



New Zealand Government Open Access and Licensing framework (NZGOAL)

Version 2
December 2014

New Zealand Government

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NZGOAL 2 Changelog - December 2014

Version 1 of NZGOAL was released in 2010. Version 2 was finalised in December 2014. This changelog summarises the changes in version 2:

- Removal of State Services Commission branding.
- Removal of certain content to simplify NZGOAL and make it more digestible, including shifting the more detailed summary of key aspects of New Zealand copyright law to a new and separate NZGOAL Copyright Guide, available on ict.govt.nz.
- Updating code samples for online Creative Commons licensing of copyright works to HTML 5.
- Recommending agency use of Creative Commons 4.0 International licences in preference to the Creative Commons 3.0 New Zealand licences (no retrospective licensing required).
- Updating of paragraph on status of NZGOAL to better reflect wording of Cabinet minute.
- Insertion of new paragraph on the Declaration on Open and Transparent Government and its relevance to NZGOAL.
- Updating of "Attribution requirements for datasets" Policy Principle to accommodate the Creative Commons 4.0 International licences.
- Insertion of additional paragraphs on the "Respect moral rights" Policy Principle that simplify agency consideration of moral rights issues. Equivalent simplification of Stage 5 (Moral rights check) of the NZGOAL Review and Release Process.
- Rewrite of the "Creative Commons licences" paragraphs of the "Explanation of NZGOAL Licences and Tools" section, to condense these paragraphs, make them easier to read, accommodate the Creative Commons 4.0 International licences and address liability concerns.
- Introduction of a new icon and cross-reference to online code samples for the No Known Rights statement for non-copyright material.
- Insertion of new paragraphs on CC Zero / CC0.
- Updating of the paragraphs headed "Applying the [Creative Commons] licences to copyright works constituted by, contained within or linked to from, website pages", with reference to the new HTML 5 code samples.
- Replacement of NZGOAL Review and Release Process decision tree with two new decision trees: one for copyright works, another for non-copyright material. Makes the decision-making process easier to follow (the decision trees summarise the NZGOAL Review and Release Process).
- Updating and substantial rewriting of the Appendix "Recommended Copyright and Licensing Statements, and Attribution Statements", in terms of its layout, inclusion of the new HTML 5 code samples and a new paragraph on "Applying a single Creative Commons licence to all or substantial portions of a website" (which cross-refers to NZGOAL Guidance Note 1: Website copyright statements).
- Other incidental and miscellaneous changes.

Contents

Introduction	5
Purpose.....	5
Scope.....	5
Status.....	6
Additional guidance notes.....	6
Copyright and other legal context	7
Copyright law basics.....	7
Information laws	7
NZGOAL Policy Principles.....	9
Introduction.....	9
Open access to copyright works with Creative Commons Attribution (BY) licence as default	9
Ensuring copyright ownership or right to sub-license	9
Open access to non-copyright material.....	9
Restrictions.....	10
Other Creative Commons licensing or restrictive licensing	10
Share-alike and no derivative works restrictions	11
Non-discrimination.....	11
Anonymisation.....	11
Attribution requirements for datasets	12
Protected names, emblems and trade marks.....	14
Formats	14
Respect moral rights.....	15
Digital rights management	15
Charging.....	16
Updating released copyright works and non-copyright material	16
Procuring and preparing copyright works and non-copyright material.....	16
Review and Release Process	17
Explanation of NZGOAL Licences and Tools.....	18
Introduction to NZGOAL licences and tools	18
Creative Commons licences	18
No known rights statement	21
Warning regarding liability exclusions and official information disclosures	21
Creative Commons Plus (CC+) protocol.....	22
CC Zero / CC0 (not supported).....	23

NZGOAL Review and Release Process	24
Introduction.....	24
Stage 1: Copyright-related rights evaluation	24
Stage 2: Evaluation of restrictions	27
Stage 3: Re-use rights selection	28
Stage 4: Application of Creative Commons licence or no-known-rights statement.....	28
Stage 5: Moral rights check	31
Stage 6: Format selection.....	31
Stage 7: Release	32
NZGOAL Review and Release Process Decision Trees.....	32
Appendix – Recommended Copyright and Licensing Statements, and Attribution Statements	35

Introduction

Purpose

- 1 State Services agencies generate vast quantities of copyright and non-copyright material. It is widely recognised, in New Zealand and abroad, that significant creative and economic potential may lie dormant in such material when locked up in agencies and not released on terms allowing re-use by others. That potential is two-fold:
 - (a) individuals, non-profit and commercial organisations can leverage this material for creative, cultural and economic growth, improved environmental sustainability, greater productivity, and the wider public benefit; and
 - (b) experts and others can contribute to improved policy development and more efficient financial performance by government through being able to access, manipulate and provide feedback on such material.
- 2 NZGOAL provides a means of realising this potential. It:
 - (a) sets out a series of open licensing and open access principles, for copyright works and non-copyright material respectively;
 - (b) advocates the use of:
 - (i) Creative Commons licences for those State Services agencies' copyright works which are appropriate for release and re-use; and
 - (ii) clear "no known rights" statements for non-copyright material released for re-use; and
 - (c) sets out a review and release process to guide agencies through the review of works and other material they consider ought to be released for re-use.
- 3 Version 1 of NZGOAL was released in 2010. This is version 2 of NZGOAL. Primarily it refines and simplifies NZGOAL and updates the code samples, for online releases of Creative Commons licensed works, to HTML 5. It also recommends the Creative Commons 4.0 International licences in preference to the Creative Commons 3.0 New Zealand licences but without requiring any retrospective action in relation to works already licensed under the 3.0 licences.

Scope

- 4 NZGOAL applies to State Services agencies. "State Services" is the term for a broad range of organisations that serve as instruments of the Crown in respect of the Government of New Zealand. A full list can be found on the State Services Commission website.¹ (Wider State sector and local government agencies are welcome and encouraged to apply it.)
- 5 NZGOAL covers both:
 - (a) copyright works; and
 - (b) non-copyright material,that are produced by or for such agencies, appropriate for release to the public or sections of the public and which those agencies are entitled to:
 - (c) in the case of copyright works, license (or sub-license) for re-use; and
 - (d) in the case of non-copyright material, release for re-use.
- 6 NZGOAL does not limit or otherwise affect the obligations of any agency or the rights of any person under the Official Information Act 1982, the Public Records Act 2005, the Privacy Act 1993 or any other legislation. Except for its guidance on anonymisation of datasets and other material which, once stripped of personal information, might be licensed or released, NZGOAL does not apply to personal information.

¹ See https://www.ssc.govt.nz/state_sector_organisations

- 7 While NZGOAL applies to datasets, it does not apply to software which, for example, an agency owns and may wish to release on open source terms. In such circumstances, agencies may wish to use open source software licences (such as the BSD, GPL or MIT licences).

Status

- 8 Cabinet has endorsed NZGOAL as guidance for State Services agencies to take into account when releasing their copyright works and non-copyright material publicly for re-use. In particular, Cabinet has:
- (a) **directed** all Public Service departments;
 - (b) **invited** the New Zealand Police, the New Zealand Defence Force, the Parliamentary Counsel Office, and the New Zealand Security Intelligence Service;
 - (c) **agreed** that other State Services agencies (other than school boards of trustees) be strongly encouraged; and
 - (d) **invited** the Minister of Education to invite school boards of trustees, to:
 - (e) familiarise themselves with NZGOAL, in its current form and as may be updated from time to time; and
 - (f) take NZGOAL into account when releasing copyright material and non-copyright material to the public for re-use.²
- 9 NZGOAL's importance was strengthened in August 2011 when Cabinet approved the Declaration on Open and Transparent Government,³ through which the Government committed to actively releasing high value public data. "Public data" refers to non-personal and unclassified data. Cabinet:
- (a) **directed** all Public Service departments, the New Zealand Police, the New Zealand Defence Force, the Parliamentary Counsel Office, and the New Zealand Security Intelligence Service;
 - (b) **encouraged** other State Services agencies; and
 - (c) **invited** State Sector agencies, to commit to releasing high value public data actively for re-use, in accordance with the Declaration and New Zealand Data and Information Management Principles, "and in accordance with the NZGOAL Review and Release process".

Additional guidance notes

- 10 Version 1 of NZGOAL contemplated that guidance notes would be released over time which:
- (a) explore, in greater detail, some of the issues addressed or raised in NZGOAL; and
 - (b) address operational or technical issues which arise in practice.
- 11 Prior to the release of this version 2 of NZGOAL, four Guidance Notes were released, covering website copyright statements, file formats, procuring copyright works, and databases and datasets. Upon the release of version 2 of NZGOAL, an additional Guidance Note was released which compares the Creative Commons 3.0 New Zealand licences and the 4.0 International licences. An NZGOAL Copyright Guide was also released.⁴ These Guidance Notes, the NZGOAL Copyright Guide and any future Guidance Notes can be found on ict.govt.nz.

² CAB Min (10) 24/5A.

³ Available at <http://ict.govt.nz/guidance-and-resources/open-government/declaration-open-and-transparent-government>

⁴ The NZGOAL Copyright Guide contains a discussion of relevant aspects of copyright law that previously was in version 1 of NZGOAL.

Copyright and other legal context

Copyright law basics

- 12 As noted above, NZGOAL covers both copyright works and non-copyright material. Given that copyright law is fundamental to the need for and operation of NZGOAL, it is appropriate to set out certain key aspects of copyright law at the outset, before launching into the NZGOAL Policy Principles.
- 13 Key aspects of copyright law relevant to NZGOAL can be summarised as follows:
 - (a) copyright is a property right that exists in certain original works, regulated by the Copyright Act 1994;
 - (b) the categories of qualifying original works are literary works (which can include datasets and databases), dramatic works, musical works, artistic works, sound recordings, films, communication works and typographical arrangements of published editions;
 - (c) generally speaking, copyright does not protect mere facts or information;
 - (d) Crown copyright is a species of copyright as set out in section 26 of the Copyright Act;
 - (e) “Crown” for Copyright Act purposes means Her Majesty the Queen in right of New Zealand and includes a Minister of the Crown, a government department, and an Office of Parliament; it does not include Crown entities or State owned enterprises; their qualifying original works are subject to what one might call regular copyright, not Crown copyright;
 - (f) while copyright (Crown or regular) exists in most original works created by State services agencies, the Act provides that no copyright exists in certain governmental and Parliamentary materials, such as legislation, court judgments and Parliamentary debates;
 - (g) it is important to distinguish between copyright in original works and the licensing of works in which copyright exists, as they are conceptually distinct; when, for example, a department licences a copyright work that the department owns, the department retains its copyright ownership but grants permissions to do things with the work (such as copy it) which would otherwise be prohibited;
 - (h) unless entitled to do so by a copyright licence or statutory provision, a person infringes copyright in a work when he or she does any of a number of “restricted acts”, the most common of which is copying the work or a substantial part of it; and
 - (i) in certain specific circumstances, those who deal in or publish copyright works need to respect authors’ so-called “moral rights” which, as explained in more detail in paragraphs 46-48 below and the NZGOAL Copyright Guide, are a set of statutory rights in the Copyright Act that are personal to the authors or other creators of original works.
- 14 It is important to emphasise at the outset that not all government held or created material qualifies for copyright protection. An informational or other product, work or dataset only qualifies if, first, it falls within one of the categories mentioned in paragraph 13(b) above, and second, the period of copyright protection that applies to it has not expired. To assume that all information and data held by State Services agencies is protected by copyright can lead to error. Care needs to be taken when talking about an agency’s “copyright material”.

