**Legal Options for the Exchange of Data through the GEOSS Data-CORE**

***Summary White Paper***

**Data Sharing Task Force[[1]](#footnote-1)**

**Group on Earth Observations**

**1. Purpose**

1.1 This summary document[[2]](#footnote-2) addresses the legal options for the exchange of data, metadata, and products [referred to as “data” or “databases” below] through the GEOSS Data Collection of Open Resources for Everyone (Data-CORE). The GEOSS Data-CORE is a distributed pool of documented data contributed by the Group on Earth Observations (GEO) community through databases under the following principles, as set forth in the 2010 GEOSS Action Plan:

a. The data are free of restrictions on re-use;

b. User registration or login to access or use the data is permitted;

c. Attribution of the data provider is permitted as a condition of use; and

d. Marginal cost recovery charges (i.e., not greater than the cost of reproduction and distribution) are permitted.

1.2 It is important to note that user registration, attribution of provider, and marginal cost recovery charges[[3]](#footnote-3) for access to the data are permitted, but not required, and are not considered restrictions by GEO in the context of the GEOSS Data-CORE.

**2. Findings and Conclusions**

2.1 “Legal interoperability” of data made available through the GEOSS Data-CORE is essential for the effective sharing of data in GEOSS, which is a priority of the GEO Members. Legal interoperability for data means that the legal rights, terms, and conditions of databases from two or more sources are compatible and the data may be combined by any user without compromising the legal rights of any of the data sources used.

2.2 When substantial amounts of statutorily protected data are combined from two or more data sources, the new resulting database often will acquire the most restrictive rights from any of the sources used.

2.3 Public domain status is the best legal option for promoting the various social benefits and goals intended by GEO through the GEOSS Data-CORE by enabling the unrestricted re-use, re-dissemination, and legal interoperability of data. The public domain may be defined as encompassing content that is (1) not subject to copyright or related rights (including database protection rights), and (2) not subject to conditions on reuse imposed by other means.[[4]](#footnote-4) The public domain may be created formally by public laws through national legislation or regulation that expressly excludes certain categories of data and information from copyright or from other exclusive property protection, or by private-law waivers of rights. Public domain status may also be attained when the protection of the databases has exceeded the statutory term of protection (which is unlikely for almost all data made available through GEOSS), or by exclusions of certain subject matter from protection, such as facts. Rights under copyright or database protection laws arise automatically (i.e., they do not have to be claimed by a copyright filing or statement), unless expressly excluded or waived. Hence, express legislative or regulatory action is needed, or a waiver of all rights through a private law alternative (see, e.g., the CC0 or PDDL waivers in section 3.2, below) to make the data excluded or waived from protection, or to make the re-use and re-dissemination of data unrestricted.

2.4 Ideally, databases already having public domain status should include a notice in their metadata or on the database owner's server informing potential users of their public domain status. The Creative Commons Public Domain Mark, listed in section 3.2, serves this purpose. Such a notice could help to overcome the incorrect assumption by some potential users that the data are subject to protection and have attendant restrictions on reuse. Such a notice would thereby promote the further use of the data and legal interoperability through the GEOSS Data-CORE.

2.5 Most databases, however, do not have public domain status and are protected in whole or in part under statutory intellectual property laws. In those cases, a legally valid waiver of rights can achieve a private-law equivalent of public domain status, or a common-use license can incorporate the attribution conditions allowed by the GEOSS Data-CORE (see the CC BY 3.0 and ODC BY 1.0 licenses in section 3.2).

2.6 The endorsement by the GEO Plenary of either standard, accepted waivers or licenses, or other customized common-use licenses that meet all of the GEOSS Data-CORE conditions of access and unrestricted re-use of data, would help ensure certainty and legal interoperability of the data, and thus support the important GEO societal benefit goals. Common-use licenses and waivers also would help promote the contribution of databases through the GEOSS Data-CORE, because most jurisdictions do not have public domain status created by statute for the data compilations relevant to GEOSS.

2.7 It is important to note that the attribution term may not be legally enforceable for all data used in all jurisdictions. In those cases that it is not, attribution may be seen as a standard community practice or norm, or a moral or ethical imperative, which is not exactly the same as the legally enforceable attribution condition.

2.8 Data policies that promote full and open data exchange, but that are not formally codified through public laws, or through licenses and agreements, do not have the force of law.

**3. Recommendations for the 2011 GEO Plenary**

1. The GEOSS Data-CORE’s terms and conditions can best be achieved through any of the following mechanisms: statutory public domain, a private-law waiver of rights, or a common-use license.

