

Chair
Cabinet Domestic Policy Committee

New Zealand Government Open Access and Licensing Framework

Proposal

- 1 Individuals, communities and businesses increasingly wish to re-use copyright works and non-copyright material created by or for government agencies. They wish to develop innovative new products and services, offer insights into government policy development, and comment on agencies' performance. Current licensing and release practices across government hinder this re-use.
- 2 Re-use of State Services agencies' non-personal copyright works and non-copyright material is likely to yield creative, cultural and economic benefits for New Zealand.
- 3 I propose that Ministers endorse the New Zealand Government Open Access and Licensing framework (NZGOAL) as government guidance in this area. NZGOAL provides a consistent and structured access and licensing approach which allows and promotes legal and innovative re-use.
- 4 The State Services Commission (SSC) has consulted extensively during the development of NZGOAL, with 21 departments' responses revealing strong support for all-of-government adoption of a common suite of licences. The draft document also received wide external support and international praise.
- 5 SSC has piloted the draft NZGOAL in three government departments. All report that staff readily incorporated NZGOAL into their publishing and release processes.

Executive Summary

- 6 State Services agencies hold and own vast quantities of:
 - 6.1 copyright works, including geospatial datasets, commissioned research reports, scientific datasets, collections of official statistics, datasets on government performance (financial and otherwise), photographic images, educational resources and archive film; and
 - 6.2 non-copyright material, such as out-of-copyright images and material in which, by law, there is no copyright.
- 7 Agencies create or receive this material while carrying out their functions. Individuals, communities and businesses increasingly wish to re-use it.
- 8 It is widely recognised that re-use of this material by third parties is likely to have significant benefits for New Zealand. It could enable:
 - 8.1 individuals, non-profit and commercial organisations to leverage the material for creative, cultural and economic growth, improved environmental sustainability, greater productivity, and wider public benefit; and
 - 8.2 experts and others to contribute to improved policy development and more efficient financial performance by government.

- 9 Agencies are taking steps towards realising this potential, but are meeting practical and operational challenges. For example:
 - 9.1 there has been no uniform set of licences to enable agencies to release their copyright works on simple and protective terms allowing re-use by others;
 - 9.2 agencies are taking different and inconsistent approaches to releasing their copyright works;
 - 9.3 there has been no standardised method of indicating on non-copyright material, when released publicly, that it is not subject to copyright and may therefore be used without copyright-related restriction; and
 - 9.4 agencies that do release material for re-use do not always provide the material in reusable and open (non-proprietary) formats.
- 10 The proposed guidance set out in NZGOAL, including adoption of the New Zealand suite of Creative Commons (CC) licences, aims to standardise State Services agencies':
 - 10.1 licensing of their copyright works on terms allowing re-use; and
 - 10.2 release of non-copyright material on terms making it clear that re-use is permitted.

Background

Unrealised potential

- 11 State Services agencies hold and own vast quantities of non-personal copyright works and non-copyright material, but practical and operational challenges have impeded its re-use by others.
- 12 It is widely recognised that re-use of this material may have significant creative and economic benefit. For example, a report commissioned in 2009 by Land Information New Zealand, the Department of Conservation and the Ministry of Economic Development estimated that, had key barriers to the adoption of spatial information been removed, "New Zealand could have benefited from an additional \$481 million in productivity-related benefits in 2008, generating at least \$100 million in government revenue".¹
- 13 Promoting proactive release of copyright works and non-copyright material also supports greater openness and transparency of government.

International context

- 14 International organisations and overseas governments are developing policies to promote re-use of non-personal government information. The OECD has recommended that member countries set clear information access and re-use policies.² The Australian Federal, Queensland and Victorian State governments and the United Kingdom and United States governments support increased release of public sector material on open terms and in formats that permit and readily enable public re-use, on Creative Commons or similar terms.

