work (e.g. adaptations or mash-ups) are not permitted;
- Share Alike (SA) – users may create and distribute derivative works, but derivative works should only be distributed under licence terms identical to those that apply to the original work (this term ensures that the material remains ‘open’).

The standard sets of licensing conditions can be combined to offer a range of six licences. The only conditions which cannot be used in the same licence are No Derivatives (ND) and Share Alike (SA) as they are incompatible with each other. The six core CC licences are:

- Attribution (CC BY) 
- Attribution Non Commercial (CC BY-NC) 



- Attribution Share Alike (CC BY-SA) 
- Attribution Non Commercial Share Alike (CC BY-NC-SA) 
- Attribution No Derivatives (CC BY-ND) 
- Attribution Non Commercial No Derivatives (CC BY-NC-ND) 

Each of the CC licences is expressed in three ways: the symbols and icons displayed above, the lawyer-readable CC Legal Code and machine readable RDF code. When using any CC licence, care must be taken to ensure that third party copyright material is not included in the work that is being licensed, unless permission to license on those terms has been given by the owner of the third party material. The licences can be enforced and last for the duration of the term of copyright in the work. Once applied, a CC licence cannot be revoked by the licensor, although the licence as a whole will come to an end if it is breached by the licensee.

How does CC apply to data?

Creative Commons licences can be applied to any works that are protected by copyright. CC licences can be applied to individual data items, such as a digital file of an image or a sound recording; a data compilation; and a database. For more information on the application of copyright to data compilations, see the ANDS guide, 'Copyright and Data.' See also the OAK Law project publications, *Building the Infrastructure for Data Access and Reuse in Collaborative Research: An Analysis of the Legal Context* (2007) and *Practical Data Management: A Legal and Policy Guide* (2008), available at <http://www.oaklaw.qut.edu/au/reports>.

Remember that in a work consisting of a compilation of factual information or data, copyright protects what has been produced through the author's independent intellectual effort or skill in organizing or arranging the work. Copyright does not apply to individual facts or bits of information – it does not give the copyright owner a monopoly over facts or information contained in the compilation or database. When a copyright-protected data compilation or database is licensed, the licence applies to the work as a whole.

How can I comply with the attribution requirement where I am using numerous datasets contributed by many different authors?

A question which frequently arises when datasets and databases are developed from numerous sources is how the attribution requirement which is a standard feature in all CC licences can be met in practice. This question is particularly relevant where numerous individual contributors (potentially numbering in their thousands) contribute data into highly collaborative works. The requirement to attribute the creators of a huge number of data compilations is often referred to as 'attribution stacking'.

The attribution condition in CC licences allows the author to specify how they are to be attributed and how the work is to be identified. However, the author may not require active acknowledgement when the work is used and may indicate this in the copyright notice on the work. Nevertheless, the author may still require that the work is not falsely attributed to another person and is not altered in a derogatory manner. In any case, often there will be no need to attribute the copyright owner because the user does not use (reproduce) a substantial part of the CC-licensed data compilation. If what is taken is mere information or facts that do not amount to a substantial part of the copyright-protected work, there is no use of the work in a copyright sense and the user will not be reproducing the data compilation or database. Therefore, the user will not need to follow the attribution condition or, indeed, any other conditions of the licence. This will often be the case where an entirely new work is produced on the basis of an analysis or selection of facts from a multitude of sources. It is possible to create an entirely new work which is protected by copyright in its own right, even though it is based on facts and data obtained from existing sources.

If numerous different contributors must be identified, an online list of all contributors can be created. Users of the CC-licensed material can then refer to the URL of the list to retrieve the attribution information about individual contributors.



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