

creative commons copyright policy and procedures

February 2019

Content

Introduction 3

Objective 3

Overriding principle 3

What is Creative Commons? 3

Creative Commons Licences 4

What material does this apply to? 5

What material does this NOT apply to? 5

Who is responsible for implementing this policy? 6

Procedures 6

How to apply a CC BY 4.0 licence to new material 6

How to licence previously published copyright material 7

Other licences for copyright material 8

Copyright notice for websites 8

Aboriginal and Torres Strait Islander cultural rights 9

Principles 9

Guidelines 10

Aboriginal and Torres Strait Islander Cultural Intellectual Property Rights Checklist 10

Copyright statement for works containing Aboriginal and Torres Strait Islander Traditional Knowledge 11

Further information 11

© Australian Capital Territory 2019

This work is licensed under a [Creative Commons Attribution 4.0 licence](http://creativecommons.org/licenses/by/4.0). You are free to re‑use the work under that licence, on the condition that you credit the Australian Capital Territory Government as author, indicate if changes were made and comply with the other licence terms.

# Introduction

A commitment to open government was made in the Legislative Assembly on 23 June 2011.

This commitment acknowledges that openness and transparency in government is essential for a robust democracy and that where possible government information should be made freely available to everyone. Further, and as outlined in the Office of the Australian Information Commissioner (OAIC)’s ‘Principles on Open Public Sector Information’, the economic and social value of public sector information is enhanced when made available through open licensing.

The Office of the Chief Digital Officer’s Proactive Release of Data (Open Data) Policy version 2.0, December 2015 states:

All ACT Government directorates and agencies are required to do what is necessary and reasonable to improve access to existing datasets by making them ‘open’ to the extent legally possible, with appropriate consideration given to licensing.

One of the principles of this policy is that ACT Government data should be reusable:

Open data is released under a Creative Commons Attribution Licence by default allowing users the right to share and remix data, unless there are strong reasons for not doing so. The most current is the [Creative Commons Attribution 4.0 International licence (CC BY 4.0)](https://creativecommons.org/licenses/by/4.0/).

# Objective

To provide guidance to ACT Public Service (ACTPS) officers on using Creative Commons with ACT Government material

# Overriding principle

The ACT Government is committed to Open Government and information sharing. ACT Government material should be licensed where possible under the Creative Commons licensing system. The preferred licence is BY [Creative Commons Attribution 4.0 International Licence (CC BY 4.0)]. **Copyright that relates to Aboriginal and Torres Strait Islander culture requires special consideration.**

# What is Creative Commons?[[1]](#footnote-1)

Creative Commons is a global non-profit organisation that enables sharing and reuse of creativity and knowledge through the provision of free legal tools, including copyright licences. These international copyright licences have been developed for use by the owners (including governments) of copyright material.

CC licences are designed to provide copyright owners with an efficient way to manage the rights contained in their copyright work, and to provide copyright users with simple and flexible terms for use.

A CC licence always requires that users attribute the work in the form specified by the licensor.[[2]](#footnote-2) Attribution also requires the user to indicate if changes have been made to the work and to provide a link to the CC licence. CC also allows the copyright owner to apply one or more of three additional conditions, discussed below.

CC allows users of works to reproduce, communicate, distribute and perform those works without prior permission or payment. Some CC licences also allow users to make derivative works and to use works for a commercial purpose.

CC licences are applied by the licensor when the work is published. This process is automated via online tools. These tools include a version of the licence in ‘human readable’ form, the legal code which sets out the terms and conditions of the licence, and digital code which enables metadata to be attached to the online version of the work.[[3]](#footnote-3)

CC licences are designed to be used ‘as is’. Each contains a non‑exclusive licence which is stated to be worldwide, royalty free, non‑exclusive and perpetual (subject to the termination provision). They do not provide for the imposition of licence fees, or licensing for a limited duration or purpose.

## Creative Commons Licences

The licence recommended for use by directorates wherever appropriate under the ACT Government copyright policy is **CC BY 4.0**.

There are six CC licences available. Each is identified by a combination of the symbols, an acronym and a descriptive label.