¹ ACIL Tasman Pty Ltd. *Spatial information in the New Zealand Economy: realising productivity gains* (August 2009), <http://www.geospatial.govt.nz/assets/News/spatial-information-in-the-new-zealand-economy-2009.pdf>

² OECD Council. *Recommendation for Enhanced Access and More Effective Use of Public Sector Information [C(2008)36]* <http://www.oecd.org/dataoecd/0/27/40826024.pdf>

Creative Commons

- 15 Creative Commons (CC) is a non-profit organisation, founded in the United States. It is dedicated to making it easier for people to share and build upon the copyright works of others. It provides six free licences and other legal tools to mark copyright works with the freedoms the creators or owners wish them to carry. The CC licences have been made compatible with the laws of over 50 jurisdictions, including New Zealand.
- 16 Each licence obliges those wishing to use a work to attribute it to its author or owner when using the work publicly. The Attribution (BY) licence is the most open. The other five licence variants include other terms that specify whether:
 - 16.1 only non-commercial use is allowed;³
 - 16.2 derivative works (adaptations) may be made; and
 - 16.3 if derivative works may be made, there is an obligation on licensees to on-license these derivative works to others on similar terms.
- 17 Each licence choice is expressed in three ways:
 - 17.1 a 'Commons Deed', which is a plain-language summary of the licence with relevant icons;
 - 17.2 the 'Legal Code', which contains the full legal terms; and
 - 17.3 the 'Digital Code', which is a machine-readable translation of the licence that helps search engines and other applications identify the licensed work by reference to its licence type.
- 18 The suite of six CC New Zealand law licences was released in 2007 by Creative Commons Aotearoa New Zealand (CCANZ). CCANZ is administered by the Royal Society of New Zealand.

Governmental adoption of the Creative Commons licences

- 19 The SSC assessed whether the CC New Zealand law licences are appropriate for licensing State Services agencies' copyright works. It concluded that they:
 - 19.1 cater for a wide range of circumstances in which agencies may wish to license their copyright works for re-use;
 - 19.2 provide agencies with sufficient protection from liability; and
 - 19.3 are sufficiently clear and self-explanatory to encourage adoption in conjunction with accompanying guidance (i.e. NZGOAL).
- 20 The SSC also found that there would be no inconsistency between governmental use of these licences and legislation of general application to State Services agencies, in particular, the Official Information Act 1982 and the Public Records Act 2005.
- 21 Adoption by State Services agencies of CC licences provides a means by which government agencies can overcome practical and operational barriers to releasing their copyright works on terms allowing re-use. This solution is:
 - 21.1 low cost as there is no need for government to draft its own set of licences;
 - 21.2 user and machine-friendly, in that the CC licences are increasingly recognised and understood and, with their machine-readable format, are equipped for the digital age; and

³ The CC licences define "Non-Commercial" as "not primarily intended for or directed towards commercial advantage or private monetary compensation".

21.3 comparatively easy to implement, as it requires no legislative change.

Comment

- 22 This NZGOAL guidance promoting the licensing and release of State Services agencies' copyright works and non-copyright material on terms allowing re-use is a vital first step towards realising the creative and economic potential that exists in these works and material.

Essence of NZGOAL

- 23 NZGOAL will not apply to the release of personal information or to software. The release of personal information is governed by the Privacy Act 1993 and in some cases is further regulated by other legislation such as the Tax Administration Act 1994. Software is not an appropriate subject for CC licences. Creative Commons itself does not recommend the use of its licences for software, "strongly encouraging" people to use an open source software licence designed specifically for use with software instead.
- 24 NZGOAL:
- 24.1 lists a series of open licensing and open access principles, for copyright works and non-copyright material respectively;
 - 24.2 advocates the use of:
 - 24.2.1 CC licences for those State Services agencies' copyright works which are appropriate for release and re-use;
 - 24.2.2 clear "no known rights" statements for non-copyright material released for re-use;
 - 24.3 provides 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; and
 - 24.4 explains key aspects of copyright law relevant to the licensing process.
- 25 NZGOAL also outlines guidance on issues to be considered when drafting a one-off licence for the minority of cases where agencies may have a genuine need for a copyright licence that is more restrictive than any of the CC licences.
- 26 If approved by Cabinet, NZGOAL will:
- 26.1 apply to State Services agencies as guidance;
 - 26.2 cover both copyright and non-copyright material that is:
 - 26.2.1 produced by or for these agencies and is appropriate for release to the public or sections of the public; and
 - 26.2.2 which the agencies are entitled to release for re-use.