Information laws

- 15 Other relevant legal context includes the Official Information Act 1982, the Public Records Act 2005 and the Privacy Act 1993. These Acts are of general application to State Services agencies. A legal review has revealed no inconsistency between the use of Creative Commons licences and this legislation.

- 16 At the same time, there are two ways in which NZGOAL can be seen to intersect with such laws that are worth noting.
- 17 First, copyright works released to a person following a request under the Official Information Act do not lose their copyright protection by virtue of being so released nor does the fact of release entitle the recipient to use the works in a way which would infringe copyright. The recipient needs a licence to re-use the works in any way which would infringe copyright in the works. NZGOAL provides a framework within which licences can, at an agency's discretion, be granted, either proactively or upon request. Indeed, to some extent NZGOAL can be seen as a logical extension of the principle of availability in section 5 of the Act.⁵
- 18 Second, NZGOAL does not extend to personal information. It is for this reason that no issues arise under the Privacy Act. Agencies should, nevertheless, be mindful of the potential for seemingly anonymised datasets, when combined, to reveal personal information, an issue which is addressed within the NZGOAL Policy Principles at paragraph 29 below.

⁵ Where appropriate, agencies may even wish to start applying NZGOAL when releasing copyright works and non-copyright material in response to requests under the Act. That is an administrative decision for agencies.

NZGOAL Policy Principles

Introduction

- 19 State Services agencies are strongly encouraged to apply the following principles in relation to:
- (a) licensing their copyright works for re-use; and
 - (b) enabling public access to and re-use of their non-copyright material.
- 20 The licences and tools referred to in this section are explained in the next section on NZGOAL licences and tools.

Open access to copyright works with Creative Commons Attribution (BY) licence as default

- 21 Unless a restriction in paragraph 24 applies, State Services agencies should make their copyright works which are or may be of interest or use to people available for re-use on the most open of licensing terms available within NZGOAL (the **Open Licensing Principle**).⁶ To the greatest extent practicable, such works should be made available online. The most open of licensing terms available within NZGOAL is the Creative Commons Attribution (BY) licence.

Ensuring copyright ownership or right to sub-licence

- 22 Agencies should only license a copyright work for re-use by others where they:
- (a) own the copyright in the relevant work and have not exclusively licensed it to a third party; or
 - (b) to the extent they do not own the copyright, either:
 - (i) can first obtain an assignment of copyright from the relevant copyright owner(s);⁷ or
 - (ii) have or can first obtain a right to sub-licence the work (or relevant elements of the work)⁸ on the terms of their preferred licence (such as a Creative Commons licence) from the relevant copyright owner(s).

Open access to non-copyright material

- 23 Unless a restriction in paragraph 24 applies, State Services agencies should:
- (a) provide online public access to non-copyright material that is or may be of interest or use to people;
 - (b) allow them to copy and re-use such material without restriction; and
 - (c) include, at the point of release (and in the released material itself if practicable), the “no known rights” statement set out at paragraph 80 below or a statement in broadly equivalent terms
- (the **Open Access Principle**).⁹

⁶ The Creative Commons Attribution (BY) licence is recommended as the default licence so as to promote the greatest re-use of State Services agencies' copyright works and interoperability between the different licence types.

⁷ Note that, under section 114 of the Copyright Act 1994, an "assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor".

⁸ The reference here to obtaining a right to sub-licence relevant elements of a work reflects the possibility that an agency may hold an overall work which consists of different, distinct copyright elements, some of which the agency owns, and others of which third parties own.

⁹ A statement in broadly equivalent terms could be Creative Commons' Public Domain Mark: see <http://creativecommons.org/publicdomain/mark/1.0/>. The Public Domain Mark is not considered to be as simple as the no known rights statement but whether an agency wishes to use it for non-copyright material, in preference to the no known rights statement, is a decision for the agency.

Restrictions

- 24 Neither the Open Licensing Principle nor the Open Access Principle applies where licensing a copyright work with the Creative Commons Attribution (BY) licence (in the case of copyright works) or providing open access to and allowing re-use of other material (in the case of non-copyright material) would:
- (a) be contrary to legislation, court order or specific government policy;
 - (b) constitute a breach of contract, breach of confidence, breach of privacy, disclosure of a trade secret or other actionable wrong;
 - (c) be contrary to an agency's own legitimate commercial interests or business model (such as Standards New Zealand's charging for standards);¹⁰
 - (d) result in the publication of a patentable invention for which the agency proposes or may wish to apply for a patent;¹¹
 - (e) be contrary to the public interest, where it exists, in having a single, authoritative and non-adapted version of a specific data source;
 - (f) result in the release of an incomplete work or incomplete material where the agency considers, acting reasonably, that:
 - (i) such release would be:¹²
 - materially misleading; or
 - likely to cause or contribute to material error on the part of recipients or licensees; and
 - (ii) such risks could not be adequately mitigated by the use of disclaimers or other statements at the point of release and/or within the work or material regarding the incompleteness of the work or material;
 - (g) threaten the control over and/or integrity of Māori or other traditional knowledge or other culturally sensitive material;
 - (h) jeopardise the economic or other potential to Māori or other indigenous groups of Māori or other traditional knowledge or other culturally sensitive material;¹³ or
 - (i) otherwise conflict with the existence of a good reason under sections 6, 7 or 9 of the Official Information Act for withholding release of the work or material if the work or material were requested under that Act.

Other Creative Commons licensing or restrictive licensing

- 25 Where, in the case of a copyright work, one of the above restrictions applies but an agency may still be able to license the copyright work on Creative Commons terms (the restrictions in paragraphs 24(c) and 24(e) being the most likely candidates), the agency should consider adopting one of the following licences for the work, taking into account the principles in paragraphs 27-28 below:
- (a) Creative Commons Attribution-Noncommercial (BY-NC);

¹⁰ It is acknowledged that open access and licensing may, to varying extents, be inconsistent with the business models of certain Crown entities. However, it does not follow that they ought therefore to be beyond the scope of NZGOAL. There may well be instances where it is not contrary to a Crown entity's business model to release copyright works on, for example, Creative Commons Attribution (BY) terms or where wider social good questions properly inform decisions on release. There may also be instances where a restriction does apply but that restriction does not preclude release on terms that allow all but commercial uses.

¹¹ In such cases, it is important that the invention not be published, as publication prior to filing a patent application will in all likelihood render the invention non-patentable. See generally the information on patents on the website of the Intellectual Property Office of New Zealand: <http://www.iponz.govt.nz/cms/patents/what-is-a-patent>

¹² Note that this restriction is not intended to suggest any general prohibition on the release of incomplete information, data or works. The restriction is only relevant where such release would give rise to one of the listed situations.

¹³ Any agency that is in any doubt as to whether this or the previous restriction applies is advised to consult Te Puni Kokiri before release.

- (b) Creative Commons Attribution-No Derivative Works (BY-ND);
 - (c) Creative Commons Attribution-Noncommercial-No Derivative Works (BY-NC-ND);
 - (d) Creative Commons Attribution-Share Alike (BY-SA); or
 - (e) Creative Commons Attribution-Noncommercial-Share Alike (BY-NC-SA).
- 26 Where no other Creative Commons licence can be applied, the agency may wish to consider making the work available pursuant to a more restrictive licence. This is expected to be the exception rather than the norm.

Share-alike and no derivative works restrictions

- 27 When considering whether to use a form of Creative Commons licence that either imposes an obligation on licensees to share-alike or prohibits the creation of derivative works (adaptations), agencies should take the following principles into account:
- (a) both the obligation to share-alike and the prohibition on the making of derivative works (adaptations) may have the adverse effect of stifling creativity and/or economic exploitation by licensees (the **Creativity Principle**); and
 - (b) the prohibition on the making of derivative works (adaptations) may only be objectively justifiable where there are real and not trifling concerns about the authenticity and integrity of the original work or elements of it or the reputation of the source agency or wider government (the **Authenticity Principle**).

Non-discrimination

- 28 Except where necessary to protect their own or others' commercial or other interests, agencies should not discriminate, when selecting an NZGOAL licence, between individual, not-for-profit and commercial uses of the relevant copyright works (the **Non-Discrimination Principle**).

Anonymisation

- 29 Particular care needs to be taken when an agency is considering the release of a dataset which once contained personal information but which the agency believes it has successfully anonymised, leading it to conclude that there would be no release of personal information. Before releasing apparently anonymised datasets, agencies should give serious consideration to:
- (a) whether its anonymisation processes are sufficiently robust to protect individuals' privacy, from the perspectives of both:
 - (i) interrogation of the particular dataset in question; and
 - (ii) interrogation of that dataset in conjunction with other datasets which are either currently publicly available or which might become publicly available in the future;
 - (b) the legal position that:
 - (i) "personal information" is defined in the Privacy Act 1993 to mean "information about an *identifiable* individual"; and
 - (ii) that definition "only requires that the information be about an identifiable individual not that the individual be identified in the information", such that information may be "personal information" where its combination with some extrinsic link, knowledge or circumstances – including combinations with other datasets – enables one or more persons to be identifiable.¹⁴

¹⁴ See *Privacy Law and Practice* (LexisNexis, loose-leaf service, Service 55) at p. 152,403 and *Siewwrights v Apostolakis* CIV-2005-485-000527, Ronald Young J, Dr A Trlin and G Kerr.

- 30 Agencies requiring assistance with the anonymisation of datasets that contain personal information may wish to:
- (a) consult international literature on the subject;¹⁵ and/or
 - (b) contact the Office of the Privacy Commissioner or Statistics New Zealand.¹⁶
- 31 Agencies should also bear in mind, when considering issues of anonymisation, that photographic and some satellite and geospatial images may contain personal information. Agencies may need to take care when releasing such images to ensure there is no unauthorised release or use of personal information or other interference with people's legitimate privacy interests.

Attribution requirements for datasets

- 32 All Creative Commons copyright licences contain attribution requirements:
- (a) The Creative Commons 3.0 New Zealand licences require licensees (i.e., users) to:
 - (i) make reference to the licence on all copies of the work, adaptations of the work and collections containing the work that they (the licensees/users) publish, distribute, perform or otherwise disseminate or make available to the public;
 - (ii) recognise the licensor's / original author's right of attribution (right to be identified) in the work, any adaptation of the work or any collection containing the work *that they publish, distribute, perform or otherwise disseminate to the public* and give credit to the licensor / original author as appropriate to the media used (unless the licensor / original author asks for such credit to be removed); and
 - (iii) to the extent reasonably practicable, keep intact all notices that refer to the licence, in particular the URI, if any, that the licensor specifies to be associated with the work, unless such URI does not refer to the copyright notice or licensing information for the work.
 - (b) The Creative Commons 4.0 International licences require licensees (i.e., users), when they share the licensed material (including in modified form), to:
 - (i) retain, if supplied by the licensor with the licensed material: identification of those designated to receive attribution, a copyright notice, a notice that refers to the Creative Commons licence, a notice that refers to the disclaimer of warranties in the licence, and a URI or hyperlink to the licensed material to the extent reasonably practicable;
 - (ii) indicate if the licensee modified the licensed material and retain an indication of any previous modifications; and
 - (iii) indicate that the licensed material is licensed under the applicable Creative Commons licence, including the text of, or the URI or hyperlink to, the licence.
- 33 At the same time, any or all of these attribution requirements can be waived by the licensor (i.e., licensing agency).

