



Option 2: Open Access Licence Agreement for Redistribution of Data: Council of European Social Science Data Archives: European Research Infrastructure Consortium (cessda-ERIC)

Scope

This is a proposal for a new CESSDA (or UKDA) licence which starts from first principles. Its purpose is to examine some of the key issues in the licensing process. Why do we do this? What are the legal principles involved? Are there knock-on effects in this licence which would demand new technical solutions?

From a legal point of view the primary reason for having a licence at all is to allow us to make copies and disseminate the data without breaking laws relating to copyright. Almost everything in the licence should stem from this. We need to ensure that the person transferring data to an archive has the right to give us the right to copy data. Even if that right is “devolved” (Crown Copyright).

The second major problem is not really the concern of the UKDA, but we take it upon ourselves to deal with, and that’s why we (UKDA) provide a “service”. This problem relates to: Who can we give these data to, and what can those people do with it?

In an “open model” we can hypothesise that there are two types of people we can give data to: anybody; or a restricted group of “anybody” Similarly, what can they use it for (which is also tied up with redistribution/attribution etc.) could be boiled down to unrestricted or restricted in some way. (This might range from HE only use, to secure access only). At the highest level there are therefore four permutations of users and access rights:

- Anybody + Anything
- Restricted + Anything
- Anybody + Restricted
- Restricted + Restricted

The first is pretty much equivalent to the Creative Commons O or Creative Commons BY licence.¹ The second is logically problematic, as “anything” may include redistribution which could potentially go to anybody. And the third and fourth are already enshrined in our licences.

This draft is predicated on this logic.

The consequences of this would be to have two sorts of user -- a) anyone who signs EUL and b) those given permission (restricted /authorised users); which would mean that lots of the verbiage of the licence would go. There would be no need to use the terms “registered user”, but this would not preclude us asking for users to register. This will also become a necessity if any SSO needs to deal with the authorisation of users (which under categories 3 and 4) will be necessary. But the main

¹ The latter is the Attribution variant of the CC Licence, where licensees may “Licensees may copy, distribute, display and perform the work and make derivative works based on it only if they give the author or licensor the credits in the manner specified by these.”

license may not need to use the term authorised. It'd also mean that there use becomes either not-for profit or for-profit.

This is a non-exclusive licence which ensures that copyright in the original data is not transferred by this Agreement and provides other safeguards for the Copyright Holder, such as, requesting acknowledgement in any publications arising from future research using the data.

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Preamble

This Agreement is made between the Licensee and the Licensor.

Whereas

- a) the Licensor (Schedule 1) holds or controls the rights in the data collection specified in schedule 2;
- b) the Licensee [CESSDA ERIC -- needs some (legal) definition] wants to preserve and disseminate the data collection specified in schedule 3

It is agreed as follows:

1) GRANT

The Licensor hereby grants to the Licensee: a worldwide, non-exclusive royalty-free licence in perpetuity to mount on any network or platform, preserve, communicate and make available the Data Collection through any networked or un-networked electronic means to provide access and allow use of the Data Collection by **Users** who have agreed to abide by the **End User Licence** conditions.

2) ACCESS CONDITIONS

The Licensor grants the Licensee permission to distribute the Data Collection to the following users and for the following purposes only:

- 1 to anybody for any purpose [attribution/derogatory treatment notwithstanding]
- 2 to anybody for either "for-profit" or "not-for-profit" purposes but if "for-profit" a separate royalty agreement may be needed
- 3 to anybody for not-for-profit purposes only

And *only* for Data Collection which contains "restricted" data,

- 4 to **authorised users** for specific purposes only.

3) TERMS AND CONDITIONS

The licensor agrees to the terms and conditions within Annexe X.

