

INFORMATION AND KNOWLEDGE MANAGEMENT FOR CLIMATE CHANGE (IKM4CC)

Guideline 5: Copyright, Legal and Ethical Issues



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for Climate Change (IKM4CC)
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Copyright, Legal and Ethical Issues

Griffith University

and

Secretariat of the Pacific Regional Environment Programme (SPREP)

The Griffith University Pacific iCLIM Project has been funded by the Australian Government Department of Foreign Affairs and Trade initiative *Government Partnerships for Development Program* to support SPREP in implementing a regional approach to climate change data and information management throughout the Pacific.

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V1.0, July 2016

Please cite this work as

Griffith University and SPREP 2016, *Information and Knowledge Management for Climate Change (IKM4CC) Guideline 5: Copyright, Legal and Ethical Issues*. Griffith University, Brisbane.

ISBN: 978-1-925455-21-2

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Australian National Data Service. Ethics, funders, policy and licensing guides. Available at: <http://ands.org.au/guides#ethics>

Creative Commons. Guidelines and examples. Available at <https://creativecommons.org/>

Griffith University 2013. *Managing Climate Change Adaptation Data and Information: A Reference Guide for Element 2, Stream 2 Projects*. Available at: <http://www.terranova.org.au>

UK Data Archive. Available at: <http://data-archive.ac.uk/> and as the publication: Van den Eynden, Veerle, et al (2011). *Managing and sharing data: Best practice for researchers*. Colchester: UK Data Archive.

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Information and Knowledge Management
For Climate Change (IKM4CC)
Guideline 5: Copyright, Legal and Ethical Issues

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ABOUT THIS GUIDELINE

This guideline is part of the Information and Knowledge Management for Climate Change (IKM4CC) Guidelines. The purpose of Guidelines is to help government departments, and other agencies and organisations that deal with issues related to climate change in the Pacific region, to implement good practices for managing information.

The Guidelines have been developed in consultation with representatives from government departments, NGOs and regional organisations based in the Pacific.

While the Guidelines focus on the management of digital data and information and the challenges posed by the electronic information environment, many of the concepts can also be applied to paper-based information.

This guideline looks at legal and ethical issues that need to be considered and addressed before information can be publically shared. It explains the concept of copyright and examines the increasingly common use of “open licensing” as a way of increasing people’s ability to share and reuse information protected by copyright.

USAGE

Throughout this document the following usage applies:

- the term *information* is used to include data, information, information assets and knowledge. The terms *data*, *knowledge*, and *information assets* are only used when specific reference is required.
- the term *organisation* is used to include a variety of organisation types including government departments, intergovernmental organisations, non-government organisations, regional bodies and public and private agencies. Individual types of organisations are used only when specific reference is required.

SHARING INFORMATION: BENEFITS AND LIMITATIONS

Information is a valuable organisational asset. The goal of information and knowledge management (IKM) is to enable organisations to control, administer, use and share these assets throughout their lifecycle in a secure, efficient and accountable manner that maximises their impact and return on investment.

Around the world, many governments and non-government organisations are looking to increase the availability and openness of the data and information they create. Reasons for this include¹:

- To assist with evidence-based policy and decision making
- To reduce staff time and effort required to locate and access information
- To avoid the need to continually recreate corporate knowledge
- To protect government and community interests

¹ Brown, RA et al. 2015, Barriers to effective adaptation and resilience planning in the Pacific: an information management perspective, Griffith University, Queensland and SPREP, Samoa.

- To create opportunities for innovation through the use and reuse of data

However before information can be made widely accessible, a number of legal and ethical questions have to be considered. Key questions include:

- Are there any intellectual property issues that affect the sharing and reuse of the information? (e.g. copyright)
- Are there any legal or ethical issues that limit the sharing and reuse of the information? (e.g. citizen privacy rights, confidentiality agreements, traditional or cultural sensitivities, cultural property rights, information related to endangered species)
- Are there any security issues that limit the sharing and reuse of the information? (e.g. national security, commercial-in-confidence)
- Does a licence or other terms and conditions of use need to be applied to the information to specify how it can be used?

COPYRIGHT AND LICENSING

WHAT IS COPYRIGHT?

Copyright is part of an area of law known as intellectual property. Most countries (including Fiji, Federated States of Micronesia, Palau, Samoa, Solomon Islands, Tonga, and Vanuatu²) have copyright laws which govern the use of original works once they have been created.

Copyright law seeks to protect the creators of original works by giving them special rights. Generally, once an original work has been written down or recorded in some way, only the copyright holder of the work has the right to reproduce or reuse the work. This continues for the life of the creator, plus 50 or 70 years depending on the country. A creator also has the “moral right” to be attributed as the author of the work.