Expected benefits

- 27 Adoption of the NZGOAL guidance is expected to:
- 27.1 bring about more consistency in copyright licensing practices and in releasing non-copyright material across the State Services;
 - 27.2 generate creative, cultural and economic opportunities for New Zealanders and both non-profit and commercial organisations;
 - 27.3 foster greater transparency of government agencies' performance through encouraging the release of (and feedback on) performance data;

- 27.4 reduce agencies' legal costs in analysing licensing and release issues and drafting licensing agreements;
 - 27.5 improve agencies' understanding of Crown copyright, copyright and licensing;
 - 27.6 reduce the frustrations experienced when agencies' different licensing arrangements restrict people's ability to re-use State Services agencies' material innovatively;
 - 27.7 reduce the measure of public confusion that exists regarding Crown copyright, copyright, licensing and re-use;
 - 27.8 reduce administration costs associated with some dataset requests, as proactive online release will remove the need to send out CDs or DVDs of datasets each time a request is made; and
 - 27.9 align New Zealand with other jurisdictions that are opening up public sector information and data for re-use.⁴
- 28 NZGOAL provides certainty for users that they can re-use copyrights works legally:
- 28.1 the licence is clearly set out on the material;
 - 28.2 there is no need to register to use the material;
 - 28.3 users can search online for CC licensed material;
 - 28.4 users can easily recognise the CC licence symbols and know what re-use is permitted; and
 - 28.5 users can combine material that is licensed with the same or another compatible licence (both government and non-government).

Implications

- 29 Agencies may require resources to implement NZGOAL. For example, they may need to reprioritise or reallocate resources to release the datasets which third parties wish to re-use. However, because NZGOAL is recommended guidance, agencies will be able to factor this impact into their business planning and release material for re-use in a manner that suits them.
- 30 Changes in work practices may be required. Legal, business and publications staff will need to work together to apply NZGOAL to copyright and non-copyright material that is to be released for re-use. Agencies that tested NZGOAL's Review and Release Process over the last six months, including SSC, report that staff readily understood NZGOAL and incorporated it into their publishing and release processes.
- 31 Some agencies may need to reinforce or introduce improved data collection, management and release processes. SSC considers this a constructive outcome but notes that it may have cost implications and, require separate all-of-government guidance.
- 32 There is an opportunity for larger or more experienced agencies to provide assistance to smaller and less experienced agencies. This could include technical assistance in converting proprietary formats to open, non-proprietary formats.
- 33 It is acknowledged that school boards of trustees, in particular, may need assistance to apply NZGOAL should they choose to. This may have downstream implications for the Ministry of Education.

⁴ Examples are: European Union, USA, Australian Federal Government, Victorian and Queensland State Governments.

- 34 Open access and licensing may be inconsistent with the business models of certain Crown entities, such as Standards New Zealand. However, it is likely that Crown entities could release some of their copyright works on CC terms. That is a question for individual agencies.
- 35 Agencies may breach third party intellectual property rights when releasing material for re-use. NZGOAL's Policy Principles and Review and Release Process take this risk fully into account. They are designed to mitigate this risk and guide agencies through the matters they need to address.

Protection from liability

- 36 The CC licences contain a "no warranties" clause and a broad exclusion of liability. They do not contain an indemnity provision under which licensees would indemnify licensing agencies for costs arising from claims brought against agencies by third parties who rely on a licensee's use of the agency's licensed material. Officials have considered this issue and concluded it does not pose a material risk to agencies. Their legal analysis considers the prospect of such claims to be low and the likelihood of any such claim succeeding also to be low.

Detail of NZGOAL

- 37 NZGOAL contains 17 broad Policy Principles for State Services agencies to follow when releasing material for re-use. The three core principles are:
 - 37.1 the **Open Licensing Principle**: this applies to copyright works and states that, unless a restriction 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 licensing terms available within NZGOAL (i.e. the CC Attribution (BY) licence);
 - 37.2 the **Open Access Principle**: this applies to non-copyright material and states that, unless a restriction applies, State Services agencies should provide online public access to non-copyright material that is or may be of interest or use to people, allow them to copy and re-use this material without restriction and include, at the point of release, a "no known rights" statement (the suggested form of which is provided); and
 - 37.3 the **Restrictions**: NZGOAL lists a number of restrictions for agencies to consider. If any of them apply to particular material being proposed for re-use, they may displace the Open Licensing Principle or Open Access Principle (as applicable); the result may be that an agency would need to release the material on less open terms or not release it at all.
- 38 The **Charging Principle** generally discourages charging by State Services agencies for re-use of copyright works and non-copyright material, unless statutory, policy or commercial imperatives require it. Before making any decision to do so, State Services agencies are encouraged to take into account:
 - 38.1 the Treasury's "Guidelines for Setting Charges in the Public Sector" (December 2002);
 - 38.2 the Auditor-General's "Charging Fees for Public Sector Goods and Services" (June 2008);
 - 38.3 the presumption that recipients and licensees should not be charged where the costs of dissemination are low or it is economically inefficient to put in place and administer a charging structure; and