¹⁵ See, for example, the United Nations Economic Commission for Europe Conference of European Statisticians' *Managing Statistical Confidentiality and Microdata Access: Principles and Guidelines of Good Practice* (2007), available at: http://www.unece.org/stats/publications/Managing_statistical_confidentiality_and_microdata_access.pdf; and ESSNet's *Handbook on Statistical Disclosure Control* (January 2010, version 1.2), available at http://neon.vb.cbs.nl/casc/.%5CSDC_Handbook.pdf; see also the "Anonymization" section of the International Household Survey Network (IHSN) website at: <http://www.ihsn.org/HOME/node/118>; and the UK Information Commissioner's "Anonymisation: managing data protection risk code of practice" (November 2012) available at http://ico.org.uk/for_organisations/data_protection/topic_guides/anonymisation.

¹⁶ Statistics New Zealand has produced a 'Confidentiality standard for microdata access', a 'Confidentialised unit record file (CURF) production guide' and a 'Confidentiality best practices manual' which, while not published, are available to agencies on request.

34 Copyright datasets released on terms allowing re-use are more likely than other copyright works to be combined or mashed-up with other datasets, either wholly or partially. In some instances data from multiple datasets, potentially large numbers of datasets, may feed into an end application. This may be particularly so in applications of a scientific, technological or geographic nature. In such situations compliance with multiple attribution requirements, one to each source, may be burdensome for researchers or the developers of such applications, at least where the attribution requirements are more than minimal and non-standardised. This has been referred to in the literature as the problem of “attribution stacking”.

35 For these reasons, State Services agencies releasing copyright datasets under Creative Commons licences should:

- (a) consider whether there is any prospect that those datasets or portions of them will be combined with one or more other datasets or portions of other datasets; and
- (b) if there is any such prospect, keep attribution requirements (if any) to a minimum, requiring at most a statement that:
 - (i) identifies the agency as a data source; and
 - (ii) contains the agency’s URI that contains licensing information for the data but only if it is reasonably practicable for the end user to refer to the URI in its application, tool, system, programme, research or other use.

36 A statement of the kind referred to in paragraph 35(b), which also accommodates wholesale copying of the dataset without combination with other datasets (which would not give rise to attribution stacking problems), could be along the following lines:

If you publish, distribute or otherwise disseminate this work to the public without adapting it, the following attribution to [*name of agency*] should be used:

‘Source: [*name of agency*] and licensed by [*name of agency*] for re-use under the [*name of and link to applicable Creative Commons licence*].’

If you adapt this work in any way or include it in a collection, and publish, distribute or otherwise disseminate that adaptation or collection to the public, the following attribution to [*name of agency*] should be used:

‘This [*work/product/application/etc*] uses data sourced from [*name of agency*].’

37 An end user who, for example, develops a web application that combines that dataset with other data sources would then be able to include a brief statement somewhere on its website (e.g., in its footer) such as this (the agency names are fictitious):

“This application uses data sourced from Geo Agency, Met Agency, CRI Agency.”

In this example, the names of the agencies could be deep-linked back to the relevant pages on each agency’s or other website on which the original data sources can be found. (A “deep link” is a link to a specific page or resource within a website that is not the homepage.)

38 Alternatively, the end user may wish to include an even briefer statement somewhere on its website such as this:

“This application uses data from various sources.”

The words “various sources” could then be linked to a web page that lists all the sources in full, with links to the locations of the original data sources.

39 Nothing in paragraph 35:

- (a) limits an agency’s right to waive *all* attribution requirements that would otherwise apply under a selected Creative Commons licence;
- (b) limits an agency’s right to positively request that there be no attribution; or

- (c) affects the legal proposition that where a user copies less than a “substantial part” of a copyright dataset, a licence for such use is not required as such copying, without a licence, would not constitute an infringement of copyright.

Protected names, emblems and trade marks

- 40 State Services agencies that are licensing their copyright works for re-use or enabling public access to and re-use of their non-copyright material, should take care to ensure that the relevant works or material and their licensing or release statements:
 - (a) do not suggest that any names or emblems protected under the Flags, Emblems, and Names Protection Act 1981 or other legislation can be reproduced in any way that would infringe such legislation;¹⁷ and
 - (b) do not contain any third party trade marks where the reproduction of such trade marks would infringe the trade mark owner’s intellectual property rights or any contractual restriction on reproduction (for example, a trade mark may be a copyright artistic work, reproduction of which without permission would constitute copyright infringement).
- 41 To the extent that protected names or emblems are included within copyright works or non-copyright material made available for re-use, State Services agencies should:
 - (a) in the case of copyright works, either:
 - (i) include a statement (within the copyright and licensing statement) that those names or emblems may not be used in any way which infringes any provision of the Flags, Emblems, and Names Protection Act 1981; or
 - (ii) exclude them from the scope of the licence granted; or
 - (b) in the case of non-copyright material, either:
 - (i) include a statement (in the “no known rights” statement) that those names or emblems may not be used in any way which infringes any provision of the Flags, Emblems, and Names Protection Act 1981; or
 - (ii) exclude them from the scope of the no known rights statement.
- 42 When deciding which approach to take in the case of copyright works, agencies should consider the practical implications of the alternatives. Where it is likely that users of a licensed copyright work will wish to copy it completely (e.g., by photocopying it or reproducing it in its entirety on a website), excluding emblems and logos from the scope of the licence may be impractical or unduly burdensome for users because, strictly speaking, users may need to white out the emblems and logos before reproducing the work. In such circumstances, it may be preferable only to make the statement referred to in paragraph 41(a)(i).
- 43 To the extent that trade marks of a kind referred to in paragraph 40(b) are included within copyright works or non-copyright material made available for re-use, State Services agencies should expressly exclude them from the scope of any:
 - (a) licence allowing re-use, in the case of copyright works; and
 - (b) “no known rights” statement, in the case of non-copyright material.

Formats

- 44 When licensing copyright works and releasing non-copyright material for re-use, agencies should:
 - (a) consider the formats in which they ought to be released, taking into account, where relevant, the wishes of those who will or are likely to re-use the works or material;

¹⁷ Among other things, this Act prohibits certain unauthorised uses of Royal and vice-regal emblems, State emblems, words suggesting Royal or government patronage, and advertising claim government patronage. See, in particular, sections 12-15 of the Act at <http://www.legislation.govt.nz/act/public/1981/0047/latest/whole.html#DLM52214>

- (b) release them in the formats they know or believe are best suited for interoperability and re-use and are searchable and indexable by search engines; and
 - (c) in the case of datasets, add their details into data.govt.nz.
- 45 When releasing works or material in proprietary formats, agencies should also release the works or material in open, non-proprietary formats (the **Open Format Principle**).

Respect moral rights

- 46 Moral rights are a set of statutory rights in the Copyright Act that are personal to the authors or other creators of original works. They are distinct from the exclusive and economic property rights conferred on the owners of copyright works. In the New Zealand State Services context, where the vast majority of candidate copyright works will be literary works, the most potentially relevant moral rights in the Copyright Act will be:¹⁸
- (a) the right to be identified as author (section 94); and
 - (b) the right to object to derogatory treatment of a work (section 98).
- 47 More often than not, however, these rights will not arise in the context of copyright works that State Services agencies own and license to others for re-use, the reasons for which are set out in the NZGOAL Copyright Guide. To the extent that they do arise (and there are circumstances where they may arise), they should be respected. In essence, this means that:
- (a) where an author has the right to be identified as author *and* asserts that right, an agency releasing the work online for re-use should identify the author; and
 - (b) where an author has the right not to have his or her work subjected to a derogatory treatment, agencies should take care to ensure that they do not subject the work to such treatment.
- 48 Whilst a number of legal questions may need to be considered when addressing moral rights questions, the simplest way for a licensing agency to check whether there *might* be an issue is to ask:
- (a) whether any author of a work, that the agency proposes to release for re-use, has asserted a 'right to be identified as the author of the work'; and
 - (b) whether the version of the work to be released could be considered a 'derogatory treatment' of the original work (that is, a treatment that is prejudicial to the honour or reputation of the author, whether by distortion or mutilation of the work or otherwise).
- 49 If the answer to these questions is no, the agency can proceed without considering moral rights any further. If the answer to either question is yes, the agency should consult the moral rights section in the NZGOAL Copyright Guide and discuss the matter with its legal team.¹⁹ In the vast majority of cases, no moral rights issues will arise.

Digital rights management

- 50 State Services agencies should not:
- (a) impose digital rights management technologies on either copyright works or non-copyright material which they make available for re-use; or

¹⁸ Other moral rights may be relevant in a minority of circumstances but are not considered here. Those moral rights are the right not to have a literary, dramatic, musical, or artistic work or a film falsely attributed to a person as author or director (section 102), the right not to have a literary, dramatic, or musical work falsely represented as being an adaptation of a work of which the person is the author (section 103), certain rights against false representations as to artistic works (section 104) and certain privacy rights in respect of photographs and films commissioned for private and domestic purposes (section 105).

¹⁹ As far as the authors are aware, in the first four years after NZGOAL's release, there was not a single instance of moral rights assertion or infringement.

- (b) make copyright works or non-copyright material available for re-use when such works or material are encumbered by externally-imposed digital restrictions.²⁰

Charging

- 51 Charging by State Services agencies for people's use and re-use of copyright works and non-copyright material is generally discouraged. Before making any decision to do so, State Services agencies should take into account:
- (a) the Treasury's "Guidelines for Setting Charges in the Public Sector" (December 2002);²¹
 - (b) the Auditor-General's "Charging Fees for Public Sector Goods and Services" (June 2008);²²
 - (c) the presumption that, where the costs of dissemination are low or it is economically inefficient to put in place and administer a charging structure, recipients and licensees should not be charged; and
 - (d) whether the creativity and/or national public benefit that could arise from allowing re-use without charge could be significantly prejudiced by the imposition of a charge.
- 52 To the extent that State Services agencies do propose to impose a charge for copyright works, they are encouraged:
- (a) to consider whether to allow non-commercial use without charge, by use of the Creative Commons Attribution-Noncommercial (BY-NC) licence and, if so, whether the Creative Commons Plus (CC+) protocol²³ might offer them a convenient means of charging for commercial use;
 - (b) to limit charges to what is reasonably necessary to meet the costs of distribution;
 - (c) to use technology to reduce such costs to the extent practicable; and
 - (d) to seek legal advice on the most appropriate choice of NZGOAL licence, whether Creative Commons or restricted.
- 53 Paragraphs 51-52 are subject to any statutory, policy or commercial imperatives to the contrary.

Updating released copyright works and non-copyright material

- 54 Where State Services agencies have released copyright works or non-copyright material on terms allowing re-use, and the released copyright works or material are superseded by a later version or found to contain errors or other inaccuracies, agencies should use all reasonable endeavours to release the later versions or inform the public of the errors or inaccuracies, as applicable.

Procuring and preparing copyright works and non-copyright material²⁴

- 55 When procuring, preparing or commissioning copyright works and non-copyright material, State Services agencies are encouraged to consider whether such works and material should, in accordance with these Policy Principles, be released to the public for re-use.

²⁰ For more information on digital rights management and trusted computing issues in governmental contexts, see the State Services Commission's "Trusted Computing and Digital Rights Management Principles & Policies" (September 2006), available at <http://ict.govt.nz/guidance-and-resources/information-management/privacy-and-security/trusted-computing-and-digital-rights-management/>, and "Trusted Computing and Digital Rights Management Standards and Guidelines" (July 2007), available <http://ict.govt.nz/guidance-and-resources/information-management/privacy-and-security/trusted-computing-and-digital-rights-management/guidelines-trusted-computing-digital-/>.

