

# NBN Terms and Conditions

## Review workshop

Thursday 20 November 2014, Natural History Museum

### Purpose of the workshop:

To critically analyse the current Terms and Conditions and establish a proposal for refreshing the Terms and Conditions.

### Principles behind terms and conditions to release the NBN strategic aims

- Currently the concern of misuse is used to restrict use
- Put the decision of openness in the hands of the recorder such as with Flickr? If they want their record to be on the NBN Gateway then this should not be restricted.
- The Terms and Conditions need to be simple and easy as no one reads them.
- The Terms and Conditions must be enabling to facilitate use
- Creative commons style licensing is needed, and this should be standardised across NBN partners. Licenses – suite of CC licenses such as GBIF, Flickr, set from a predefined set of licenses which can be used as a filter. Never going to be able to fully stop people breaking the conditions. Some people may consider data unusable if no license for use
- An alternative to a suite of licenses would be to have a completely open license which relieves the need for Terms and Conditions
- Need to have a risk based approach to change with a majority agreement
- The terms must ensure no harm is made to species or habitats, especially sensitive species

### Issues identified

A range of issues were identified throughout the workshops. These can be categorised into issues especially around the terms and conditions, and wider issues within the Network.

#### *Terms and Conditions*

The first issue, which was not resolved in this workshop was who decides the Terms and Conditions? Is it the recorder who has IRP or the collator? It was raised that once data are published to the NBN Gateway, or GBIF, we cannot control what people do with the data. People who are aware of the Terms and Conditions will be more conservative than those who do not understand the Terms of use, and often the legality of the Terms and Condition can dissuade people from using data from the NBN Gateway.

It was noted that not all recorders want to push data or enter data into iRecord/NBN and there is an ongoing challenge to educate and support individuals who are reluctant to share their collections. It was identified that this is out of scope for the terms to fix.

#### *Other Issues*

It is important to note that recorders do not want to undermine the Local Record Centre network through publishing their data at full resolution. A record is not just a species and location. The value of the attributes attached to a record is high, and these attributes are the 'added value information' which Local Record Centres base their business from.

It was suggested that the NBN could attract further support and funding through demonstrating use of records. The current instability of the NBN Gateway is preventing the NBN Gateway servicing consultant/commercial uses

Other issues raised included concerns of data quality, speed of data flow and support for verification.

## **Attendees were asked to identify the pros and cons to openness**

### **Pros to openness**

It was discussed that given the shift in open data outside of the NBN, through increasing the openness of the NBN data holdings this will ensure that the NBN stays relevant in these changing times. Some members of the workshop believe that if you can access data you should be able to use it, and use should not be further restricted by Terms and Conditions, however it was recognised that in most cases there are 'degrees of openness' which can be applied to the data. If the data holdings are fully open to use there is less need for access controls, which in turn will increase the speed of access. There is a need to take into account INSPIRE compliance and funding terms which often include making research and other data available at the end of a project.

It was suggested that there is often greater trust in data when they are open. Open data ensure that the funds used to capture the data (public, or otherwise) are but to best effort and can be used to increase public support and engagement. It was recognised that open data can lead to new discoveries and knowledge, promotes innovation and also realises the full benefit of the data.

It was discussed that open data could be more likely to protect the environment as users are fully informed as to what has been recorded in a given area. Consultants would be able to use the data holdings to fully inform development, and researchers would be able to use the data for innovative discoveries.

### **Cons to openness**

It was raised that one of the main concern of opening access to data is surrounding consultants making commercial gain without the data provider being funded and supported. The cost to mobilise data may not be recuperated and release of data could undermine data providers business model.

There is concern that some data cannot be open, for example vulnerable species, data which have been collected on private land or personal details such as recorder addresses. It was raised that there it needs to be clear the difference between private information such as addresses, and personal details such as recorder names.

Opening up data may reduce the lack of control over specific uses and users may not understand how to interpret the data appropriately resulting in misuse of the data. Additionally, some users may have multiple roles, for example they could be a recorder but also a consultant and through opening data, they could access it through one route for use via another.