A copyright holder can be an individual, a group of people, a government department, an organisation or a publisher. When an individual creates an original work as part of their job, the copyright holder is usually the organisation they work for.

Copyright laws mean that legally, other people or organisations can only reuse original works in limited ways, unless they get written permission from the copyright holder.

Original Works and Copyright

An **original work** can be a creative output (e.g. a song, a film, a radio broadcast) or an intellectual output (e.g. a book, a scientific article).

Under the global copyright regime, copyright automatically exists in all original works without any need for registration¹. For example, a song which is recorded in Vanuatu is automatically protected under the *Vanuatu Copyright and Related Rights Act*, and a book which is published in Fiji is automatically protected under the *Fiji Copyright Act*.

² Information sourced from WIPO Country Profiles, www.wipo.int/directory/en, accessed 1/2/2016.

✓ **Usually permitted** under copyright law:

- ✓ Downloading or photocopying small sections of another person's work for private study or research.
- ✓ Including quotes from another person's report in your own report, as long as you acknowledge the creator and the source of the quote.

✗ **Usually prohibited** under copyright law:

- ✗ Taking large amounts of text from another organisation's report and putting it into your own report, especially without acknowledging the creator.
- ✗ Uploading a report or journal article (where you don't own the copyright) to a public website.
- ✗ Photocopying a whole book or report (where you don't own the copyright) and giving it away or selling it.
- ✗ Broadcasting someone else's music or film in public (e.g. playing someone else's song over a loudspeaker in a public place).

To legally do any of these prohibited activities, you would need to get permission from the copyright holder.

WHY DOES COPYRIGHT MATTER?

You need to think about copyright in your workplace, whether you create new information or use information created by someone else.

If you work in a country with copyright legislation in force and you create **original information** during the course of your employment, then your organisation will probably be the copyright holder. This means that:

- People from outside your organisation will need to seek written permission to reuse, repackage or redistribute your organisation's work.
- If you want to grant people automatic permission to reuse, repackage or redistribute your organisation's work over and above what copyright law allows, you should include a licence or other terms of use with the work.

If you **reuse, repackage or reproduce information** from another organisation:

- You can only do so within the limits of what copyright law allows.
- You may have to seek written permission to reuse, repackage or reproduce the work.
- You may need to respect the copyright laws of other countries, even if your country doesn't have its own copyright legislation.

If a copyright holder discovers that you have used their original work illegally, they can ask you to stop using it, and ask for compensation. Commercial copyright holders (e.g. music companies, book or journal publishers) are most likely to enforce their rights under copyright law.

WHAT IS A LICENCE?

A licence is a legal instrument that allows a copyright holder to specify how they want their work to be reused, and how they want the creator of the work to be acknowledged (or “attributed”). The granting of a licence may involve the payment of a fee, or limits on time, place or purpose of reuse. Licences work alongside copyright – they are not an alternative to it.

WHAT IS AN OPEN LICENCE?

An open licence is one that gives people more rights than would have been available under copyright only. Open licences are used by copyright holders when they want to grant people extra permissions to reproduce or reuse their work.

CREATIVE COMMONS LICENCES

The most common open licences for digital works come from the Creative Commons licence suite.

The Creative Commons licences have been designed to offer a flexible and straightforward tool for copyright holders who want to increase the accessibility and use of their works, but still want to maintain some rights.

There are 6 standardised Creative Commons licences. Each licence specifies a set of conditions under which works can be used. Every licence also ensures copyright holders get the credit for their work they deserve. More details of the Creative Commons licences can be found in [Appendix I](#) of this Guideline.

WHO USES CREATIVE COMMONS LICENCES?

Creative Commons licences are being used by many governments around the world. Some development partners and agencies are also moving towards the use of open licences, for example the World Bank has incorporated the Creative Commons Licence “CC BY” into its Open Access Policy and as a default for Bank-produced research and knowledge products. Some United Nations materials (particularly educational resources) are also licensed with Creative Commons licences.

WHY USE CREATIVE COMMONS LICENCES?

Using Creative Commons licences allows more flexibility than traditional copyright, and may offer the Pacific region a number of practical benefits³:

- Making it easier to access and legally reuse research findings and educational resources
- Promoting the sharing of donor data and information for the benefit of the region, while still protecting intellectual property rights
- Making public data and information more open to citizens
- Explaining clearly what people can or can't do with information
- Less government time and money spent on administering and enforcing state-based copyright regimes.

³ Adapted from Forsyth, M., 2014, Creative Commons comes to the Pacific Islands. State, Society & Governance in Melanesia Program, ANU: Canberra.

HOW DO I USE CREATIVE COMMONS LICENCES?