The CC licences available are as follows:

| Image | Label | Acronym | Licence conditions |
| --- | --- | --- | --- |
| CC BY Logo | Attribution | CC BY | * Attribution as required by licensor.[[4]](#footnote-4)
 |
| CC BY SA Logo | Attribution – Share Alike | CC BY‑SA | * Attribution as required by licensor;
* any derivative works must be distributed under the same licence.
 |
| cc by nd logo | Attribution – No Derivative Works | CC BY‑ND | * Attribution as required by licensor;
* derivative works must not be made.
 |
| CC BY NC logo | Attribution – Non commercial | CC BY‑NC | * Attribution as required by licensor;
* work must not be used for commercial purposes.
 |
| CC BY-NC-SA logo | Attribution – Noncommercial – Share Alike | CC BY‑NC‑SA | * Attribution as required by licensor;
* work must not be used for commercial purposes;
* any derivative works must be distributed under the same licence.
 |
| CC BY-NC-ND logo | Attribution – Noncommercial – No Derivatives | CC BY‑NC‑ND | * Attribution as required by licensor;
* work must not be used for commercial purposes;
* derivative works must not be made.
 |

CC BY should be used with most copyright material that is made publicly accessible. However, in some limited circumstances, an alternative CC licence may be more appropriate. For example, if an agency needed to prevent any commercialisation of copyright material, CC BY‑NC may be the most appropriate licence. Agencies should carefully consider whether an alternative CC licence is appropriate, in consultation with their Intellectual Property (IP) Officer,the Territory Records Office (TRO) and, if required, legal advice.

There is a no mandatory requirement to apply a CC licence to government material where this is not appropriate. Before applying a CC licence to new material or existing websites, the following questions should be asked. If the answer to any of the questions is yes, the material should not be released, published or uploaded:

* Are there any information, privacy, confidentially or security restrictions?
* Does the item contain any third party material? Did the copyright owner give permission to use the material in this way, or was it made available under a CC licence?
* Are there reasons to restrict what the public can do with the material i.e. contractual or statutory obligations?[[5]](#footnote-5)

## What material does this apply to?

This policy can be applied to material which can be classed as Public Sector Information. This is 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.

Public Sector Information 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 ACT Government owns the copyright.[[6]](#footnote-6)

## What material does this NOT apply to?

Public Sector Information does not include materials that:

* have been published for commercial purposes;
* are of a sensitive nature, such as information that impacts on privacy, national security, or information which would destroy the possibility of subsequently obtaining patent protection where such protection is necessary to achieve public benefit.

## Who is responsible for implementing this policy?

* Each directorate should designate an appropriate officer to be its Intellectual Property (IP) Officer. Application of Creative Commons should be done in consultation with the IP Officer.
* The IP Officer will be the central contact person responsible for disseminating the Creative Commons policy to the directorate. Advice on implementing Creative Commons Licences is available on the [Creative Commons website](http://creativecommons.org.au/).
* The TRO will provide a frontline advisory role on Creative Commons licensing and the implementation of these licences.
* Directorate IP Officers will work in consultation with the Office of Aboriginal and Torres Strait Islander Affairs (OATSIA) when considering Aboriginal and Torres Strait Islander cultural rights.

# Procedures

## How to apply a CC BY 4.0 licence to new material

Prior to making appropriate Territory owned copyright material available to the public, a CC BY licence should be applied as follows.

A CC BY licence may be applied to copyright material by attaching a notice to this effect to the work. Accordingly, directorates are encouraged to apply CC BY licences to document templates.

**If the material relates to Aboriginal and Torres Strait Islander heritage, consideration must be given to the section on Aboriginal and Torres Strait Islander cultural rights in this policy before considering how to apply a Creative Commons licence.**

In most cases, the following notice will be appropriate:

© Australian Capital Territory [year]

This work, [insert title of work], is licensed under a [Creative Commons Attribution 4.0 licence](http://creativecommons.org/licenses/by/4.0). You are free to re‑use the work under that licence, on the condition that you credit the Australian Capital Territory Government as author, indicate if changes were made and comply with the other licence terms.

[Optional addition to exclude aspects of the work from the CC licence:] The licence does not apply to [specify which aspects of the work the licence does not apply to, for example. ‘any branding’ or ‘any images or photographs’]

The ‘optional addition’ at the final sentence of the notice enables agencies to exclude aspects of a work from the CC licence. For example, it can be used to ensure that the Territory does not provide third parties with a licence to use its branding, in order to protect the Territory’s reputation. Images and photographs may also be appropriate to exclude because they are often owned by third parties. However, this exclusion should only be used in appropriate circumstances, and should not unduly limit the scope of the licence. Agencies are encouraged to consult with their IP Officer, the TRO and, if required, seek legal advice.

It is recommended that the notice be accompanied by a symbol indicating the CC licence applies. The [symbols are available on the CC website](http://creativecommons.org.au/learn/licences/).

The CC BY symbol is as follows:

The CC Australia website contains useful material relating to the application of CC licences by government.[[7]](#footnote-7)

## How to licence previously published copyright material

Agencies often receive requests from publishers and members of the community to use Territory owned copyright material which has already been published. For example, educational publishers sometimes contact the Territory to seek permission to reproduce directorate fact sheets in text books.