²¹ Available here: <http://www.treasury.govt.nz/publications/guidance/planning/charges>

²² Available here: <http://oag.govt.nz/2008/charging-fees/docs/charging-fees.pdf>

²³ The Creative Commons Plus (CC+) protocol is discussed at paragraphs 88-89 below.

²⁴ Further guidance on this topic can be found in NZGOAL Guidance Note 3: Procuring Copyright Works (August 2013) at <http://ict.govt.nz/guidance-and-resources/open-government/nzgoal/nzgoal-guidance-notes/>

- 56 Where such works and material should be released to the public for re-use, State Services agencies should, where applicable, consider the steps that may be required as part of their procurement and contracting processes to ensure they have the relevant rights to so release. Such steps may include:
- (a) ensuring the agency owns the copyright in any relevant commissioned copyright works or otherwise obtains a broad licence from the copyright owner allowing the agency to sub-license the works on Creative Commons terms (or more restricted terms where the Creative Commons model is not appropriate), by specifying this as a requirement in procurement documentation (if any) and drafting contractual provisions accordingly;
 - (b) ensuring, where practicable and relevant, that non-copyright material is not subject to either confidentiality obligations owed to third parties²⁵ or other contractual restrictions; and
 - (c) ensuring that procured or commissioned copyright works or non-copyright material are not encumbered by externally-imposed digital restrictions, by specifying this as a requirement in procurement documentation (if any) and drafting contractual provisions accordingly.
- 57 Agencies are also advised to be cautious of provisions which consultants or researchers may endeavour to include in agreements that would require agencies to co-brand reports, research papers or other outputs. The existence of co-branding can raise downstream licensing complexities which it may be preferable to avoid through not accepting such provisions in the first place.
- 58 Paragraphs 55-57 are subject to any statutory, policy or commercial imperatives to the contrary.

Review and Release Process

- 59 State Services agencies should ensure that the NZGOAL Review and Release Process has been followed prior to:
- (a) the release for re-use of what they believe to be copyright works on the terms of either a Creative Commons licence or a more restrictive licence; or
 - (b) the release for re-use of material in which they believe there is no copyright or other intellectual property rights related restrictions.
- 60 Agencies may need to consult their legal teams when undertaking the NZGOAL Review and Release Process.
- 61 Before licensing a copyright work on Creative Commons terms, State Services agencies should also take into account:
- (a) the fact that the licences are stated to be for the duration of copyright in the work; and
 - (b) the likelihood that, for all practical intents and purposes, they are irrevocable.²⁶
- 62 At the same time, it may also be noted that if a licensee breaches the terms of the applicable Creative Commons licence, the licence to that person terminates automatically.²⁷

²⁵ The point here is not to suggest that truly commercially sensitive or confidential material be released to the public for re-use, but to be aware that contractual confidentiality provisions can be used as a device to restrict circulation of material which may not in fact be sensitive.

²⁶ The licences are likely to be irrevocable either because they are contractual as opposed to bare licences (an issue which, in this specific context, has not been determined by the courts) or pursuant to the doctrine of estoppel. To avoid doubt, ordinarily the likely irrevocable nature of Creative Commons licences ought not to be a cause for concern. It is, however, an important consideration to take into account prior to licensing.

²⁷ Under the Creative Commons 4.0 International licences, a licensee's right to use the licensed material reinstates if the breach is cured within 30 days of the licensee's discovery of the breach or if expressly reinstated by the licensor.

Explanation of NZGOAL Licences and Tools

Introduction to NZGOAL licences and tools

- 63 The licences and tools recommended by NZGOAL comprise:
- (a) the six Creative Commons licences; and
 - (b) a template “no known rights” statement for non-copyright material.²⁸
- 64 The Creative Commons licences are expected to cover the clear majority of State Services agencies’ copyright licensing requirements and, over time, to result in considerably greater consistency in licensing approaches across the State Services.
- 65 The no known rights statement enables agencies to specify that material has no copyright or other intellectual property rights and may be re-used without restriction. It can be used for works and material which:
- (a) are not copyright works because they are not qualifying works under the Copyright Act, such as Bills, Acts, regulations, bylaws, NZ Parliamentary debates, select committee reports laid before the House, court and tribunal judgments, and reports of Royal commissions, commissions of inquiry, ministerial inquiries, or statutory inquiries; or
 - (b) are no longer copyright works in the sense that the relevant term of copyright protection has expired.
- 66 To avoid doubt, the no known rights statement is not intended to be used for copyright datasets and databases.
- 67 NZGOAL also supports use of the Creative Commons Plus (CC+) protocol for the probably rare circumstances in which a State Services agency considers a Creative Commons non-commercial and/or no derivatives licence to be appropriate and wishes to adopt a practical means by which users can ascertain the separate terms for commercial use or use allowing the creation of adaptations.
- 68 The remainder of this section explains:
- (a) the Creative Commons licences;
 - (b) the no known rights statement; and
 - (c) the Creative Commons Plus (CC+) protocol.
- It also comments briefly on the Creative Commons CC0 ('CC Zero') tool and why NZGOAL does not support it.

Creative Commons licences

The genesis and aim of Creative Commons

- 69 Creative Commons is a non-profit organisation founded in the United States in 2001 by proponents of reduced legal restrictions on the sharing and use of copyright works. Headquartered in California, it also has affiliate organisations around the world. The New Zealand affiliate is Creative Commons Aotearoa New Zealand.
- 70 Creative Commons aims to establish a middle way between full copyright control and the uncontrolled uses of intellectual property. To do so, it provides a range of copyright licences, freely available to the public, which allow those creating intellectual property to mark their work with the freedoms they want it to carry. As Creative Commons puts it on its website:

²⁸ After NZGOAL was first released, Creative Commons developed a Public Domain Mark that can be used to denote that specified material is free of known copyright restrictions: <http://creativecommons.org/choose/mark/>. The Public Domain Mark is not considered to be as simple as the no known rights statement but whether an agency wishes to use it for non-copyright material, in preference to the no known rights statement, is a decision for the agency.

"Our tools give everyone ... a simple, standardized way to keep their copyright while allowing certain uses of their work — a “some rights reserved” approach to copyright — which makes their creative, educational, and scientific content instantly more compatible with the full potential of the internet. The combination of our tools and our users is a vast and growing digital commons, a pool of content that can be copied, distributed, edited, remixed, and built upon, all within the boundaries of copyright law."

International standardisation

- 71 The original Creative Commons licences were “ported” to the laws of a large number of jurisdictions, including New Zealand.²⁹
- 72 More recently, Creative Commons has developed a non-ported but internationally compatible version of its licences, the Creative Commons 4.0 International licences. These licences were developed after wide-ranging international consultation, including with New Zealand through Creative Commons Aotearoa New Zealand, and were released in November 2013. They are compatible with New Zealand law. For the reasons discussed in NZGOAL Guidance Note 5: Comparison of the Creative Commons 3.0 New Zealand licences and the 4.0 International licences,³⁰ the 4.0 International licences are recommended for use by agencies in preference to the 3.0 New Zealand licences.
- 73 It is emphasised that there is nothing 'wrong' with the 3.0 New Zealand licences. They were regarded as 'best of breed' when they were launched and they were (and still are) fit for government licensing needs. Agencies are free to continue to use the 3.0 New Zealand law licences if they wish. It is recognised, for example, that some agencies may have put licensing processes in place, using the 3.0 New Zealand licences, that they may not wish to change in a hurry. Note also that NZGOAL's preference for the 4.0 International licences does not mean that works already licensed under a Creative Commons 3.0 New Zealand licence need to be re-licensed with a 4.0 International licence. There is no need for that.

The licences

- 74 There are six Creative Commons licences. The licences all confer a set of baseline rights on licensees (e.g., as to copying, use and distribution) and a set of baseline obligations and restrictions (e.g., licensees cannot sublicense the licensed work and they must not falsely attribute the work to someone else).
- 75 All of the licences also contain one or more "licence elements". There are four Creative Commons licence elements:³¹



Attribution

This means that others must credit you as the original creator of the work. All Creative Commons licences require users to provide attribution.



NoDerivatives

This means that others can share your work, but they must not change it. Note that users still have the range of use rights granted to them under the Copyright Act 1994.



NonCommercial

This means that others may not share, adapt or reuse your work if their use is primarily intended for commercial advantage or monetary compensation.



ShareAlike

This means that those who adapt or remix your work must use the same or equivalent Creative Commons licence on any derivative works they share.

²⁹ The reference here to “porting” means ensuring the licences are compatible with a jurisdiction’s domestic law.

³⁰ Available at <http://www.ict.govt.nz/guidance-and-resources/open-government/nzgoal/nzgoal-guidance-notes/>

³¹ Some of the licence descriptions here are based on the descriptions at creativecommons.org.nz and creativecommons.org which, in turn, are licensed under a Creative Commons Attribution 3.0 New Zealand licence and a Creative Commons Attribution 4.0 International licence, respectively.

- 76 The Attribution element is common to all of the licences. The other three elements are used in different combinations across five out of the six licences.
- 77 The six licences, and their combination of licence elements, are summarised below. Note that, in all cases, Crown copyright or other copyright in the subject material is preserved. There is no waiving or abandonment of copyright. The effect of the licences is to allow certain forms of copying, distribution, use and adaptation. The particular rights and conditions depend on the applicable licence elements.



**Attribution
CC-BY**

This licence lets others distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you for the original creation.

[3.0 New Zealand](#) | [4.0 International](#)



**Attribution-NonCommercial-
NoDerivs
CC-BY-NC-ND**

This is 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.

[3.0 New Zealand](#) | [4.0 International](#)



**Attribution-NonCommercial
CC-BY-NC**

This licence lets others remix, tweak, and build upon your work non-commercially with credit to you (their new works must also be non-commercial).

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**Attribution-ShareAlike
CC-BY-SA**

This licence lets others remix, tweak, and build upon your work even for commercial purposes, as long as they credit you and license their new creations under the same terms.³²

[3.0 New Zealand](#) | [4.0 International](#)



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**Attribution-NonCommercial-
ShareAlike
CC-BY-NC-SA**

This licence lets others remix, tweak, and build upon your work non-commercially, as long as they credit you and license their new creations under the same terms.³²

[3.0 New Zealand](#) | [4.0 International](#)

- 78 For a down to earth and entertaining description of the six different licences, take a look at the "Creative Commons Kiwi" video, available online at www.creativecommons.org.nz.³³



³² Note that the obligation to license new creations on the same terms only applies where the person making the new creation shares that creation with others. If a licensee makes a new creation purely for personal purposes, the obligation to share alike on the same terms does not apply.

³³ A larger version of the video can be found at <http://vimeo.com/25684782>. In addition to viewing it, you can download it and re-use it as you wish. It is licensed under a Creative Commons Attribution 3.0 New Zealand licence.

79 Sometimes agencies express concern over the potential liability risks of licensing copyright works, such as copyright datasets, for re-use. The Creative Commons licences all contain a broad disclaimer of warranties and a broad exclusion of liability. See section 5 of each licence for the specific wording.³⁴ Whilst the existence of the disclaimer and exclusion may not prevent a complaint or claim being made, they ought to provide agencies with a solid defence to claims made by licensees. Should an agency wish to emphasise the disclaimer and exclusion, it can always include an additional notice to licensees at the point of release (e.g., on its website) and/or on or within the released work itself (where practicable).