2. If the database is not in the public domain as a result of a statutory or private-law waiver of rights, or by the expiration of the term of protection of any rights, the GEO Members and Affiliated Organizations should consider adopting a common-use data license with the following characteristics:

1. *The license must be compatible with the GEOSS Data-CORE principles as established in the 2010 GEOSS Action Plan; specifically:*

*- The data are free of restrictions on re-use;*

*- User registration or login to access or use the data is permitted;*

*- Attribution of the data provider is permitted as a condition of use; and*

*- Marginal cost recovery charges (i.e., not greater than the cost of reproduction and distribution) are permitted.*

1. *The license should be valid under the laws of as many different jurisdictions as possible.*
2. *The license should be clear and simple enough not be confusing to the data provider or user.*
3. *The license should be easy to recognize and find.*
4. *The license should be embeddable in the data as machine readable metadata whenever possible.*
5. *The license should be available in different languages, at a minimum in the language(s) of the country making the data available, as well as in English.*
6. *The license may have any other terms and conditions, such as a disclaimer of warranty and liability, that do not restrict the user or conflict with any of the terms and conditions summarized in a-f above.*
7. *Finally, and perhaps most important, the data and the applicable license must be kept under the legal control of the data providers, and not GEO or GEOSS.*

3. Based on these characteristics, the GEO Members and Participating Organizations should consider adopting one of the following existing private-law waivers or standard common-use licenses, which are presented below from pure public domain to the adoption of the legal attribution condition by license[[5]](#footnote-5):

**a. Creative Commons Public Domain Mark.** The CC Public Domain Mark is used to mark and identify data sets already in the public domain, enabling their more ready identification in global web searches. For a full description, see <http://creativecommons.org/choose/mark/>.

**b. Creative Commons Public Domain Dedication (CC0).** To the extent possible under law across the world, the person or authority who associates CC0 with the work waives all copyright and related or neighboring rights to this work. For the text of this waiver, see: <http://creativecommons.org/choose/zero/>.

**c. Open Data Commons Public Domain Dedication and License (PDDL).** The PDDL allows the database user to “copy, distribute and use the database”; “produce works from the database”; and “modify, transfer and build upon the database.” See: <http://www.opendatacommons.org/licenses/pddl/1-0/> for the full text of the license and waiver.

**d. Creative Commons Attribution License (CC BY 3.0).** The CC BY 3.0 license allows the database user “to Share – to copy, distribute and transmit the work”, and “to Remix – to adapt the work”, as long as the user “attribute[s] the work in the manner specified by the author or licensor” (plus some other conditions described in the license). See: <http://creativecommons.org/licenses/by/3.0/legalcode> for the full text.

**e. Open Data Commons Attribution License (ODC BY 1.0).** The ODC BY 1.0 license allows the database user “To Share: To copy, distribute and use the work”, “To Create: To produce works from the database”; and “To Adapt: To modify, transform and build upon the database”, as long as the user “attribute[s] any public use of the database, or works produced from the database, in the manner specified in the license.” See <http://www.opendatacommons.org/licenses/by/> for the full text.

4. Custom licenses that have the same terms and conditions as the characteristics listed in recommendation 2 above can also be used to provide data through the GEOSS Data-CORE, although such custom licenses will not be vetted and approved by the GEO Members in advance.

1. The information contained in this document does not constitute legal representation by the GEO Data Sharing Task Force (DSTF) or its Legal Liability Subgroup. Before using any information in this publication, it is recommended that an attorney licensed in the jurisdiction of interest be consulted for specific legal advice. The DSTF is grateful to its Legal Interoperability Sub-Group members for providing the draft of this summary and the background white paper. The Sub-Group members are: Paul F. Uhlir, Miles Gabriel, Joanne Irene Gabrynowicz, Jeff Heninger, Puneet Kishor, Harlan Onsrud, Kevin Pomfret, Daniel Quintart, and Glenn E. Tallia. We also wish to express our gratitude to Sarah Pearson, Senior Counsel at Creative Commons, for her comments on drafts of this paper. The views expressed here are those of the authors and not necessarily those of their employing institutions. [↑](#footnote-ref-1)
2. A draft of the full background white paper is available upon request. [↑](#footnote-ref-2)
3. For a definition and discussion of marginal cost pricing, see the Implementation Guidelines for the GEOSS Data Sharing Principles (2009). [↑](#footnote-ref-3)
4. Private communication from Sarah Pearson to Paul Uhlir, 1 September 2011. [↑](#footnote-ref-4)
5. Examples of standard, common-use licenses that meet the GEOSS Data-CORE terms and conditions, but that are geographically limited or constrained to a particular type of data and information (e.g., information generated by a government agency) include: the U.K. Open Government Licence for Public Sector Information (OGL), available at <http://www.nationalarchives.gov.uk/doc/open-government-licence/>, and the Norwegian Open Data License for Public Sector Information (NLOD), available at <http://data.norge.no/nlod>. [↑](#footnote-ref-5)