**If the material relates to Aboriginal and Torres Strait Islander heritage consideration must be given to the section on Aboriginal and Torres Strait Islander cultural rights in this policy before considering how to apply a Creative Commons licence.**

When an agency receives a request to re‑use previously published copyright material, it must consider issues around ownership and capacity to licence. The Government’s commitment to open government strongly encourages directorates to grant rights to IP with the fewest possible restrictions. However, the Territory’s IP rights may need to be exercised restrictively for reasons including privacy and compliance with the law. Agencies should ensure that they are responsible for the copyright material before providing permission.

In most cases, it is appropriate to provide permission for third parties to re‑use Territory’s owned copyright material on flexible terms. Accordingly, where appropriate, it is recommended that agencies respond promptly to requests by providing permission to re‑use the material on the terms of a CC BY 4.0 licence.

The following written response may be appropriate to achieve this:

On behalf of the Australian Capital Territory, [Name of agency, for example, the Territory Records Office] grants you a licence to re‑use [Name of copyright work, for example, Intellectual Property Guidelines] under the [Creative Commons Attribution 4.0 Licence](https://creativecommons.org/licenses/by/4.0/). You are free to re‑use the work under that licence, on the condition that you credit the Australian Capital Territory Government as author, indicate if changes were made and comply with the other licence terms.

[Optional addition to exclude aspects of the work from the CC licence:] The licence does not apply to [specify which aspects of the work the licence does not apply to, for example. ‘any branding’ or ‘any images or photographs’]

Where permission is given on these terms, the directorate should also make the material publicly accessible, for example, through publication on their website.

Material on agency websites may also be licensed flexibly by applying a general copyright notice to all content on the website.

## Other licences for copyright material

CC licences are generic, and may not be appropriate in some circumstances. This is particularly so where the licensed materials involve business or legal risks, or where the licence is granted as part of a funding or procurement agreement rather than for the purpose of public accessibility.

For example, CC licences provide no means to ensure that a licensee is using the most up to date information available from an agency. This can be an issue in relation to important public health information. Where material of this kind is involved, the directorate should determine the most appropriate licence to use, which may be a more restrictive licence.

Other aspects of CC 4.0 licences that agencies should be aware of include that they:

* do not include a provision as to the governing jurisdiction;
* are not automatically terminated for breach; and
* are unlikely to be appropriate where the agency is commercialising the IP.

Where the nature of an agency’s copyright material is such that CC may not be appropriate, agencies should seek advice from their IP Manager. Legal advice may also be required as to whether it is appropriate to use a more restrictive licence for the IP, to deal with specific disclaimers or relevant restrictions.

## Copyright notice for websites

In most cases the copyright notice that appears on directorate websites should grant rights to use Territory owned copyright material on the website with the fewest possible restrictions. A CC BY 4.0 licence is recommended.

A good example of a CC copyright notice that includes a copyright notice under a CC BY 4.0 licence, is as follows:

**Copyright**

The Territory Records Office encourages the dissemination and re‑use of information provided on this website.

The Australian Capital Territory Government owns the copyright in all material produced by this agency.

All material provided on this website is provided under a Creative Commons Attribution 4.0 licence, with the exception of:

any images, photographs or branding, including the ACT Coat of Arms, the ACT Government logo and any other government logos or symbols; and content supplied by third parties.

The [licence conditions are available on the Creative Commons website](http://creativecommons.org/licenses/by/4.0/).

Attribution

Material obtained from this website is to be attributed as:

© Australian Capital Territory.

Third party copyright

In some cases, a third party may hold copyright in material presented on this website. Their permission may be required to use the material.

Contact us

Enquiries about copyright and use of the material on this website can be directed to:

[Insert Name & email address of Directorate/Agency]

This example of a copyright notice excludes content supplied by third parties. Agencies should be careful to ensure that they do not purport to licence material owned by third parties, unless they have the clear right to do so. Where possible, they should clearly identify material provided on their websites in which the copyright is owned by a third party.

Agencies should consult with their IP Officer prior to changing a website copyright notice. A CC licence can be changed or withdrawn if circumstances change. However if the material has already been used under the original CC licence, the user is allowed to continue to use the material under the original terms and conditions.

It is important to note that CC licences do include terms that users must abide by when using any Creative Commons material. These include the following requirements:

* users must not use the work in any way that is prejudicial to the reputation of the creator;
* users must not imply that the creator is endorsing or sponsoring the work.

These licensing terms, among others, prevent the use of ACT Government material in a way that is detrimental to the ACT Government.