No known rights statement

80 State Services agencies releasing material which is not subject to copyright or other intellectual property rights are encouraged to add a statement at the point of release (and in the material itself if practicable) to this effect:

No known rights

To the best of [name of agency]’s knowledge, under New Zealand law:

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

[[Name of agency] 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.]

81 The last paragraph in square brackets is optional. Its purpose is to protect the releasing agency from liability in the event that:

- (a) there are, in fact, intellectual property-related restrictions on copying or other re-use of the released material; or
- (b) someone relies on the released material in a way which subsequently causes harm (e.g., economic loss).

82 It is for the releasing agency to determine whether there is any risk warranting the inclusion of that paragraph.

83 If agencies prefer, they can reproduce a No Known Rights icon and place it close to the material to which it applies, as described in paragraph 140 below.



84 Agencies are reminded to consider the “Protected names, emblems and trade marks” Policy Principle at paragraphs 40-43 above when drafting a no known rights statement for any given release.

Warning regarding liability exclusions and official information disclosures

85 The square bracketed statement in paragraph 80 above is materially similar to the exclusion of liability in the Creative Commons licences. In neither case, however, should agencies look at the existence of such a disclaimer as a reason for not conducting appropriate due diligence before releasing a copyright work or non-copyright material for re-use. To the contrary, agencies should not release either works or material for re-use unless they have a high level of confidence that there is no copyright or other intellectual property rights restrictions in the material (or any components of it) and no contractual or other restriction that would prevent release and/or re-use. This is important to avoid exposing end users –

³⁴ See, for example, the CC-BY 4.0 International licence at <http://creativecommons.org/licenses/by/4.0/legalcode>

the people of New Zealand and others – to legal risk in the form of third party complaint or action against them.

- 86 Bear in mind, in this context, that the exclusion of liability (which is consistent with the Creative Commons licensing model) transfers legal risk to those end users. Users of the material may be exposed to legal or other risk if, for example, the material:
- (a) constitutes a third party copyright work;
 - (b) contains third party copyright components;
 - (c) contains trade marks or other protected names, symbols or marks that are not dealt with appropriately;
 - (d) contains confidential or personal information or information which otherwise ought not to be disclosed such as Māori or other cultural traditional knowledge or culturally sensitive material; or
 - (e) encourages action that would infringe a third party's patent.

Works and other material should not be publicly released for re-use if doing so would breach others' intellectual property or other rights.

- 87 Similarly, the above no known rights statement should not be used if the relevant material needs to be disclosed under the Official Information Act 1982 but the agency does not have the high level of confidence referred to above. Releasing such material following a request under the Official Information Act neither requires such a statement nor entitles others to reproduce the material in any way which would infringe a third party's intellectual property rights.

Creative Commons Plus (CC+) protocol

- 88 Where an agency wishes, for example, to license material pursuant to a non-commercial variant of Creative Commons licence, and offer a separate fee-based arrangement for commercial use, it could utilise the Creative Commons Plus protocol (also referred to as CCPlus or CC+). As noted on the Creative Commons website:³⁵

“CC+ is a protocol providing a simple way for users to get rights beyond the rights granted by a CC license. For example, a work's Creative Commons license might offer noncommercial rights. With CC+, the license can also provide a link by which a user might secure rights beyond noncommercial rights -- most obviously commercial rights, but also additional permissions or services such as warranty, permission to use without attribution, or even access to performance or physical media.

The CC+ architecture gives businesses a simple way to move between the sharing and commercial economies. CC+ provides a lightweight standard around these best practices and is available for implementation immediately.”

- 89 There are various ways in which CC+ can be implemented, the simplest being the presence of additional graphical or text-based links to the arrangements governing (in this example) commercial use:³⁶



³⁵ <http://wiki.creativecommons.org/CCPlus> See also “CC and CC+ Overview for the World Wide Web” (<http://wiki.creativecommons.org/images/c/cb/Ccplus-general.pdf>) and “CC+ Technical Implementation for the World Wide Web” (<http://wiki.creativecommons.org/images/0/06/Ccplus-technical.pdf>).

³⁶ See http://wiki.creativecommons.org/CCPlus#What_is_a_simple_way_of_explaining_CC.2B.3F for further examples. Note, however, that the code for these examples is invalid in all versions of HTML. Consult your web team to obtain HTML-valid code and see, generally, the code examples in the Appendix to NZGOAL.

CC Zero / CC0 (not supported)

- 90 Since the release of version 1 of NZGOAL in 2010, some agencies and others have asked why State Services agencies don't just waive copyright by using the Creative Commons Zero, or CC0, tool. CC0 is a tool that seeks to enable an owner of copyright in a work to waive the copyright in that work, thereby relinquishing the work into the public domain. It also states that, if the waiver is legally ineffective, an extremely broad and obligation-free licence is granted instead.
- 91 There are legal, policy and operational aspects to governmental use of CC0, each of which provides sufficient reason not to adopt a waiver/CC0 approach.
- 92 Legally, there are questions as to whether and the extent to which the Crown and other State Services agencies can, in fact, waive (or abandon) copyright under the Copyright Act 1994 and potential inconsistencies with the moral rights regime in that Act.
- 93 At a policy level, guidance which advocated all-of-government or even selective waiving of Crown copyright (for departments) and copyright (for other State Services agencies) would be a substantial move and one which is considered more appropriate for consideration in the context of any future reform of the Copyright Act, which is primarily a matter for the Ministry of Business, Innovation & Employment (MBIE). It could raise a range of issues which are more appropriately dealt with as a matter of law reform.
- 94 At the operational level, using CC0 would have the effect of removing attribution requirements, despite correct attribution to and integrity of certain categories of copyright works being important to many government agencies.
- 95 An individual agency is not necessarily precluded from deciding to use CC0 if it wishes (that is a question for the agency) but, for the reasons above, NZGOAL does not support it.

NZGOAL Review and Release Process

Introduction

- 96 It is recommended that State Services agencies follow the review and release process set out below before releasing copyright works or non-copyright material for re-use, with assistance where required from their legal teams. The process consists of seven main stages:
- (a) copyright-related rights evaluation;
 - (b) evaluation of restrictions;
 - (c) re-use rights selection;
 - (d) application of licence or no known rights statement;
 - (e) moral rights check;
 - (f) format selection; and
 - (g) release for re-use.
- 97 Each stage contains one or more issues that may need to be worked through. The stages and the issues within them reflect a mixture of the NZGOAL Policy Principles, legal requirements and practical considerations.
- 98 It can be important to work through these steps to ensure that the agency:
- (a) has all relevant rights in the copyright work or non-copyright material that it proposes to release;
 - (b) uses Creative Commons licences when appropriate, a more restrictive licence when appropriate, “no known rights” statements when appropriate, or does not release the work or material at all when one or more of the prohibitive restrictions apply; and
 - (c) does not expose either itself or those who may re-use the copyright work or non-copyright material to liability or related risk.
- 99 Decision tree diagrams for the review and release process are set out at paragraph 150 below.
- 100 The suggested review and release process set out below is not intended to be rigidly prescriptive. In some cases, for example, an agency may be able to determine immediately that a work is subject to a restriction of a nature that prevents any form of release. In that event, undertaking a prior copyright-related rights evaluation may not be particularly helpful.

Stage 1: Copyright-related rights evaluation

- 101 The first stage involves:
- (a) clearly identifying the boundaries of the work or material that the agency proposes to release; and then
 - (b) determining:
 - (i) whether the work or material to be released constitutes a copyright work; and, if so
 - (ii) who owns that copyright, with a view to determining whether it can, in principle, be the subject of a copyright licence.
- 102 This can entail consideration of some or all of the issues set out below.

Qualifying original work

- 103 Does the work or material constitute a copyright work under the Copyright Act, i.e., is it an original:
- (a) literary, dramatic, musical, or artistic work;
 - (b) sound recording;
 - (c) film;
 - (d) communication work; or
 - (e) typographical arrangement of a published edition,
- whose period of copyright protection has not expired?
- 104 If the work or material does not constitute a copyright work, the copyright analysis ceases and the agency can skip to Stage 2.

Copyright ownership

- 105 If the work or material does constitute a copyright work, questions of copyright ownership need to be considered. Who owns the copyright in the work?

Singular works

- 106 In the context of NZGOAL and its focus on State Services agencies, this question is likely to entail consideration, in the first instance, of who created the work and in what circumstances:
- (a) **employees and contractors of the “Crown”:**³⁷ where a work is made by a person employed or engaged by the Crown under a contract of service, a contract of apprenticeship, or a contract for services, the work qualifies for copyright and the Crown is the first owner of any copyright in the work, unless the parties to the contract agree otherwise;³⁸
 - (b) **employees of other State Services agencies (e.g., Crown entities):** where an employee makes, in the course of his or her employment, a literary, dramatic, musical, or artistic work, that person's employer is the first owner of any copyright in the work, unless the parties to the contract agree otherwise (which is rare);³⁹
 - (c) **contractors of other State Services agencies (e.g., Crown entities):** where a person commissions, and pays or agrees to pay for, the taking of a photograph or the making of a computer program, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film, or sound recording, and the work is made in pursuance of that commission, that person is the first owner of any copyright in the work, unless the parties to the contract agree otherwise.⁴⁰

Note that there is a significant difference in who owns copyright in a *commissioned* literary work depending on whether the State Services agency is part of the “Crown” (Ministers, departments, Offices of Parliament) or not (e.g., Crown entities, Reserve Bank of New Zealand). In the case of Crown copyright, the default position is that copyright ownership of all types of literary works commissioned by the Crown vests in the Crown. By contrast, for other agencies, first ownership of a commissioned literary work (other than a computer program) vests in the author. (In both cases, the default position is subject to agreement to the contrary by the commissioner and the commissioned party.)

³⁷ “Crown” for Copyright Act purposes means Her Majesty the Queen in right of New Zealand and includes a Minister of the Crown, a government department, and an Office of Parliament. It does not include Crown entities or State owned enterprises. Their qualifying original works are subject to what one might call regular copyright, not Crown copyright.

³⁸ Section 26(1) and (6) of the Copyright Act 1994.

³⁹ Section 21(2) and (4) of the Copyright Act 1994.

⁴⁰ Section 21(3) and (4) of the Copyright Act 1994.

Composite works/compilations

- 107 Paragraph 106 above assumes that the copyright work in question is singular or indivisible, that is, it is not a compilation of distinct components, some of which are copyright and owned by the agency, with others having been sourced from third parties.
- 108 Copyright ownership and re-use questions can be more complex in the case of works such as compilations which contain discrete components sourced from third parties.⁴¹ If an agency proposes to release and license such a composite work for re-use, before doing so it will need to consider, for each discrete third party component, whether the agency has sufficient rights to do so. An agency may have sufficient rights to do so if:
- (a) in the case of components which themselves are copyright works:
 - (i) the agency:
 - commissioned the component work from a third party and, under either the Copyright Act or an express contractual provision, was the owner of copyright in the work (as to which, see paragraphs 106(a) (relevant to the Crown) and 106(c) (relevant to other agencies) above); or
 - obtained a licence from the commissioned party allowing it to sub-license the copyright component as part of a wider work and in sufficiently broad terms;
 - and
 - (ii) there is otherwise no contractual restriction on licensing the work for re-use; or
 - (b) in the case of components which themselves are not copyright works, there is no contractual restriction (such as a confidentiality obligation) on including the component within a wider work and licensing that wider work for re-use.

