



ANDS Guide



Copyright, data and licensing

Level: Awareness

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Web link: www.ands.org.au/guides/copyright-data-and-licensing

Copyright provides an exclusive right to the copyright holder to reproduce, publish, adapt, communicate or perform a work. The term 'use' [a work], elsewhere in this document, refers to reproducing, publishing, adapting, communicating or performing a work.

In the absence of permission from the copyright holder, another person cannot exercise any of these rights unless their actions affect only a small (insubstantial) portion of the work or if the work falls within one of the statutory exemptions (e.g. fair dealing) under the Copyright Act.

Copyright and research sector

In the research sector, such as a university or other research institution, the employer usually holds the copyright to the research outputs. In the case of university students, the common practice is for the student to hold the copyright in his or her research. Variations to both of these generalisations can occur. In the case of state, territory or federal government organisations producing research data, it is usually the government (the Crown) that holds copyright.

If you are the copyright holder and you do not license your research outputs (e.g. your data), no-one else can use it in the ways explained above. In Australia, no license is regarded as the same as 'all rights reserved', confining any reuse to very limited circumstances.

Copyright basics

- Copyright is one of a suite of intellectual property (IP) rights recognised under Australian law (and globally). Examples of other intellectual property rights include trademarks and patents
- Copyright is regulated under the [Copyright Act 1968 \(Cth\)](#)
- Copyright exists in original literary works (which may include data and databases), artistic works (paintings, photographs etc), musical works, dramatic works; and films and sound recordings and broadcasts
- Generally, copyright does not protect mere facts
- Copyright protects the expression of an idea, rather than the idea itself
- Copyright vests (is considered to exist) immediately upon creation of a work, and expires 70 years after the death of the author (Crown copyright has a different duration)
- Registration to protect a copyrighted work is not applicable in Australia. There is no legal requirement to place a © symbol on a work, although it may alert a user that the work is subject to copyright.

Obtaining permission from a copyright holder

You are not permitted to exercise any of the copyright holder's rights (as in paragraph one) unless your actions fall within an exception in the Copyright Act. However, copyright holders may provide permissions to others to exercise their rights. These permissions are usually expressed in the form of a licence or assignment. An assignment exists where copyright is transferred from one party (the copyright holder) to another. Alternatively, a licence merely extends a permission to someone else (as in paragraph one).

Copyright and data

The Australian Government's Open Access and Licensing system ([AusGOAL](#)) provides a range of options (including a licence selector, which guides you through the most appropriate licence for your particular situation) for the management and licensing of data in a manner compatible with Australian law. AusGOAL includes all of the Creative Commons licences, as well as other, more specialised options for software, for example. See the AusGOAL [data section](#). ANDS recommends AusGOAL.

Use of a copyright licence

A dataset may attract copyright protection (as a literary work), if it meets certain threshold criteria of human authorship, originality, or creativity, for example. On that basis, significant quantities of research data will attract copyright protection. As such, it may not be reused by researchers (or anyone else) without permission. Since the output of most research is intended for reuse, it is recommended that a licence, such as a Creative Commons Attribution licence, be applied to make that intention explicit. In addition, appropriate author / copyright holder attribution details should also be supplied.

Should the data not meet the threshold criteria for copyright, no harm will arise from the application of a Creative Commons Licence. It will still serve as a useful way to make known how you would like to be attributed, in addition to applying a limitation of liability and warranty clause to the data. Alternatively, and perhaps if the data

is entirely machine generated and compiled, the Creative Commons Public Domain Mark, or a no known rights statement could be applied.

No Copyright

Copyright doesn't subsist in everything that's published. This may be because:

- copyright has expired; or
- copyright never existed in the material.

This is referred to as 'public domain' material. The Copyright Act doesn't recognise public domain because, by definition, the term refers to material that is devoid of copyright. Nevertheless, organisations publish a lot of material (including data) that lacks copyright protection, and they should apply an appropriate statement or marking to the material to indicate that status. AusGOAL recommends the use of the Creative Commons Public Domain Mark. However, if your organisation wishes to apply a specific disclaimer, you may wish to use the 'no known rights statement' as a template.

Before applying these markings, your organisation should carefully consider whether copyright would nevertheless subsist in the material in other countries.

Creative Commons – Public Domain Mark



The benefit of using the Creative Commons [Public Domain Mark](#) (PDM) is that the [Public Domain Mark Chooser](#) creates machine readable code underneath the human readable mark. This permits search engines and other software to determine copyright status of the material being published. For more information about the PDM, please visit the [FAQ](#) page.

A no known rights statement

Organisations can choose to apply a 'no known rights' statement to material that is devoid of copyright or other intellectual property rights. These are simply another, perhaps less sophisticated form of public domain mark. There is no prescribed format for these types of statements, but they should include content similar to the example below. Organisations should also consider whether they need to make reference to the exclusion of emblems/coats of arms/other devices that might attract trademark protection when drafting these statements.

Example text:

To the best of [custodian/organisation]'s knowledge:

- there is no copyright or other intellectual property rights in [identify material] in Australia; and
- it may be copied and otherwise re-used in Australia without copyright or other intellectual property right related restriction.

The following is a disclaimer that is optional and may be excluded or replaced by an alternative disclaimer used by you / your organisation:

[custodian/organisation] will not be liable to you, on any legal basis (including negligence), for any loss or damage you suffer through your use of this material, except in those cases where the law does not allow us to exclude or limit our liability to you.

Moral Rights

Australian law provides that moral rights also attach to copyrighted material upon its creation. Part 9 of the Copyright Act establishes moral rights for authors (whom may not always be the copyright holder). Moral rights in relation to an author include:

- a right of attribution of authorship
- a right not to have authorship falsely attributed, or
- a right of integrity of authorship (doing anything to the work that would be prejudicial to the authors reputation).

Moral rights:

- generally exist in a work for the same period as copyright
- are not economic rights, and as such, cannot be transferred or remunerated as is the case with copyright
- vest with authors and may not be disposed of or sold. However, authors may consent to waive their moral rights.

The take home message for researchers

The Australian Code for the Responsible Conduct of Research says: "Researchers have a responsibility to their colleagues and the wider community to disseminate a full account of their research as broadly as possible".

In terms of research data, the best way to achieve this objective is to license the data (using AusGOAL) and to place it in a publicly-accessible repository (along with appropriate metadata etc). If you don't license the data, no-one else can use it; it's that simple!

Feedback?

We welcome your feedback on this guide. Please email contact@ands.org.au with any comments or questions.

About ANDS

The Australian National Data Service (ANDS) makes Australia's research data assets more valuable for researchers, research institutions and the nation.

ANDS is a partnership led by Monash University in collaboration with the Australian National University (ANU) and the Commonwealth Scientific and Industrial Research Organisation (CSIRO). It is funded by the Australian Government through the National Collaborative Research Infrastructure Strategy (NCRIS).

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