There are 3 simple steps to applying a Creative Commons licence:

- ensure you have the authority to apply a licence to the work in question (i.e. you or your organisation are the copyright holder)
- select the most appropriate licence
- display the licence information on your work

See [Appendix I](#) for more details on the different types of Creative Commons Licences and how to apply them.

WEBSITE TERMS OF USE / DISCLAIMERS

If your organisation provides information, data or tools via public website, it's a good idea to include a **"terms of use"** section or a **disclaimer** in the website footer. A disclaimer is a legal statement which asserts that the organisation issuing the disclaimer is not responsible for any mishap to which a user is exposed from applying whatever object or information the disclaimer is attached to.

Terms of use may refer to information on the website and / or linked websites, and may include:

- a copyright statement and any licensing information about the website itself
- restrictions on what can be done with material on the website (e.g. if it is owned by a third party)
- a disclaimer that attempts to limit and exclude various types of liability that may arise from the use of the website
- an "acceptable use" statement, setting out the kinds of website use that are acceptable and unacceptable (especially if your site allows users to submit content)

If people are required to register to use any part of your website, you may also need a **privacy statement** outlining how you will store and use their personal information.

Some examples of website terms of use and disclaimers are provided in [Appendix II](#).

Key Messages

- The advantages of publishing sensitive information will usually outweigh any potential disadvantages as long as simple and appropriate steps are taken.
- Publishing sensitive information, or just a description of the information (metadata), means that others can discover it and reuse it.
- You can publish a description of the information (metadata) without making the information itself openly accessible. This means that people will be aware of the existence of the information.
- You can place conditions around access to information.

Before information can be shared, you need to consider whether there are any privacy or confidentiality issues surrounding the information. You will need to limit access to personal information, confidential data (e.g. endangered species, national defence, trade secrets) or culturally sensitive information (e.g. traditional knowledge).

PRIVACY LAWS AND OTHER RELEVANT LEGISLATION

Your country may have legislation that impacts on the sharing of personal or confidential data, such as

- Privacy legislation
- Freedom of information/right to information legislation
- Environmental information regulations
- Security of information/official secrets legislation

Privacy laws in many countries regulate the way an individual's personal information should be handled. Government departments, non-government organisations and the private sector must make sure they protect citizens' privacy according to their country's laws. You should seek guidance from your government or organisation's privacy officer and ensure you comply with local legislation, policies and guidelines.

Personal information is information that identifies or could identify someone, e.g. name, address, medical records, photos. Sensitive personal information can include a person's race, ethnicity, sexuality, political opinion, religion or criminal history.

Confidential information is information given in confidence or agreed to be kept confidential or secret, e.g. information on business, income, health; also spatial location of endangered species or cultural sites, and traditional knowledge.

CONFIDENTIALITY AND CONSENT

The sharing of personal or other confidential information can often be achieved using a combination of obtaining informed consent, anonymising data and regulating access to the information.⁴

Informed Consent – this is where a person gathering information (e.g. a researcher, a government officer) enters into an agreement with a participant about how their information will be stored and used, and tells them how their confidentiality will be maintained. When dealing with personal or confidential information, you must respect any confidentiality agreement about stored data that has been made with participants before you share it.

Anonymisation – this is the process where some information collected about people is altered or removed so that individuals, organisations and businesses cannot be identified. Anonymisation can involve:

- removing direct identifiers (e.g. names, addresses, photos)
- removing indirect identifiers (e.g. occupation, age, salary)
- removing spatial locations
- aggregating data (e.g. replacing date of birth with age groups)
- using pseudonyms

Anonymisation can be time consuming and costly, so informed consent or regulation of access may be better alternatives. More information on de-identification of data can be found at <http://ands.org.au/working-with-data/enabling-data-reuse/de-identifying-data>.

Regulation of access – this is where sensitive or confidential information is shared only with particular people or in a limited way by restricting or regulating access. Examples include:

- publishing a description of the information (metadata) without making the information itself openly accessible
- requiring access by negotiation with, or authorisation from, the data owner
- placing information under an embargo for a given period of time
- issuing passwords to approved users
- designing a system that will allow you to set different levels of access for different types of users (see COSPPac case study below)

CULTURAL SENSITIVITIES AND TRADITIONAL KNOWLEDGE

Information that focuses on indigenous peoples and traditional knowledge (TK) may have special information management requirements. Indigenous peoples have the right to retain secrecy in relation to their knowledge, ideas, materials, traditional practices and cultural expressions. You should make sure that restricted material is shown or distributed only with express permission from those who provided or are responsible for it⁵.

If people are asked to participate in sharing their traditional knowledge, they must be properly informed about how their knowledge will be stored, used and shared and have the option as to whether or not they want to participate.