Position where the agency did not at time of content creation own some or all of copyright or otherwise obtain licence allowing sub-licensing

- 109 In situations where the agency did not at the time of content creation own some or all of the requisite copyright in the work it proposes to release for re-use or otherwise have a licence allowing it to do so, it may nevertheless be able to license the work for re-use if, before doing so, it can first, to the extent required:
- (a) obtain an assignment of copyright from the copyright owner;⁴² or
 - (b) obtain from the relevant copyright owner(s) a right to sub-license the work, or relevant third party components, on the terms of the preferred Creative Commons licence or, where necessary, a more restrictive licence.
- 110 If this is not possible, the agency should not attempt to license the full composite work for re-use. To license the work, the third party components would, if possible, need to be excluded from the scope of the licence grant.⁴³

No exclusive licensing

- 111 The final point to note under Stage 1 is that, if an agency owns copyright in a work it is proposing to release and license for re-use, but has already granted an exclusive licence to another party, then it will have prevented itself from licensing the work to others under a

⁴¹ As noted in Appendix 3 below, the Copyright Act's definition of "literary work" includes a "table or compilation", and the definition of "compilation" includes "a compilation consisting wholly of works or parts of works, a compilation consisting partly of works or parts of works, and a compilation of data other than works or parts of works".

⁴² An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor: section 114 of the Copyright Act 1994.

⁴³ For example: "Except for its photographic images, this copyright report is licensed under a Creative Commons Attribution 4.0 International licence. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>". Or: "The textual content of this report is licensed under a Creative Commons Attribution 4.0 International licence. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>".

Creative Commons or restrictive licence. In such circumstances, to license the work further on either Creative Commons or restrictive terms, the agency would need to either:

- (a) await expiry of the exclusive licence (assuming it is for a period shorter than the duration of the copyright in the work); or
- (b) renegotiate the terms of the licence it has already granted to the exclusive licensee, with a view to removing the exclusivity and allowing the agency to license the work on the relevant Creative Commons or restrictive terms.

Stage 2: Evaluation of restrictions

112 If an agency has completed Stage 1 and concluded either that:

- (a) it does have the requisite copyright-related rights to release the copyright work for re-use (either in the form of owning all relevant copyright or, to the extent it does not, having one or more licences which allow sub-licensing on sufficiently broad terms); or
- (b) there are no copyright-related rights in the work or material that it proposes to release for re-use,

then the NZGOAL Policy Principles recommend, respectively, that:

- (c) the copyright work be released and licensed for re-use with the Creative Commons Attribution (BY) licence; or
- (d) the non-copyright material or work be released on open access terms, unless a restriction set out in paragraph 24 applies.

113 For each proposed release, the restrictions need to be considered in the light of all the surrounding circumstances relevant to the specific work or material and its release.

114 In many instances, the exercise will be quick as none of the restrictions will apply. In that event, the agency can move to Stage 4 below. This is because the recommendation in paragraph 112(c) or 112(d) (as applicable) will not have been displaced.

115 If one or more of the restrictions applies, it may displace the relevant recommendation in paragraph 112. Where that is the case, then:

- (a) in the case of a copyright work, the relevant restriction(s) may:
 - (i) prevent any licensing of the work at all, in which case the analysis stops at this point; or
 - (ii) be able to be accommodated through release and licensing with either another Creative Commons licence or, if that is not possible, a more restrictive licence, in which case one can move to Stage 3 below;
- (b) in the case of non-copyright material, the relevant restriction(s) may:
 - (i) prevent any release of it at all, in which case the analysis stops at this point; or
 - (ii) be able to be accommodated through release of the material or work on restricted contractual terms to a restricted audience, in which case one can move to Stage 3 below.

116 In some cases, restrictions may apply only to discrete portions of copyright works or non-copyright material that an agency proposes to release. In that event, the agency may wish to consider whether it could release an amended version of the work or material with those discrete portions removed. For example, a dataset containing personal information may be able to be safely anonymised. Whether an agency wishes to do so and whether it makes sense to do so is a matter for the agency's discretion. It may be the case, for example, that removing the discrete portions would result in an incomplete, misleading or comparatively useless work or incomplete, misleading or comparatively useless material.

- 117 If an agency produces an amended version that is capable of addressing any restriction(s) (i.e., the restriction(s) fall away), the agency can proceed to Stage 3 below.
- 118 Agencies are reminded that, should they be in any doubt as to whether a restriction in paragraph 24(g) or 24(h) applies (regarding the protection of Māori or other traditional knowledge or other culturally sensitive material), they are advised to consult Te Puni Kokiri before release.

Stage 3: Re-use rights selection

- 119 Stage 3 applies where one or more restrictions have been identified at Stage 2 but those restrictions do not completely prevent release of the copyright work or non-copyright material.
- 120 Where:
- (a) no restriction was identified at Stage 2 to displace the Open Licensing Principle or the Open Access Principle, as applicable; or
 - (b) any restrictions can and will be addressed (i.e., removed) by providing an amended version of the work or material,
- the agency should move to Stage 4.

Copyright works

- 121 Where, in the case of a copyright work, the restrictions can be accommodated through release and licensing with another Creative Commons licence, the agency should, before selecting the licence, take into account:
- (a) the nature of the relevant restriction(s); and
 - (b) the Creativity, Authenticity and Non-Discrimination Principles set out in paragraphs 27-28 of the NZGOAL Policy Principles.
- 122 Having taken those matters into account, it is for the agency to determine which of the Creative Commons licences is most appropriate in all the circumstances. Having done so, the agency should proceed to Stage 4.
- 123 Where the restrictions can be accommodated only through use of a more restrictive licence, it is up to the agency to decide whether to do so. There may, for example, be no immediate demand. If there is demand, it is for the agency to exercise its discretion as it sees fit. So far as NZGOAL is concerned, the analysis stops at this point, as the matter becomes one of restricted licensing.

Non-copyright material

- 124 Where, in the case of non-copyright material, the relevant restriction(s) can be accommodated through release of the material on restricted contractual terms to a restricted audience, it is up to the agency to decide whether to do so. There may, for example, be no immediate demand. If there is demand, it is for the agency to exercise its discretion as it sees fit. So far as NZGOAL is concerned, the analysis stops at this point, as the matter becomes one of restricted contractual provisioning.

Stage 4: Application of Creative Commons licence or no-known-rights statement

Introduction

- 125 This description of Stage 4 explains how agencies go about applying the NZGOAL licences and tools. In particular, it explains:
- (a) how to apply a Creative Commons licence to copyright works; and
 - (b) how to mark non-copyright material with an appropriate “no known rights” statement.

(Restrictive licences are expected to be customised to the individual circumstances of any given release, in consultation with the agency's legal team. For that reason, there is no separate treatment in NZGOAL of how to draft a restrictive licence.)

Applying Creative Commons licences

- 126 Where an agency has determined that:
- (a) material it wishes to release on terms allowing re-use is a copyright work; and
 - (b) a Creative Commons licence is to be used to license that work,
- it needs to apply the appropriate Creative Commons licence markings to the work.
- 127 The means by which a Creative Commons licence is applied depends on whether the relevant work is:
- (a) a document or other work that is not conveyed electronically or is conveyed electronically but can be consumed in an offline environment (e.g., a PDF document that can be printed); and/or
 - (b) a work that is released electronically, or consists of or is contained in, website pages.

Applying the licences to literary and other copyright works that can be consumed in an offline environment

- 128 A document or other work that is not conveyed electronically or is conveyed electronically but can be consumed in an offline environment:
- (a) should contain one of the recommended copyright and licensing statements for that licence set out in the Appendix which the agency wishes to add to the work; and
 - (b) may also contain any of the specimen attribution statements for that licence set out in the Appendix which the agency may wish to require of licensees when those licensees publish, distribute, perform or otherwise disseminate to the public either the licensed copyright work, any adaptation of the work or any collection containing the work.
- 129 The Appendix includes specimen attribution statements because agencies may wish to provide such statements to licensees rather than leaving it to them to devise an attribution statement and comply with other licence obligations such as referring to the licence's URL and, where relevant, indicating that an adaptation of the original is in fact an adaptation. It is likely that an agency's decision in this regard will depend on the type of licensed work, the manner of its release, its likely uses and, in some instances, design considerations.
- 130 It is strongly recommended that State Services agencies that apply Creative Commons licences to a hard copy/non-electronic work also announce the availability of the work and the relevant Creative Commons licence terms via online channels:
- (a) on its own website in accordance with the instructions below; and
 - (b) if the work is a dataset, on data.govt.nz.
- 131 The reason for this is to two-fold:
- (a) to make State Services agencies' Creative Commons-licensed works more readily available to the public; and
 - (b) to enable search engines and other tools to index the metadata.
- 132 In the first instance, it is recommended that, to the extent practicable, agencies make an announcement on their own websites of copyright works which they are releasing under a Creative Commons licence. This can be done either on a page describing the work or its general surrounding subject matter or a discrete news item in a news area of the site (where available). The process is explained at paragraphs 134-**Error! Reference source not found.** below.
- 133 The process for adding an announcement of a dataset release to data.govt.nz is explained at paragraph 136 below.

Applying the licences to copyright works constituted by, contained within or linked to from, website pages

- 134 Creative Commons licences are applied to copyright works which are constituted by website pages, contained within website pages or linked to from website pages, through the insertion of a snippet of HTML code in the relevant webpage(s).
- 135 The process of obtaining the HTML code is straight-forward. Sample and valid HTML5 code, for a variety of situations, can be found in the Appendix to NZGOAL. As HTML5 is the latest iteration of HTML, HTML 5 code is provided. NZGOAL currently recommends that agencies *not* use the Creative Commons licence chooser because, as at the date of version 2 of NZGOAL, it produced code which, whilst valid for XHTML, was invalid for HTML5 and HTML 4.⁴⁴ Whilst the HTML5 code in the Appendix is not valid for HTML 4 and XHTML, this HTML5 code, when used in HTML 4 and XHTML doctypes, will still be parsed correctly by web browsers and metadata parsers.

Announcing a new dataset release on data.govt.nz

- 136 If the relevant work is a dataset, the releasing agency should also announce the release on data.govt.nz. If the agency is not already providing DIA with an Atom feed of such releases (if it is, an announcement on data.govt.nz will be automatic), it should:
- go to the data.govt.nz website;
 - click on the “Add Dataset” tab; and then
 - follow the instructions on the page that appears.

How to mark non-copyright material with an appropriate “no known rights” statement

- 137 As noted at paragraphs 80-82 above, agencies releasing material which is not subject to copyright or other intellectual property rights are encouraged to add a statement at the point of release (and in the material itself if practicable) to this effect:

No known rights

To the best of [name of agency]’s knowledge, under New Zealand law:

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

[[Name of agency] 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.]

- 138 The last paragraph in square brackets is optional. Its purpose is to protect the releasing agency from liability in the event that:
- there are, in fact, intellectual property-related restrictions on copying or other re-use of the released material; or
 - someone relies on the released material in a way which subsequently causes harm (e.g., economic loss).
- 139 It is for the releasing agency to determine whether there is any risk warranting the inclusion of that paragraph.
- 140 If agencies prefer, when releasing such material online, they can reproduce a No Known Rights icon and place it close to the non-copyright material to which it applies through the use of a snippet of



⁴⁴ Creative Commons international is aware of this issue and is working on upgrading its licence chooser.

HTML code that they paste into the relevant web page. Insertion of that code into a web page will insert the icon as well as a summary of the 'no known rights' text above (including the optional last paragraph) with a link to a page on govт.nz that contains the full details of the No Known Rights statement and the disclaimer. This snippet is being finalised and will be released shortly.

