

Practice essay · Communities and governance

A data licence cannot grant consent

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Fictional author and institute · Editorial demonstration, not peer reviewed

ABSTRACT

A public licence does not summarise every permission governing research material. This practice essay compares Creative Commons Attribution 4.0 legal terms with the National Inuit Strategy on Research, TCPS 2 Chapter 9, and the CARE Principles. A fictional archive containing instrument measurements, place descriptions, and interview excerpts illustrates why possession, copyright authority, individual consent, collective governance, and repository access must remain distinct. The analysis examines irrevocable public grants, incompatible downstream restrictions, attribution without endorsement, and material excluded from a blanket licence. It provides neither legal advice nor a universal Indigenous permission process, and makes no claim of community approval. Clearer separation of objects and authorities can support legitimate reuse while avoiding promises that a repository is not entitled or able to make.

Keywords: data licensing · consent · collective authority · research agreements

A source-based editorial text, not a report of original Still North research. Examples and imagery are illustrative.

One download, several kinds of permission

A licence badge answers a particular question about reuse. It does not automatically answer who authorised the research, whether contributors agreed to publication, or whether an outside institution has authority to release collectively governed knowledge. Confusing these questions can create a repository that is technically easy to use but misleading about the rights and responsibilities that travel with its contents.

This practice essay compares the legal scope of Creative Commons Attribution 4.0 with the research-governance questions articulated in the National Inuit Strategy on Research, TCPS 2 Chapter 9, and the CARE Principles. It is an analysis of distinctions, not legal advice or a universal Indigenous data checklist. The fictional archive case does not describe an actual partnership, community decision, or agreement with any Indigenous organisation.

Distinguish the questions before combining the files

Copyright and related rights concern legally protected interests in material. A public licence can give others specified permissions that a rights holder has authority to grant. Consent concerns a person's informed and voluntary participation and the uses to which their contribution may be put. Collective governance concerns authority, interests, and responsibilities that cannot be reduced to a set of individual signatures. Repository access determines who can obtain a file. These layers can intersect without becoming interchangeable.

The CC BY 4.0 legal code is explicit about its scope. The licensed rights are rights the licensor has authority to license. The licence does not license privacy and publicity rights, and it does not grant permission to imply endorsement. It also describes the grant as irrevocable, subject to its terms. These details matter more than the shorthand “free to use”.

Nor should every datum be assumed to have identical intellectual-property status in every jurisdiction. A factual measurement, a database arrangement, a photograph, a narrative recording, and accompanying software can engage different rights. Legal exceptions, database rights, contracts, and confidentiality may also matter. A repository should identify the relevant material and seek appropriate expertise rather than assuming that one badge settles a heterogeneous package.

Fictional case: an environmental archive with three layers

Imagine an invented project preparing a download containing instrument measurements, contributed place descriptions, and interview excerpts explaining seasonal observations. The institution controls some rights in the instrument dataset. Contributors authorised certain excerpts for a limited research summary. The place descriptions are subject to a separately agreed review process. Nothing in this scenario identifies a real people's protocols or asserts that these arrangements would be appropriate elsewhere.

Putting the three layers into one archive does not enlarge the institution's authority over the latter two. Applying CC BY to the whole package would offer permissions the institution might not possess. A user could reasonably understand the badge to permit commercial adaptation, since CC BY is not a non-commercial-only licence. The archive would have created ambiguity rather than achieved openness.

The cleaner response is to separate the releasable materials and their terms. The public instrument release might carry an appropriate licence after its own review. Other material might remain accessible through an authorised request process or not be released at all. A public catalogue can describe the existence and access conditions of restricted material only where that description is itself

Layer	Proposed reuse	Question not answered by a blanket badge
Instrument measurements	Recalculation of a regional index	Does the institution hold the relevant rights, and are location or other restrictions unresolved?
Place descriptions	Inclusion in a searchable external map	Who has authority over that representation and audience?
Interview excerpts	Reuse in a commercial teaching product	Did the agreed use and publication permissions cover that purpose?

appropriate. Hidden sensitive content should not be exposed merely to explain why it is restricted.