- 38.4 whether the imposition of a charge would prejudice the NZGOAL creativity principle and/or national public benefit that could arise from allowing re-use without charge.
- 39 The Treasury considers that NZGOAL's treatment of charging is consistent with its own and the Auditor-General's guidance.
- 40 The other Policy Principles address, among other things:
- 40.1 matters to take into account when selecting the other more restrictive CC licence variants;
 - 40.2 anonymisation of datasets;
 - 40.3 minimal and standardised attribution requirements in the case of datasets that might be "mashed up" or combined with other datasets;
 - 40.4 taking care with protected names, emblems and trademarks;
 - 40.5 the need to release works in non-proprietary formats;
 - 40.6 the need to respect moral rights in the limited circumstances where they apply; and
 - 40.7 digital rights management.

NZGOAL Review and Release Process

- 41 The Review and Release Process sets out seven steps for agencies to work through when releasing copyright and non-copyright material for re-use:
- 41.1 evaluate copyright-related rights;
 - 41.2 evaluate restrictions;
 - 41.3 select re-use rights;
 - 41.4 apply a licence or no-known rights statement;
 - 41.5 check moral rights;
 - 41.6 select the format; and
 - 41.7 release.
- 42 It also provides guidance on listing datasets on data.govt.nz, a public dataset directory operated by the Department of Internal Affairs (DIA).

Recommendatory nature of NZGOAL

- 43 When departments were consulted on whether a framework like NZGOAL should be mandatory or recommendatory, the uniform response was that it should be recommendatory. There were various reasons for this: State Services agencies hold vast quantities of copyright works and non-copyright material, some of which will be of no interest to people from a re-use perspective; the volume of re-usable material in agencies differs, as does the level of resources available to apply NZGOAL to them; and some Crown entities have differing business models.
- 44 In these circumstances, it is considered appropriate that NZGOAL take the form of government guidance rather than mandatory government policy. However, agencies are encouraged to move towards regular licensing of their new copyright works and non-copyright material as they are released.

- 45 I am proposing that Ministers **direct** Public Service departments, the New Zealand Police, the New Zealand Defence Force, the Parliamentary Counsel Office, and the New Zealand Security Intelligence Service, strongly **encourage** other State Services agencies (other than school boards of trustees), and **invite** school boards of trustees to familiarise themselves with NZGOAL, and to take it into account when releasing copyright or non-copyright material to the public for re-use.
- 46 As this is a recommendatory framework, some State Services agencies may:
- 46.1 choose not to implement NZGOAL, because it is not mandatory; and
- 46.2 either not release copyright works for re-use at all or continue to apply restrictive licences to copyright works contrary to the open approach set out in NZGOAL.
- 47 The SSC's initial and ongoing promotion of NZGOAL will endeavour to mitigate and address these potentially difficult areas. I am proposing that the SSC report to me on agency adoption of NZGOAL 12 months after its release.
- 48 I am also proposing that the SSC work with the Royal Society of New Zealand to encourage adoption and promote the benefits of NZGOAL for New Zealanders. This work will include the production of a brief and simple guide or flyer which explains the essence of NZGOAL to the public.

Updating NZGOAL

- 49 The attached NZGOAL provides the detailed legal and technical guidance required for State Services agencies to release their copyright works and non-copyright material for re-use. From time to time it may be necessary or desirable to amend the NZGOAL guidance in the light of experience or legal developments. I am proposing that the SSC may make amendments of a minor or uncontroversial nature but that it will obtain my approval before implementing any changes that could reasonably be considered to effect a change in policy.