- 141 If the released non-copyright material is some form of dataset, then its release should also be notified on data.govт.nz in accordance with the instructions at paragraph 136 above.

Stage 5: Moral rights check

- 142 Stage 5 applies only to copyright works being released to the public for re-use. It does not apply to non-copyright material being released to the public for re-use. Agencies releasing non-copyright material for re-use should proceed to Stage 6.
- 143 As discussed above, the simplest way for a licensing agency to check whether there *might* be a moral rights issue is to ask:
- (a) whether any author of a work, that the agency proposes to release for re-use, has asserted a 'right to be identified as the author of the work'; and
 - (b) whether the version of the work to be released could be considered a 'derogatory treatment' of the original work (that is, a treatment that is prejudicial to the honour or reputation of the author, whether by distortion or mutilation of the work or otherwise).
- 144 If the answer to these questions is no, the agency can proceed to Stage 6 without considering moral rights any further. If the answer to either question is yes, the agency should consult the moral rights section in the NZGOAL Copyright Guide and discuss the matter with its legal team.⁴⁵ (In the vast majority of cases, no moral rights issues will arise.)

Stage 6: Format selection

- 145 Before releasing the relevant copyright work or non-copyright material, the agency should consider the formats in which it ought to be released.

Where agency knows users' format preferences

- 146 If the agency already knows the formats in which users of the work or material would or would probably like to see it provided, the agency should – to the extent practicable – prepare the work or material for release in those formats.

Where agency does not know users' format preferences

- 147 If the agency does not know the formats in which users of the work or material would or would probably like to see it provided, it may wish to either:
- (a) seek public feedback on the desired format(s) before release; or
 - (b) prepare the material for release in one or more standards-compliant formats with a view to asking recipients, after release, whether they are satisfied with those format(s).

Proprietary and non-proprietary formats

- 148 To the extent that a copyright work or non-copyright material is provided in a proprietary format, the agency should endeavour to provide it in one or more open, non-proprietary formats.

⁴⁵ As far as the authors are aware, in the first four years after NZGOAL's release, there was not a single instance of moral rights assertion or infringement.

Stage 7: Release

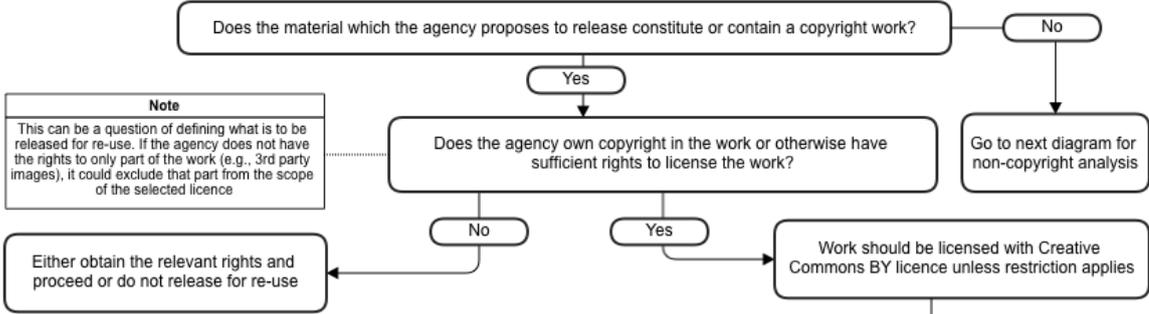
- 149 When the copyright work or non-copyright material is ready for release, the agency should:
- (a) consider the various channels through which it could be released (whether governmental and/or third party operated), selecting those which are most appropriate in all the circumstances (with announcements on its own website and, for datasets, on data.govt.nz, as a minimum);
 - (b) consider whether to use press releases and/or social media to publicise the release and maximise awareness; and
 - (c) release for re-use.

NZGOAL Review and Release Process Decision Trees

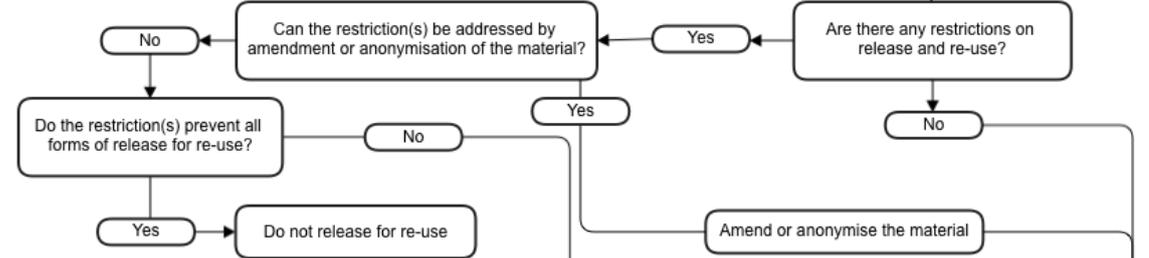
- 150 The decision tree diagrams below illustrate the Review and Release Process explained above. They are intended to be read in conjunction with the explanations above for each stage. The first diagram is for copyright works, the second for non-copyright material.

NZGOAL Review and Release Process - Decision tree for copyright works

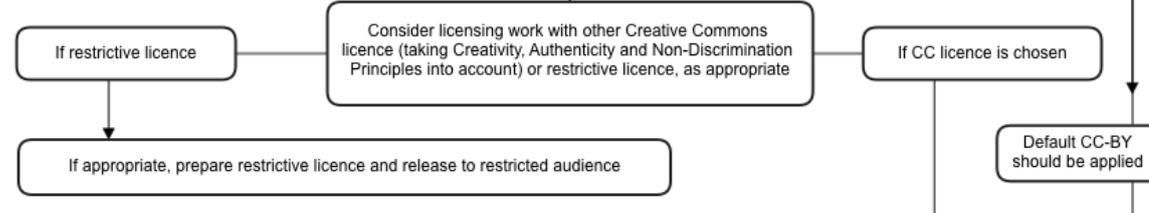
1. Copyright-related rights evaluation



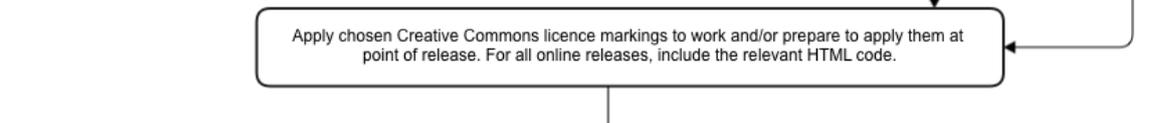
2. Evaluation of restrictions



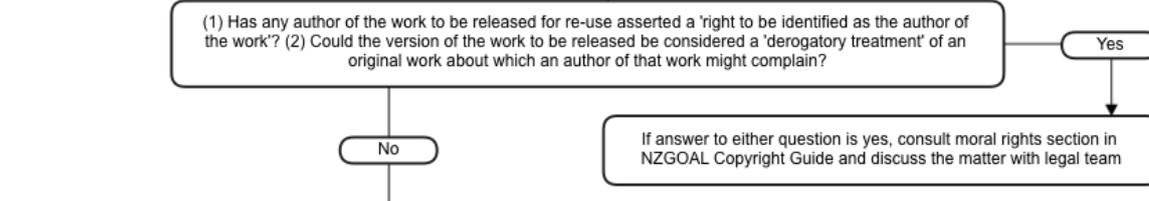
3. Selection of re-use rights



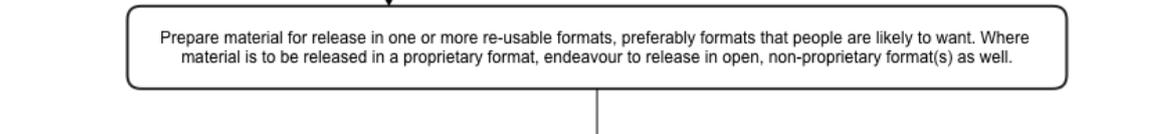
4. Application of licence



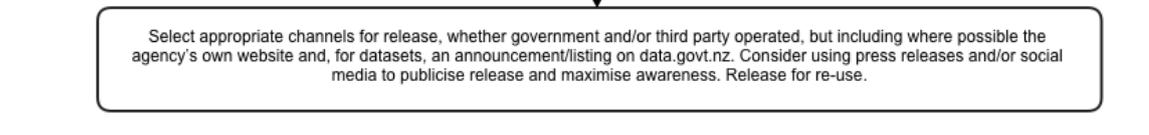
5. Moral rights check



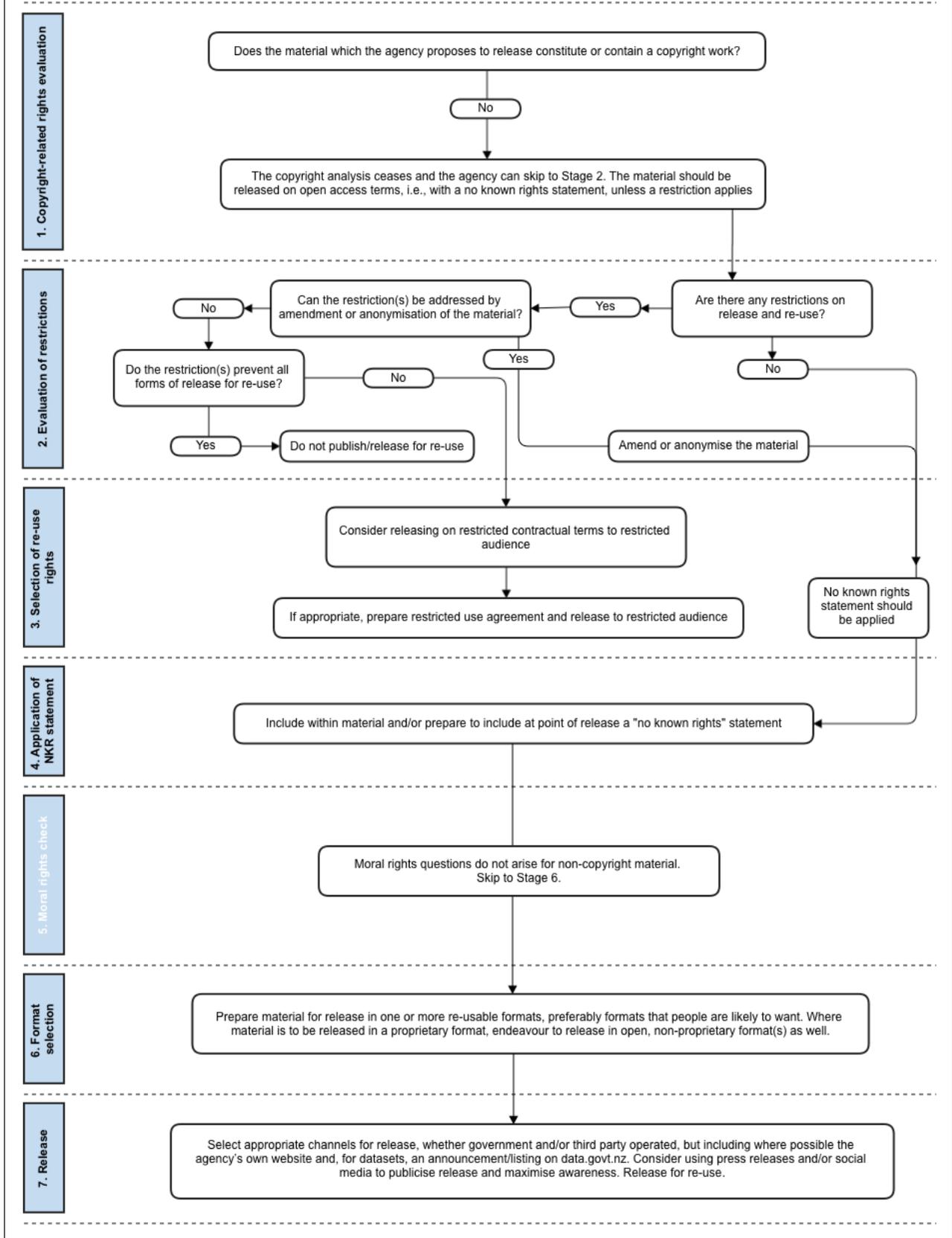
6. Format selection



7. Release



NZGOAL Review and Release Process - Decision tree for non-copyright material



Appendix – Recommended Copyright and Licensing Statements, and Attribution Statements