Consent authority is not generated by possession

Holding a recording or paying for collection does not establish authority for every further use. Consent to an interview does not automatically imply consent to public audio, identifiable quotations, a searchable map, or future machine-learning use. A consent process should make its actual scope intelligible. The institution needs to preserve the relevant permissions and limits, while protecting the private records through which those decisions were made.

TCPS 2 Chapter 9 distinguishes individual consent from community engagement. It also addresses intellectual-property arrangements in collaborative research and recognises customs governing disclosure. Its Canadian policy scope should remain visible. It does not replace Indigenous peoples' own ethical guidance, and it does not authorise an outside repository to select one representative whose approval will settle every question.

The National Inuit Strategy on Research is an Inuit-authored statement of expectations for Inuit Nunangat research. Governance, ownership, control, funding alignment, and capacity belong together in that account. Citing the strategy is not evidence that a particular release has Inuit authorisation. Outside institutions need the relevant relationships and processes, not a general declaration that they support the strategy's aims.

The fictional archive therefore needs to know which authority applies to which material and decision. An individual can decide about their own participation without necessarily holding authority to publish all collectively held knowledge. A collective process can govern a project without removing a person's right to decline participation. Where authorities overlap or disagree, uncertainty should be resolved through the applicable process, not through the most convenient software setting.

Do not promise incompatible forms of control

A common temptation is to attach a broad public licence and then add a sentence saying every reuse requires fresh project approval. For rights actually granted under CC BY, additional downstream restrictions conflict with the licence's structure. An ethical request can still be stated, and independent obligations may still apply, but their legal status should not be disguised. Readers must be able to tell a binding condition from a requested courtesy or a separate approval requirement.

If ongoing case-by-case approval is essential, unrestricted public licensing may be the wrong publication model for that material. This decision belongs before

release, when the institution can still choose a controlled service or a narrower authorised derivative. A licence is not an access-control switch that can later be flipped to recall all copies. Irrevocability within the licensed rights should be understood by the people making the release decision.

Equally, a restricted download is not automatically ethical. Access controls can reinforce outside institutional gatekeeping if the people holding authority cannot obtain or use their own information. The CARE Principles foreground collective benefit and authority to control, including data useful for Indigenous governance. A protective rationale should be tested against whose access and interests it actually serves.

Make the distinction visible to downstream users

A landing page should identify the covered object, the applicable licence where one exists, material excluded from it, and any separate access or use conditions. It should provide a responsible contact route and a version date. The downloaded package needs enough of that information to remain interpretable after it is detached from the website. An ambiguous "all rights cleared" statement should not stand in for a record of what has actually been authorised.

Attribution also deserves care. A dataset citation can give scholarly credit without implying that every named contributor endorses a new interpretation. CC BY explicitly excludes implied endorsement. Some contributors may require anonymity, a collective form of credit, or no public identification. Authorship, acknowledgement, legal attribution, and participation are different relationships; a repository should not collapse them into one mandatory public contributor list.

For the fictional case, a proposed teaching-product reuse would be assessed against the specific material involved. The instrument table's licence would not silently extend to interview excerpts merely because they were downloaded together. Conversely, users should not be told they need permission for activities already allowed under applicable exceptions or valid public terms. Clear boundaries protect legitimate reuse as well as legitimate limits.

Limits and implication

This essay cannot decide copyright ownership, the enforceability of particular agreement terms, or the legal effect of a permission dispute across jurisdictions. It also cannot identify the authorities for a real Indigenous project from outside that project's relationships. The sources provide important distinctions and stated priorities; they are not a substitute for qualified legal advice, institutional ethics responsibilities, or locally applicable governance.

The practical implication is to stop treating a licence as a summary of every permission. Establish the authority to release, define what is being licensed, preserve consent and governance limits separately, and choose a sharing model that can honour them. Openness becomes more credible, not less, when a reader can see exactly which reuse is enabled and which questions a public badge was never entitled to answer.

References

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