I have read and agreed the terms and conditions

Signed
Print name
Position
Department/Section
Date

I have read and agreed the terms and conditions

Signed on behalf of the LICENCEE

Schedule 1

[Details of licensor]

The Licensor(s) warrants and undertakes that s/he

- I. are the owner of the copyright and associated intellectual property rights in the whole Data Collection and are lawfully entitled to grant this licence;
- II. are the joint owners of the copyright and associated intellectual property rights in the whole data collection and are authorised to grant this licence on behalf of each and every joint owner whose full names and addresses appear in Schedule 2;
- III. are not the owners of the copyright and associated intellectual property rights in the whole data collection but are authorised to grant this licence on behalf of each and every owner whose full names and addresses appear in the Schedule 2. This includes institutional or organisational copyright holders

Schedule 2

[Details of additional rights holders in the Data Collection]

Schedule 3

[Name (and other details?) of Data Collection]

The small print

1. Purpose:

1.1 The Licensee may:

1.1.1. Distribute copies of the Data Collection to Users in a variety of media formats.

1.1.2. Promote and advertise the Data Collection in any publicity, in any form, for the Licensee.

1.1.3. To catalogue, enhance, validate and document the Data Collection.

1.1.4. To store, translate, copy or re-format the Data Collection to ensure its future preservation and accessibility.

1.1.5. Incorporate metadata or documentation in the Data Collection into registries to facilitate public use of the data for the Data Collections.

2 Licensor's Rights and Undertaking

2.1. The Licensor is free to use or publish the Data Collection elsewhere.

2.2. The Licensor does not warrant or guarantee the Data Collection in terms of the comprehensiveness, accuracy, reliability, or otherwise of its contents.

2.3. The Licensor hereby warrants and undertakes as follows:

2.3.1. That the Licensor is entitled to grant the rights contained in this Agreement to the Licensee and by exercising the rights assigned to the Licensee under the Agreement, will not infringe the rights of any party;

2.3.2. That the Data Collection does not and will not contravene any laws as in force from time to time, including but not limited to the law relating to defamation, or obscenity;

2.3.3. That the Licensor is not under any

obligation or restriction created by law, contract or otherwise which would in any manner or to any extent prevent or restrict the Licensor from entering into and fully performing this Agreement;

2.3.4. to promptly notify the CESSDA ERIC member or [CESSDA ERIC] of any change of copyright ownership affecting the Data Collection;

2.3.5. to promptly notify the CESSDA ERIC member or [CESSDA ERIC] of any confidentiality, privacy or data protection issues pertaining to the Data Collection.

2.4. The Licensor hereby indemnifies and will keep indemnified the CESSDA ERIC members and its employees and appointed agents against all damages, losses, claims, costs and expense for which they become legally liable to the extent that this shall arise out of any negligent act or omission or breach of this Agreement committed by or on behalf of the Licensor. This indemnity shall survive the termination of this Agreement for any reason.

3.1. THE LICENSEE shall:

4.1.1. take reasonable measures to prevent unauthorised access to duplication of or distribution of the Data Collection whilst it is in the Licensee's possession or under its control;

4.1.2. permit Users to access and use the Data Collection, or any part of it;

4.1.3. draw the following information to the attention of each User as part of the registration process or as part of the data delivery process (subject that such information may be changed from time to time): No part of these materials may be reproduced, stored in, or introduced into a retrieval system, or transmitted, in any form, or by any means (electronic, mechanical, photocopying, recording or otherwise) without the prior written permission of the Licensee.

4.1.4. request Users publishing any work based in whole or in part on the Data Collection to acknowledge the original data creators, Licensor or copyright holders, the funders of the Data Collections (if different) and the source institution of CESSDA ERIC, and to acknowledge Crown or State Copyright where appropriate. Any publication, whether printed, electronic or broadcast, based wholly or in part on these materials should carry a statement that the original data creators, Licensors or copyright holders, the funders of the Data Collections (if different) and the Licensee's member bear no responsibility for their further analysis or interpretation;

4.1.5. not be under any obligation to take legal action on behalf of the Licensor or other rights-holders in the event of breach of any intellectual property rights or any other right in the Data Collection deposited;

4.1.6. not be under any obligation to reproduce, transmit, broadcast, or display the Data Collection in the same formats or resolutions as those noted in the deposited materials;

4.1.7. not be under any obligation to include the Data Collection or any part of it within the Holdings of Licensee and retain the right to remove all or any part of the Data Collection from the licensee's Holdings.