Individual copyright works

- 151 A series of recommended copyright and licensing statements, and attribution statements for individual copyright works, are set out below after paragraph 152. They are the statements referred to at paragraphs 128-129 and 135 above. Different copyright and licensing statements are provided for offline and online works. The attribution statements can be used for both.
- 152 When considering the statements, agencies should bear the following in mind:
- (a) each recommended copyright and licensing statement begins with the words “[Crown copyright / Copyright]”. Ministers, departments and offices of Parliament should select “Crown copyright”; all other agencies should select “Copyright” as they do not have “Crown” copyright in their original copyright works;
 - (b) each recommended copyright and licensing statement contains, in square brackets, a summary of what the licence permits (in the sentence commencing “In essence...”); while that summary is suggested to give licensees a quick snapshot of the key licence terms, it is optional and may be removed (the square brackets should be removed in any event);
 - (c) the copyright and licensing statement options headed “Statement with logo/trade mark carve out” and “Statement with no carve out but warning re Flags, Emblems, and Names Protection Act” reflect the “Protected names, emblems and trade marks” Policy Principle at paragraphs 40-43 above;
 - (d) square-bracketed text needs to be checked and edited as applicable to the context (for both the offline and online statements / code);
 - (e) for the online / HTML5 mark-up, "COMPLETEURL" needs to be replaced with the appropriate URL for the agency’s website;
 - (f) the highlighted text in the attribution statements is intended for use on websites, as appropriate, rather than in hard copy releases; again, square-bracketed text needs to be checked and edited as applicable;
 - (g) agencies are not obliged to require attribution statements from licensees and may, if they wish, expressly waive them;⁴⁶
 - (h) an agency may request an attribution statement (i.e., to be used when licensees provide the copyright material to the public by any means or process that requires permission under the licensed rights) but later request its removal in particular instances of re-use should it not wish to be attributed in a given context (licensees must then remove it "to the extent reasonably practicable"); and
 - (i) agencies licensing datasets which may be mashed up with other datasets and give rise to attribution stacking problems (as discussed at paragraph 34 above) should consider opting for the most minimal of attribution requirements (if any); the most minimal requirement is the third option set out in the relevant “Attribution statements” for those licences that permit derivative works/adaptations (i.e., “This [work/product/application/etc] uses data sourced from [name of agency]”).

⁴⁶ Should an agency wish to expressly waive any attribution requirements, it could do so by adding a statement such as the following at the end of the copyright and licensing statement it selects from options below: “[name of agency] does not require any attribution when someone publishes, distributes, performs or otherwise disseminates this work to the public and hereby waives its right of attribution.”

Creative Commons Attribution (BY)

Basic copyright and licensing statement

Recommended statement text (offline)



[Crown copyright / Copyright] ©. This [copyright work / *name of work*] is licensed under the Creative Commons Attribution 4.0 International licence. [In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to [name of agency/licensor] and abide by the other licence terms.] To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.

Recommended statement HTML5 markup (online)

```
<a rel="license" href="http://creativecommons.org/licenses/by/4.0/"></a>[Crown copyright / Copyright] ©. This <span property="http://purl.org/dc/terms/title">[copyright work / name of work]</span> by <a href="COMPLETEURL" vocab="http://creativecommons.org/ns#" property="attributionURL"><span property="attributionName">[name of organisation]</span></a> is licensed for re-use under a <a rel="license" href="http://creativecommons.org/licenses/by/4.0/">Creative Commons Attribution 4.0 International Licence</a>. [In essence, you are free to copy, distribute and adapt the work, as long as you attribute it to [name of agency/licensor] and abide by the other licence terms.]
```

Statement with logo/trade mark carve out

Recommended statement text (offline)



[Crown copyright / Copyright] ©. Except for [name relevant logos, emblems and/or trade marks], this [copyright work / *name of work*] is licensed under the Creative Commons Attribution 4.0 International licence. [In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to [name of agency/licensor] and abide by the other licence terms.] To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.

Recommended statement HTML5 markup (online)

```
<a rel="license" href="http://creativecommons.org/licenses/by/4.0/"></a>[Crown copyright / Copyright] ©. Except for [name relevant logos, emblems and/or trade marks], this <span property="http://purl.org/dc/terms/title">[copyright work / name of work]</span> by <a href="COMPLETEURL" vocab="http://creativecommons.org/ns#" property="attributionURL"><span property="attributionName">[name of organisation]</span></a> is licensed for re-use under a <a rel="license" href="http://creativecommons.org/licenses/by/4.0/">Creative Commons Attribution 4.0 International Licence</a>. [In essence, you are free to copy, distribute and adapt the work, as long as you attribute it to [name of agency/licensor] and abide by the other licence terms.]
```

Statement with no carve out but warning re Flags, Emblems, and Names Protection Act

Recommended statement text (offline)



[Crown copyright / Copyright] ©. This [copyright work / *name of work*] is licensed under the Creative Commons Attribution 4.0 International licence. [In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to [name of agency/licensor] and abide by the other licence terms.] To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>. Please note that no [departmental or governmental emblem, logo or Coat of Arms] may be used in any way which infringes any provision of the Flags, Emblems, and Names Protection Act 1981 or would infringe such provision if the relevant use occurred within New Zealand. Attribution to [name of agency] should be in written form and not by reproduction of any such [emblem, logo or Coat of Arms].

Recommended statement HTML5 markup (online)

```
<a rel="license" href="http://creativecommons.org/licenses/by/4.0/"></a>[Crown copyright / Copyright] ©. This <span property="http://purl.org/dc/terms/title">[copyright work / name of work]</span> by <a href="COMPLETEURL" vocab="http://creativecommons.org/ns#" property="attributionURL"><span property="attributionName">[name of organisation]</span></a> is licensed for re-use under a <a rel="license" href="http://creativecommons.org/licenses/by/4.0/">Creative Commons Attribution 4.0 International Licence</a>. [In essence, you are free to copy, distribute and adapt the work, as long as you attribute it to [name of agency/licensor] and abide by the other licence terms.] Please note that no [departmental or governmental emblem, logo or Coat of Arms] may be used in any way which infringes any provision of the Flags, Emblems, and Names Protection Act
```

1981 or would infringe such provision if the relevant use occurred within New Zealand. Attribution to [name of agency] should be in written form and not by reproduction of any such [emblem, logo or Coat of Arms].

Attribution statements (offline and online)

If you publish, distribute or otherwise disseminate this work to the public without adapting it, the following attribution to [name of agency] should be used:

"Source: [name of agency] and licensed by [name of agency] for re-use under the Creative Commons Attribution 4.0 International licence at <http://creativecommons.org/licenses/by/4.0/>"

If you adapt this work in any way or include it in a collection, and publish, distribute or otherwise disseminate that adaptation or collection to the public, the following attribution to [name of agency] should be used:⁴⁷

Either:

"This work is [based on/includes] [name of agency]'s [insert name of work or data] which [is/are] licensed by [name of agency] for re-use under the Creative Commons Attribution 4.0 International licence at <http://creativecommons.org/licenses/by/4.0/>"

Or:

"This [work/product/application/etc] uses data sourced from [name of agency] which are licensed by [name of agency] for re-use under the Creative Commons Attribution 4.0 International licence at <http://creativecommons.org/licenses/by/4.0/>"

Or:

"This [work/product/application/etc] uses data sourced from [name of agency]."

Where practicable, please hyperlink the name of the agency to the agency's web page that contains or links to the source data.

⁴⁷ The agency should choose which one of these statements is appropriate by reference to the work in question. It should not include all three.

Creative Commons Attribution-NonCommercial (BY-NC)

Basic copyright and licensing statement

Recommended statement text (offline)



[Crown copyright / Copyright] ©. This [copyright work / name of work] is licensed under the Creative Commons Attribution-NonCommercial 4.0 International licence. [In essence, you are free to copy, distribute and adapt the work for non-commercial purposes, as long as you attribute the work to [name of agency/licensor] and abide by the other licence terms.] To view a copy of this licence, visit <http://creativecommons.org/licenses/by-nc/4.0/>.

Recommended statement HTML5 markup (online)

```
<a rel="license" href="http://creativecommons.org/licenses/by-nc/4.0/"></a>[Crown copyright / Copyright] ©. This <span property="http://purl.org/dc/terms/title">[copyright work / name of work]</span> by <a href="COMPLETEURL" vocab="http://creativecommons.org/ns#" property="attributionURL"><span property="attributionName">[name of organisation]</span></a> is licensed for re-use under a <a rel="license" href="http://creativecommons.org/licenses/by-nc/4.0/">Creative Commons Attribution-NonCommercial 4.0 International Licence</a>. [In essence, you are free to copy, distribute and adapt the work for non-commercial purposes, as long as you attribute it to [name of agency/licensor] and abide by the other licence terms.]
```

Statement with logo/trade mark carve out

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Statement with no carve out but warning re Flags, Emblems, and Names Protection Act

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Statement with no carve out but warning re Flags, Emblems, and Names Protection Act

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⁵⁰ The agency should choose which one of these statements is appropriate by reference to the work in question. It should not include all three.

Generic treatment of attribution requirements for all individually licensed works on a website

- 153 Some agencies may prefer a generic treatment of attribution requirements that applies to all individually Creative Commons licensed works on a website, rather than including attribution information for each discrete copyright work.
- 154 Set out below is suggested wording for such a generic treatment of attribution requirements. It is intended for inclusion by the licensing agency within a website's general copyright statement or attribution policy, and may need to be tailored to meet an agency's specific circumstances and requirements. As noted above, including such attribution requirements is optional.

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- the work itself; or
- where the applicable licence allows you to make an adaptation / derivative work, any adaptation of the work; or
- any collection containing the work.

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This [work/product/application/etc] uses data sourced from [name of agency].

⁵¹ Depending on the variety of copyright works on its website, an agency may wish to select one of these kinds of statements or it may wish to include two or three of them and allow licensees to choose which one to use.

Where practicable, please hyperlink the name of the agency to the agency's web page that contains or links to the source data.

Applying a single Creative Commons licence to all or substantial portions of a website

- 155 There will be other instances where agencies prefer to apply a single Creative Commons licence either to all copyright content on a website or to substantial portions of copyright content on a website, rather than attaching licences to individual copyright works on a case-by-case basis across the website. Instructions on how to do this, together with a sample website copyright statement (in both plain text and HTML), can be found in NZGOAL Guidance Note 1: Website copyright statements, available at <http://www.ict.govt.nz/guidance-and-resources/open-government/new-zealand-government-open-access-and-licensing-nzgoal-framework/nzgoal-guidance-notes/>.