Open licensing of Intellectual Property: Considerations for the University of the Free State Intellectual Property Policy

# Background

Works that are published without an explicit licence are subject to copyright laws, which differ per jurisdiction. Copyright laws give exclusive rights to the copyright holder – including the right to produce copies as well as derivative works. Copyright prohibits those other than the copyright holder from redistributing and reuse of the work. In terms of the UFS IP Policy, where UFS owns the copyright of intellectual property, there is an option to apply an open licence to such works. An open licence in no way diminishes or negates copyright law, it merely grants permissions and states restrictions in respect of such copyrighted work, so that it is not necessary for a third party to contact the author of the work in the situations stipulated in the licence. Open licences enable the owner of the copyright to allow more freedom in what others can do with their work.

Educational resources, journal articles, and data are all subject to copyright restrictions and can therefore have open licences applied.

# Key terms

*Open Educational Resources (OER)*

OER are teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property licence that permits their free use and re-purposing by others. Open educational resources include full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge[[1]](#footnote-1).

*Open Access publishing (OA)*

Generally, Open Access refers to research articles that are freely and openly available to the public for reading, reviewing, and making and distributing derivative works.[[2]](#footnote-2) OA literature is digital, online, free of charge, and free of most copyright and licensing restrictions. It is made possible by the Internet and the consent of the author or copyright-holder.[[3]](#footnote-3) Open Access publishing is compatible with peer-review, and open access articles typically go through normal refereeing and editorial processes.[[4]](#footnote-4)

*Open data*

Open data refers to data that can be freely used, shared, and built on by anyone, anywhere, for any purpose.[[5]](#footnote-5) It is usually non-personally identifiable data produced in the course of an organization’s ordinary business, which has been released under an unrestricted licence (like the Open Government Licence – see [http://www.nationalarchives.gov.uk/doc/open-government-license/version/2/](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/2/)).[[6]](#footnote-6)

# Educational resources and publishing

Creative Commons or CC Licences are a global standardized way of openly licensing all types of content; they do not apply to software. Certain baseline In addition to certain “baseline” rights and restrictions which are included in all Creative Commons licences, the copyright owner can choose a number of licensing options, which can be used alone or in combination.

#### Baseline features

The following features are common to all Creative Commons licences:

* Licensees are granted the right to copy, distribute, display, digitally perform, and make verbatim copies of the work into another format;
* The licences have worldwide application that lasts for the entire duration of copyright and are irrevocable;
* Licensees cannot use technological protection measures to restrict access to the work;
* Copyright notices should not be removed from all copies of the work; and
* Every copy of the work should maintain a link to the licence;
* Attribution must be given to the creator of the copyright work **(BY).**

#### Optional features

Copyright owners can choose from among the following optional license conditions:

* **Non-commercial (NC):** others are permitted to copy, distribute, display and perform the copyright work – and any derivative works based upon it – but for non-commercial purposes only;
* **No derivative works (ND):** others are permitted to copy, distribute, display and perform exact copies of the work only and cannot make derivative works based upon it;
* **Share alike (SA):** others may distribute derivative works only under a licence identical to that covering the original work.

By mixing and matching these elements, copyright owners can choose between the following six core licences:

* **Attribution (BY)** – This is the most accommodating of the licences offered, in terms of what others can do with your work. It lets others copy, distribute, re-use and build upon your work, even commercially, as long as they credit you for the original creation.
* **Attribution-Non-commercial (BY-NC)** – This licence lets others copy, distribute, re-use and build upon your work, as long as it is not for commercial purposes and they credit you as the original author.
* **Attribution-Share alike (BY-SA)** – This licence lets others re-use and build upon your work even for commercial purposes, as long as they credit you and license any derivative works under identical terms.
* **Attribution-Non-commercial-Share alike (BY-NC-SA)** – This licence lets others re-use and build upon your work, as long as it is for non-commercial purposes, they credit you and they license their new creations under identical terms.
* **Attribution-No derivatives (BY-ND)** – This licence allows use of a work in its current form for both commercial and non-commercial purposes, as long as it is not changed in any way or used to make derivative works, and credit is given to the original author.
* **Attribution-Non-commercial-No derivatives (BY-NC-ND)** – This is the most restrictive of the six core licences. It is often called the “advertising” licence because it only allows a work to be copied and shared with others in its original form, and only for non-commercial purposes and where credit is provided to the original author. This licence does not allow the creation of derivative works, or the use of the work for commercial purposes.

# Data

In most jurisdictions there are intellectual property rights in data that prevent third-parties from using, reusing and redistributing data without explicit permission. Even in places where the existence of rights is uncertain, it is important to apply a licence simply for the sake of clarity. In order to make data available it should be licensed, in a similar manner to the above discussion.

# Possible Clauses for UFS IP Policy

# Open licensing

* 1. Open licensing entails making available intellectual property on a continuum of modified or waived reservation of rights. UFS seeks to protect the rights and privileges of the UFS community, while at the same time balancing this with the philosophy of sharing information with others and discharging its mission as a public university. UFS will, by default, publish materials, research, and data under the relevant open licence as well as making software open source unless an alternative licence is proposed by the creator.

