ALRC Copyright Inquiry - Submission from the Australian National Data Service (ANDS)

Summary

This submission argues that misunderstanding and uncertainties around whether copyright exists (subsists) in research data is limiting the potential re-use of these data. This in turn is limiting innovation and the extent to which Australian researchers, and their international counterparts, can collaborate on large, international research projects.

About ANDS

ANDS was established with funding from the (former) Department of Innovation, Industry, Science and Research early in 2009 with a brief to develop the Australian Research Data Commons—a cohesive collection of research resources from all research institutions—in order to make better use of Australia's research data outputs, to improve the overall quality of research and enhance Australia's capacity for innovation. To that end, ANDS has developed a number of programs to enhance data access. These programs cover developments in management, connection, discovery and re-use of publicly-funded research data. There are now over 43,000 collections registered with Research Data Australia (http://researchdata.ands.org.au/).

ANDS works primarily with publicly-funded research organisations. However, data of interest to researchers is created in other sectors as well. Governments produce data, both in the course of research, but also in the course of normal business. Such data is likely to be of high value to researchers and ANDS has been working with a number of government agencies of different types to support improved access to government data. One of the key drivers in modern research, be it in government agencies or research institutions, is the potential to combine different kinds of data to achieve novel outcomes.

Defining data

ANDS is interested in data collections of all types, so it is difficult to provide a concise definition of data. Examples of collections registered in Research Data Australia include: annotated relational databases; genotypes; taxonomic codes; surveys, questionnaires and interviews; images in the form of photographs, electron micrographs and x-rays, plans and maps; audiovisual materials such as sound or video files; spatial representations of different phenomena; climate observations; catalogues of documents or moths or other collections. Some of this data is raw, some processed, and some highly derived.

ANDS and data licensing

One of the essential ingredients of re-usable data is clarity of reuse permissions, terms, and conditions. Prospective reusers need to know exactly what they can and cannot do with the data. Those conditions and permissions should be explicit. Not being clear about permission to reuse data can have the same result as forbidding data reuse, because uncertainty can be enough to discourage the potential re-user.

Many researchers find the issues of copyright and licensing complex and forbidding. ANDS has therefore supported the use of the AusGOAL suite of licences. AusGOAL has the benefit of being simple to use while providing consistency with many Commonwealth and State government agencies. Importantly, it

uses Creative Commons licenses (as well as some restrictives licenses).

International and Australian setting

There is strong interest throughout the world in ensuring that research data is fully exploited through making it available for further use, usually without charge and with clear usage conditions. This is primarily to improve research outcomes by making research both more effective and more efficient. This supports innovation and also ensures a better return on government investment in research. The trend towards data exploitation and sharing can be seen in the policies of governments and research funding bodies such as the European Union and the National Science Foundation and UK Research Councils, both of which are funded by government.

Australia is following suit, as can be seen in the recent National Research Investment Plan released this week (http://www.innovation.gov.au/Research/Pages/NationalResearchInvestmentPlan.aspx).

"Open data, which is sometimes included as an aspect of open access, refers to the application of similar principles to scientific research data. Open access publishing of the outputs of publicly-funded research, including published findings and research data sets and databases, has the potential to increase knowledge transfer to a wide range of research users." (p.85)

Issues limiting the re-use of publicly-funded research data

The following observations are anecdotal; they arise through mechanisms like the data licensing working groups that ANDS runs, feedback from individuals and organisations who are entering records in our major metadata repository Research Data Australia (http://researchdata.ands.org.au) and commentary from the research and innovation sector with whom ANDS works routinely. In a sense, all of the following observations, or opinions, can be seen as symptoms of an underlying issue, which is uncertainty and misunderstandings about copyright and research data. The important thing to remember when looking at these observations is that they are anecdotal, and, from the perspective of people and organisations wanting others to use their data, and, in many cases, also wanting to use other's data.

1. overall, there appears to be a great deal of uncertainty around the issue of copyright and data, created largely it seems, by the Telstra Corporation Limited v Phone Directories Company Pty Ltd [2010] FCA 44 (8 February 2010)
2. the vacuum created by this uncertainty has led to a range of situations which has the potential to reduce the free flow of research data, and may prove critical to large and international collaborations
3. some people and organisations have opted not to license their data at all, in the belief that this will solve any data re-use issues. This option has the potential to 'lock up' data rather than allow it to be re-used
4. others are exploring 'no copyright' options like CC(0) and various forms of 'marks', but we are aware that this causes problems in Australia and in some overseas countries
5. some organisations have created customised and bespoke licences such as the Terrestrial Ecosystem Research Network (http://www.tern.org.au/TERN-s-Data-Licences-pg22188.html)

ANDS is not offering an opinion on any or all of these observations. We are, however, becoming aware that collectively these anecdotes are symptoms of a growing uncertainty about copyright in research

data. If this issue is not addressed, the innovation sector in Australian will be disadvantaged by impeded access to data and the Australian Government's aspirations with respect to publicly-funded research and research data could be made more difficult to achieve.

We ask that the Commission give consideration to and guidance on the issue of copyright in publicly-funded research data. An ideal outcome from our point of view would be where the uncertainty we refer to is substantially removed or otherwise clarified. This could be achieved, for example, by the development of guidelines for researchers, research funders, and institutions, explaining the copyright status of research data under various conditions.

ANDS would be happy to discuss these issues further, if required.

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