Consultation

- 50 Development of NZGOAL has progressed through four stages, all involving consultation and feedback:
- 50.1 a review by the SSC in December 2008 to determine whether the CC New Zealand law licences would be appropriate for all-of-government adoption;
- 50.2 the development in March 2009 of the *Suggested All-of-government Approach to Licensing of Public Sector Copyright Works: Discussion Paper for Public Service and Non-Public Service Departments* and the subsequent release of the *Summary and Analysis of Departmental Feedback*;
- 50.3 development in August 2009 of the draft NZGOAL; and
- 50.4 development of the final version of NZGOAL.
- 51 This paper was prepared by SSC in consultation with DIA. All Public Service departments, New Zealand Police, New Zealand Defence Force, Parliamentary Counsel Office, New Zealand Security Intelligence Service and the Office of the Privacy Commissioner have been consulted.

Financial implications

- 52 NZGOAL has no direct fiscal implications. No additional funding is required for implementation of NZGOAL. Some agencies may require resources to implement it but, given NZGOAL's recommendatory nature, are able to factor this into their business planning in a manner that suits them.

Human rights

- 53 NZGOAL gives rise to no human rights issues, under either the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Legislative implications

- 54 No legislation is required to implement NZGOAL.

Regulatory impact analysis

- 55 Neither a regulatory impact statement nor a business compliance cost statement is required, as there are no legislative implications.

Gender and disability implications

- 56 NZGOAL has no adverse gender or disability implications. The greater release of government material on terms allowing re-use may benefit women and disabled people. Wider release of certain types of data may enable more thorough analysis of potentially discriminatory practices which may foster constructive policy and legal change.

Publicity

- 57 SSC will implement a number of communications activities if Cabinet approves NZGOAL. It will also brief Chief Executives and work with the Royal Society of New Zealand to develop a promotion and training programme for agencies.
- 58 It is proposed that this Cabinet paper and related Cabinet minute be released on the SSC website in July.

Recommendations

- 59 It is recommended that the Cabinet Domestic Policy Committee:

- 1 **note** that opening up State Services agencies' copyright works and non-copyright material for re-use by New Zealanders and others is likely to result in significant economic, social and cultural opportunities.
- 2 **note** that open access to State Services agencies' copyright works and non-copyright material supports greater transparency of government agencies' performance and gives members of the public, business and communities greater opportunity to provide potentially valuable insights into government policy development.
- 3 **note** that the New Zealand Government Open Access and Licensing framework (NZGOAL) adopts the six Creative Commons New Zealand law licences for licensing State Services agencies' copyright works.

Yes/ No

Yes/ No

Yes/ No

- 4 **endorse** the New Zealand Government Open Access and Licensing framework (NZGOAL) as guidance for State Services agencies to take into account when releasing their copyright works and non-copyright material publicly. Yes/ ~~No~~
- 5 **direct** all Public Service departments, the New Zealand Police, the New Zealand Defence Force, the Parliamentary Counsel Office, and the New Zealand Security Intelligence Service, strongly **encourage** other State Services agencies (other than school boards of trustees) and **invite** school boards of trustees, to:
- 5.1 familiarise themselves with NZGOAL, in its current form and as may be updated from time to time.
- 5.2 take it into account when releasing copyright material and non-copyright material to the public for re-use. Yes/ ~~No~~
- 6 **note** that the State Services Commission proposes to work closely with the Royal Society of New Zealand to promote awareness and adoption of NZGOAL and the benefits its implementation has for New Zealanders. Yes/ ~~No~~
- 7 **note** that the State Services Commission will report to the Minister of State Services on agency adoption of NZGOAL 12 months after its release. Yes/ ~~No~~
- 8 **agree** that the State Services Commission:
- 8.1 may make amendments to NZGOAL that are of a minor or uncontroversial nature; but
- 8.2 will obtain approval from the Minister of State Services before implementing any changes that are more substantive in the sense that they could reasonably be considered to effect a change in policy. Yes/ ~~No~~
- 9 **agree** that the State Services Commission may publicly release this Cabinet Paper and the accompanying Cabinet minute. Yes/ ~~No~~

Ryall

Hon Tony Ryall
Minister of State Services

23, 6, 10