## Educational Materials and Published Research (including Student Theses and Dissertations)

1. Where appropriate and subject to the provisions of this policy, UFS supports the publication of materials under Creative Commons licences to promote sharing of knowledge and the creation of Open Educational Resources. UFS undertakes certain research projects that seek to publish the research output in terms of a suitable Creative Commons licence.
   1. UFS by default requires that the CC-BY licence be applied to all copyrighted materials where IP is owned by the university. This includes (but is not limited to) essays, books, conference papers, reports (where permitted by a funder of the research leading to the report) educational resources, presentations, scholarly multi-media material, audio-visual works and digital representations of pictorial and graphical materials.)
   2. Author(s) of copyrighted materials should seek permission from their respective Faculty Tuition Committee or Management Committee, who, on behalf of UFS, may grant permission for the material to be distributed under a more restrictive Creative Commons licence or to retain full copyright restrictions. Decisions about which combination of restrictions to apply in the chosen Creative Commons licence and when to retain all-rights reserved copyright will be left to the author and the relevant Committee.
   3. Where it is the desire of the IP Creator or a funder of research at below full cost to place Intellectual Property in the Public Domain and this desire is supported by IPSC, the IPSC will seek approval from the National Intellectual Property Management Office (NIPMO) to release the IP into the Public Domain, provided that:
   4. The IP falls within the ambit of the IPR Act;
   5. The IP has Commercialization prospects, or can contribute to the socioeconomic needs of South Africa; and
   6. UFS does not wish to obtain statutory protection, where this is available, or to retain ownership of the IP.
   7. Decisions taken regarding the application of a Creative Commons licence to any UFS IP will be recorded in the UFS Enterprise Content Management System, as part of the Meta data for that IP.
   8. An author must deposit an appropriate peer reviewed version of a Scholarly Publication into an officially designated Institutional Repository; or if prevented by a publisher’s copyright terms must notify the Institutional Repository in writing that they will not be doing so and the reasons for this.
   9. The University of the Free State:
      1. Recommends that Authors avoid the transfer of copyright to publishers, where the publisher does not permit archiving, re-use or sharing, as a minimum of a submitted version of a scholarly publication.
      2. Encourages authors to publish their Scholarly Publications in peer-reviewed open access journals. In this case the Author should supply the metadata to the Institutional Repository in order to maximise institutional and personal discoverability.

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| * What should the procedures be at UFS to get permission to apply a more restrictive licence? * Where should IP decisions be recorded? * Is there a central content management system? If not, is one requires? * What processes need to be followed to record licensing decisions in a central system? If there is not a central system, what recording process could be incorporated or developed?  Who would need to decide whose responsibility it is to ensure that materials that are openly licensed by UFS do not include any third-party copyrighted material?  * Should Open Access publishing be discussed in a separate section? * Does an institutional repository exist? Does it have an open licences options that can be applied to documents that are uploaded? * Does UFS have a fund to cover open access publishing? If so, the procedures to access these funds could be referred to in this document. |

## Open licensing of data

1. UFS by default requires that all data collected or created by the institution be openly licensed by applying the Creative Commons Attribution ShareAlike licence (CC-BY-SA).
2. Originators of copyrighted data should seek permission from their respective Faculty Tuition Committee or Management Committee, who, on behalf of UFS, may grant permission for the material to be distributed under a more restrictive Creative Commons licence or not to apply a licence at all where full copyright restrictions should remain. Decisions about which combination of restrictions to apply in the chosen Creative Commons licence will be left to the originator and the relevant Committee.
3. Decisions taken regarding the application of a Creative Commons licence to any UFS IP will be recorded in the UFS Enterprise Content Management System, as part of the Meta data for that IP.

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| * Would UFS make only use of Creative Common’s licences for data or include other accepted licences? * Same as above: would need a procedure in order to apply a more restrictive licence to data. * Same as above: is there a central place to store data and to indicate its licence? |

References:

<http://opendatahandbook.org/guide/en/what-is-open-data/>

<http://opendefinition.org/guide/>

<https://creativecommons.org/licenses/>

OECD. Open Content Licensing (OCL) for Open Educational Resources by Prof Brian Fitzgerald. Paper commissioned by the OECD’s Centre for Educational Research and Innovation for the project on Open Educational Resources. [www.oecd.org/edu/oer](http://www.oecd.org/edu/oer)

<http://www.iplaw.uct.ac.za/sites/default/files/image_tool/images/317/News/Archive/Open_Content_Licensing/UCTOpenAccessPolicy.pdf>

1. [*"Open Educational Resources"*](http://www.hewlett.org/programs/education-program/open-educational-resources).The William and Flora Hewlett Foundation*. Retrieved 27 March 2013*. [↑](#footnote-ref-1)
2. Wiley, D., and Green, C. (2012). Why Openness in Education? In Oblinger, D. *Game Changers: Education and Information Technologies.* Educause [↑](#footnote-ref-2)
3. Suber, P. A Very Brief Introduction to Open Access. Retrieved from http://legacy.earlham.edu/~peters/fos/brief.htm [↑](#footnote-ref-3)
4. Open Humanities Press. What is Open Access. Retrieved from: http://openhumanitiespress.org/resources.html [↑](#footnote-ref-4)
5. Open Knowledge Foundation Blog. Defining Open Data. Retrieved from http://blog.okfn.org/2013/10/03/defining-open-data/ [↑](#footnote-ref-5)
6. LinkedGov. What is Open Data-Our definition of open data. Retrieved from <http://linkedgov.org/what-is-open-data/> [↑](#footnote-ref-6)