## Line of Exposure to openness (to use)

Attendees were asked to place a mark on a line from closed – open to represent their current position as a data provider or user to openness at the start of the workshop. At the end of the workshop, the exercise was repeated to highlight where people want to be. All attendees moved towards the ‘wanting to be more open’ end of the line by the end of the workshop

## Alternative models for Terms and Conditions, and NBN Gateway

**Model 1:** Fee paying licensing model for NBN Gateway. For this to work, the NBN Gateway needs to be a stable system run as a commercial organisation, which determines if consultant gets access to the data. Funding for the NBN Gateway could come from this model to support stability.

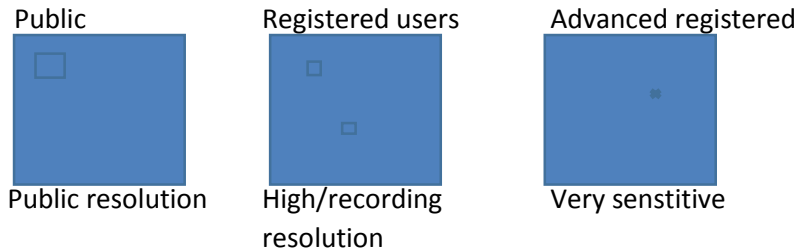
The role of Local Record Centre can be split into data requests and interpretation. Through automating data requests via the NBN Gateway, this would free up time for Local Record Centres to add value, interpretation and advice. This could include creation of nationally agreed lists - sensitivity, commercially sensitive *etc.* It was identified however that it is hard to estimate the value of ‘added value’ services such as data entry, recorder support *etc.* that LRCs provider. We need to get better at measuring the soft services that LRCs can provide to remove such reliance on income from data request services

**Model 2:** Default position is that “data can be used in any way by anybody”. There should be exceptions around sensitive species which must have an agreed national approach to control level of access. NBN Gateway has potential to streamline commercial use, however we must identify if the dangers outweigh the advantages? Many recorder may not care if their data are used commercially but will care if this means their Local Record Centres lose funding.

**Model 3:** A limited suite of machine readable licenses should be applied to datasets and/or individual records (or elements thereof) e.g. CC/CC-BY. Trust through transparency leads to confidence (both the users and provider have a clear understanding of conditions) and this, over time, will become part of the culture – promoted through education and training. Licenses will ensure that use and access become increasingly synonymous, with exceptions such as use and access to vulnerable species. *Potential Issues: if there are data without a commercial license attached, and a user wanted to access the data for commercial use – how would they/could they, access these data? Once data submitted under a license this cannot be undone. Can the collator submit data under a license on behalf of a recorder? Would CC be covered by saying ‘data provided*

by multiple providers via NBN Gateway'? Licenses may be hard for people who wear two or more hats, e.g. recorder & consultant.

**Model 4:** Three tier system to access data on the NBN Gateway (Public, Registered use, Advanced Registered user). **Public access** has no restrictions and simple/no Terms and Conditions. **Registered users** have a annual fee which pays for data management. The terms and conditions around use would be more stringent and the fee payers would be consultants, academics, planning, statutory users. **Registered advanced users** would be able to received access to sensitive data on request.



*Potential issues: Access controls could govern use more rather than Terms and conditions. However, when data goes to GBIF the access controls do not apply. Instead of relying on access controls should we not be educating people around use of data?*

**Model 5: (based on Natural Resources Wales model)** Set list of 'sensitive' species and habitats and everything else OGL industry standard. Where there are restrictions for use this is explicit in Metadata. The owner must be credited. The data user cannot use in a way that bring the provider into disrepute and cannot be used in a deliberately misleading way

**Model 6: Citations.** It was identified that the NBN need to look at the technological solution to citations. "We" are the NBN and people may be happy for the 'NBN' to be cited, which will cover the data providers. It was agreed that the NBN need to decide if 'we' are happy with consultants using the NBN Gateway. In Australia some data providers don't necessarily sell the data, instead they sell 'knowledge' and consultants will go to the data provider for the added value information. Receiving income is a way of showing relevance, however it was identified that showing the download and use of data also demonstrates relevance. We need to look at alternative models for generating income outside of selling data. It was also raised that we should discourage the use of non-commercial licensing

## Conclusions

Open data are overall better for conservation action, especially when it is taken into account that the restrictive nature of the current terms and conditions are preventing Local Record Centres using the data as their role has a commercial aspect.