⁴ Australian National Data Service, Ethics, consent and data sharing, <http://ands.org.au/guides/ethics-consent-and-data-sharing>, accessed on 13/4/16

⁵ AIATSIS, "Rights, respect and recognition", <http://aiatsis.gov.au/research/ethical-research/guidelines-ethical-research-australian-indigenous-studies/rights-respect-and-recognition>) accessed 19/01/2016.

For more information on the protection of traditional knowledge, see the **Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture**: a model law that has been developed in close consultation with SPC, UNESCO and Forum Pacific Island member countries and territories and the Council of Pacific Arts http://www.wipo.int/wipolex/en/text.jsp?file_id=184651.

Case Study: Traditional Knowledge of Weather and Climate Database

The COSPPac project (Australian Bureau of Meteorology) aims to preserve and ensure continued use of TK for weather and climate prediction in the Pacific. COSSPac has established a database for partner countries Vanuatu, Samoa, Niue and Solomon Islands to manage and store their climate-related TK stories and records. The TK Database is designed to ensure that information is stored in a safe and secure environment that respects individuals' intellectual property and cultural sensitivities around data sharing and use.

Key steps in gathering, storing and providing access to the stories include:

- At the interview stage, the project is explained and people are asked to sign a consent form. Interviewees are also asked if they are sharing a sensitive story and if they want to restrict access to particular individuals or groups of people.
- When entered into the database, each story is assigned to one or more access groups. For example, male only, female only, specific language group etc.
- Each database user has a personal login linked to a user account. Their account stores their personal information (e.g. gender, tribe, language group) and defines their level of access to stories.
- Only senior managers are allowed to access all stories.

ENVIRONMENTAL SENSITIVITIES

Some environmental, ecological and biodiversity data can also be sensitive. Sensitive information can include:

- location of rare, endangered or commercially valuable plant or animal species
- other scientific information such as breeding habits, dates for fruiting or migration
- location of conservation efforts or projects

You should consider whether the publication or sharing of environmental information could result in an adverse effect to a species or conservation activity.

THE CREATIVE COMMONS LICENCES⁶

Creative Commons (CC) licences are a set of standardised open content licences which grant users permission to use copyright works in accordance with the particular standard set of conditions. CC licences originated in the U.S. and have been translated to 52 jurisdictions around the world. They are widely used by government and related sectors. There are different versions of the licences in use (e.g. V3, V4), as well a version specifically designed for Intergovernmental Organisations (IGO).

The six standardised CC licences are listed in the table below, from most open to least open.

Licence name	Licence Details	Logo and links
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Attribution-ShareAlike: CC BY-SA	Lets others remix, tweak, and build upon your work even for commercial purposes, as long as they credit you and licence their new creations under the identical terms. All new works based on yours will carry the same licence, so any derivatives will also allow commercial use. This is the licence used by Wikipedia, and is recommended for materials that would benefit from incorporating content from Wikipedia and similarly licensed projects.	 View licence Deed View Legal Code
Attribution-NoDerivatives: CC BY-ND	Allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to you.	 View licence Deed View Legal Code
Attribution-NonCommercial: CC BY-NC	Lets others remix, tweak, and build upon your work non-commercially, and although their new works must also acknowledge you and be non-commercial, they don't have to license their derivative works on the same terms.	 View licence Deed View Legal Code
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Attribution-NonCommercial-NoDerivatives: CC BY-NC-ND	The most restrictive of the six licences, only allowing others to download your works and share them with others as long as they credit you, but they can't change them in any way or use them commercially.	 View licence Deed View Legal Code

⁶The information on this page is © AusGOAL 2011. <http://www.ausgoal.gov.au/creative-commons-v4.0>, accessed 08/02/2016.

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⁷ Attorney-General's Department, Disclaimer Statement and Copyright Statement, © Commonwealth of Australia 2015 [Accessed 19/04/16]; available from <https://www.ag.gov.au/Pages/Disclaimer.aspx> and <https://www.ag.gov.au/Pages/Copyright.aspx>.

TERMS OF USE FOR WEBSITE THAT HOSTS THIRD PARTY MATERIAL UPLOADED BY USERS

Extract from **Terra Nova Climate Change Adaptation Information Hub**⁸

Disclaimer [<https://www.terranova.org.au/disclaimer-and-copyright>]

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PRIVACY POLICY AND ACCEPTABLE USE FOR AN INTERACTIVE WEBSITE

Extract from **Pacific Solution Exchange “acceptable use” Terms and Conditions for Membership**⁹

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⁸ Griffith University 2015, Terra Nova Disclaimer [accessed 19/04/16]; available from <https://www.terranova.org.au/disclaimer-and-copyright>.

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¹⁰ United Nations Development Programme, Solution Exchange Privacy Policy, [accessed 19/04/2016], available from <http://www.solutionexchange-un.net/memagreement.html#SOLUTION> . Reproduced with permission.