# Aboriginal and Torres Strait Islander cultural rights[[8]](#footnote-8)

## Principles

* All Aboriginal and Torres Strait Islander peoples are entitled to respect for their culture.
* All Aboriginal and Torres Strait Islander peoples’ cultural heritage, including cultural expression, is the intellectual property of Aboriginal people.
* Aboriginal and Torres Strait Islander peoples have the right to protect and manage the use of their cultural heritage and expression.
* Aboriginal and Torres Strait Islander peoples have the right to benefits accruing from any activities that use their cultural heritage and expression.
* Aboriginal and Torres Strait Islander peoples have a right to Government support in the protection and maintenance of their cultural heritage and expression.

## Guidelines

As best practice, any projects involving Aboriginal and Torres Strait Islander peoples’ cultural expression should be negotiated with the owner/s using appropriate protocols which include:

* An agreement outlining the conditions of consent should be obtained from the owner/s for projects to commence and continue.
* An acknowledgement of the owner/s of the cultural heritage or expression.
* A clear description in plain and appropriate language of:
	1. the aims and objectives
	2. the methodology
	3. how the results are to be interpreted
	4. what the results are to be used for; and
	5. what the anticipated benefits to the community will be.
* Proposals should also demonstrate that:
	1. the project will not result in damage to Aboriginal cultural integrity; and
	2. the collected information remains the intellectual property of the people who provided it.
* An Aboriginal perspective should be sought on all issues surrounding the proposal.

## Aboriginal and Torres Strait Islander Cultural Intellectual Property Rights Checklist

The following questions are intended as a guide to assist in negotiations and consultations with Aboriginal and Torres Strait Islander peoples.

* Does your nominated Aboriginal and Torres Strait Islander peoples’ community representative have the authority to speak for or on behalf of the proposed project?
* Have you received written consent from the traditional owners/custodians of Aboriginal and Torres Strait Islander Cultural Intellectual Property Rights for the project?
* Does the community understand the aims, objectives and methodology of the project?
* Does the community understand how the outcomes of the project will be used?
* Have you made arrangements with the community to provide feedback on the project at all stages?
* Have you acted in good faith and respected the privacy of Aboriginal and Torres Strait Islander peoples and communities?
* Have you ensured that the community understands the copyright issues of the project?
* Does your proposal safeguard Aboriginal and Torres Strait Islander sensibilities?

## Copyright statement for works containing Aboriginal and Torres Strait Islander Traditional Knowledge

If work containing traditional knowledge is being published by the ACT Government, the following notices should be attached to that portion of the work:

1. For artworks: “The images in this artwork embody traditional ritual knowledge of the (name) community. It was created with the consent of the custodians of the community. Dealing with any part of the images for any purpose that have not been authorised by the custodians is a serious breach of the customary law of the (name) community, and may also breach the Copyright Act 1968. For enquiries about permitted reproduction of these images, contact (community name).”
2. For language-group owned traditional stories: “Traditional story: (language group). This version: © (name, date). This version is made with the permission of the language group. It may not be reproduced in any form without the permission of the writer and the language group concerned.”

For assistance with the application of these principles to a particular project or Public Sector Information, please contact the Office of Aboriginal and Torres Strait Islander Affairs (OATSIA). Officers are encouraged to do this as early as possible in projects.

Unless clear agreement is reached with the appropriate individual or community, a Creative Commons licence should not be applied to Aboriginal and Torres Strait Islander peoples’ material. If there is a mix of material, the licence conditions need to clearly state what material is included and what material is excluded.

# Further information

Further information on CC Licensing can be obtained from:

Creative Commons: <http://creativecommons.org.au/>

Territory Records Office (TRO): copyright@act.gov.au



Chief Minister, Treasury and Economic Development Directorate

February 2019

1. Adapted from material in the creative commons section in the Intellectual Property Guidelines for the Victorian Public Sector (Version 1) March 2015; State of Victoria (Department of Treasury and Finance) [↑](#footnote-ref-1)
2. For example, by attributing the name of the author or copyright owner. [↑](#footnote-ref-2)
3. This metadata, which can be added to by the licensor, allows works to be readily searched online. [↑](#footnote-ref-3)
4. A user of the work must attribute it as required by the licensor. For example, agencies should request that users of their copyright material attribute it to the ACT Government. This condition also requires the user to indicate if changes have been made to the work and provide a link to the CC licence. [↑](#footnote-ref-4)
5. Adapted from material in the NSW Government, Department of Justice, State Copyright Unit – Information Sheet: Creative Commons Licences: Checklist and Copyright Statements, June 2015 [↑](#footnote-ref-5)
6. Adapted from material on page 3 in Guidelines on Licensing Public Sector Information for Australian Government Entities September 2016; Australian Government (Department of Communications and the Arts) [↑](#footnote-ref-6)
7. <http://creativecommons.org.au/sectors/government> [↑](#footnote-ref-7)
8. ##  Material in this section drawn from the NSW Ministry of the Arts Indigenous Arts Protocol

 [↑](#footnote-ref-8)