There are challenges ahead to changing public attitude towards openness and the younger generations who have always been surrounded by the open data culture are potentially in a position to help lead on this and communicate to those who are unsure. The local nodes of the NBN are also in a strong position to engage with recorders with regards to any new approach and this will be the key for implementation and establishing a revolution.

Through using invasive non-native species data, and historic records (an agreed threshold) as a starting point to making data available/open we can test the mechanics and perceptions etc. of any changes.

Standard licenses attached to our data holdings will clarify use, establish innovation, serendipity and prompt the development of valuable products. There was discussion that there are three options with regards to alternative approaches, in addition to the suggested models above

- T&C Legal Framework
- Code of practise/code of conduct
- Licenses (CC0) + Code of Conduct

There was agreement that a series of licenses would be a suitable option moving forward and some felt strongly that a single CCO open license, with an associated code of conduct would be suitable to ensure responsible use of data (within the law). This model would not have access controls expect sensitive flags on the data and would reduce the control needed over over publication, commercial use, research use.

Wider consultation is needed, especially ensuring that both recorders and collators are heard. The NBN want to be able to use data of the benefit of biodiversity outcomes and a key issue is the funding model on supporting the partners in the network

## **NBN Gateway Terms and Conditions Review – Discussion Paper**

### **Background**

The NBN Trust is, together with wider NBN partners, reflecting on nearly 15 years of experience in sharing data and information about wildlife. Given the review of strategic direction and technical vision refresh, it is timely to review and consider recasting the NBN Gateway Terms and Conditions which govern onward sharing and use of NBN data.

Undoubtedly, the first key milestones which the NBN reached has been the development of both the NBN Gateway and also a change in behaviour with regards to data providers willingly putting data in the internet for use.

Two types of control were introduced to address the heightened concerns of sharing data over the Web, at the time a very new and untested media. The first were a set of physical controls, allowing providers the ability to restrict the level of access to their own data. In parallel, work was undertaken to manage the transfer of rights and permissions associated with data collated and shared by NBN partners. The latter culminated in a model agreement between data providers and data users via the NBN Gateway; the Gateway Terms & Conditions.

### **Need for a review**

The NBN is now entering a second phase of development with a focus on improving access to data and visualisation, application and use of data on the NBN Gateway. In practice, physical sets of controls have been favoured by providers over the legal Terms and Conditions as a means of restricting onward use. NBN Gateway Access Controls have just undergone a major revision, introducing a finer level of flexibility and control.

A review of the NBN Terms and Conditions for use is required because;

- it is the NBN ambition for open and free access to as much data as possible and the current Terms and Conditions conflict with this ambition.
- the current Terms and Conditions are complicated for users to understand and interpret
- in particular, the mechanism for deviation from the standard terms is complicated and impractical to follow.
- there is no mechanism for data providers to grant specific users more open permission to use their data.
- the current Terms and Conditions are being regularly broken, both by users authorised by data providers but with no mechanism to affirm it, and potentially by others using ambiguity as justification.

### **Objectives of this review**

This review is being undertaken to achieve the following objectives:

- to ensure that the Terms & Conditions reflect, and are compatible with, the ambitions of the NBN strategy to *“Make all biological records freely and easily available to everyone”*
- introduce a clear mechanism allowing data providers to grant specific users more open permission to use data
- simplify the NBN Terms and Conditions to aid interpretation and adherence by users
- develop a way of supporting people to understand the Terms & Conditions.