4.2. While reasonable care will be taken to preserve the physical integrity of the Data Collection, the licensee shall incur no liability, either express or implicit, for the Data Collection or for the loss of or damage to any of the Data Collection.

4.3. The copyright in any additional data added by the licensee to the Data Collection, including user guides and documentation that are prepared by the licensee to assist users in using the Data Collection will belong to the licensee's and any other parties with whom the licensee's may choose to enter into an agreement to produce such materials.

5. Royalties

5.1 No royalties shall be paid for the use of the Data Collection for Educational Purposes, archiving, or publicity for the Purpose set out in Clause 2 above.

5.2. For Commercial Purposes, royalty payments may be collected by the licensee on behalf of the Licensor, subject to a further written agreement and the licensee member or the licensee' shall not have any duty to pay such royalties unless it executes such a further written agreement.

6. Notice

6.1 All notice under this Agreement shall be in writing and shall be sent to the address of the recipient set out in this Agreement or to such other address as the recipient may notify from time to time. Any notice may be delivered personally, by first class post, by fax or by email.

Any notice may be delivered personally or by first class post or by fax or by email and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting, if by fax when confirmation of transmission is received and if by email, when confirmation of receipt is received from the system of the recipient. If no reply is received to a notice under this Agreement the consent of the recipient will be deemed to have been given after thirty (30) days have elapsed from the issue of that notice.

7 Termination

7.1 In addition to any other remedy, the Licensee on the one hand and the Licensor on the other may terminate this Agreement immediately in the event of any breach of this Agreement which cannot be remedied or is not remedied within thirty (30) days of the party in breach being requested to do so by the other party and all obligations shall cease except where specified otherwise under this Agreement.

7.2 Where there is no breach, either party

may terminate this Agreement upon six months written notice and if the Licensor terminates the Agreement under this Clause 7.2 the Licensee shall be entitled to charge the Licensor for such reasonable costs as have been incurred in archiving and cataloguing, and any other investment of resources in the Data Collection, prior to its withdrawal.

8. General

8.1. This Agreement is binding on and will benefit the successors and assigns of the parties.

8.2. The Licensee will not assign, transfer or subcontract the Agreement or any rights under it without prior written consent of the Licensor.

8.3. This Agreement constitutes the entire agreement between the parties. No variation will be effective without mutual agreement by the parties in writing.

8.4. If any part of this Agreement is held unlawful or unenforceable that part shall be struck out and the remainder of this Agreement shall remain in effect.

8.5. This Agreement does not create any partnership or joint venture between the parties.

8.6. No delay, neglect, or forbearance by either party in enforcing its rights under this Agreement shall be a waiver of or prejudice of those rights.

8.7. This Agreement is governed and interpreted in all respects under the laws of Belgium and shall be subjected to the jurisdiction of the courts of Belgium.

8.8. The Licensor and the licensee shall be under no liability for any loss or for any failure to perform any obligation hereunder due to causes beyond their control, including but not limited to industrial disputes of whatever nature, Acts of God, hostilities, force majeure or any circumstances which they could not reasonably foresee and provide against.

This section should also include a copy of the current EUL.

DEFINITIONS

User: any person accessing the Data Collection from anywhere in the world who has agreed to abide by the **End User Licence** conditions.

Authorised user: any person accessing a restricted-access Data Collection who has agreed to abide by the **End User Licence / Special Licence** conditions.

End User Licence

For profit: means use of the Data Collection for the purpose of monetary reward by means of the sale, resale, loan, transfer, hire or other form of commercial exploitation of the Data Collection. For the avoidance of doubt this includes the incorporation of any part of the Data Collection into any product made available for sale, resale, loan, transfer, hire etc, etc.

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