

Whose data are they anyway?

Introduction

An introductory presentation was given to outline the status of biodiversity records as intellectual property and look at the implications of this. The main points were:

- Copyright applies to creative works
- It may not apply to individual records as a report of facts
- However, this could vary depending on aspects of the record, e.g. is it a photographic record or part of a literary work?
- Rights exist over databases, covering the structure not the content, and providing significant work has been invested in creating them
- Whatever the legal position there is also the moral obligation to respect the wishes of recorders
- Creating agreements with recorders and applying licences to records can be the best way of dealing with these issues
- Creative Commons licences are internationally understood, and by applying them to digital records, can be a simple way of clearly showing how records should be treated
- Recorders' attitudes to their own data can vary depending on circumstances such as the reasons for collecting the data or sensitivities surrounding particular species
- Historical records, where the recorders are hard to contact, can create a specific set of problems and may require all reasonable steps to be taken to contact the recorders or their relatives.

Case studies

The group split into smaller groups with each of these discussing a separate case study. The groups were asked to comment on the case studies and say what they thought the best practice would be. They were also asked to comment on whether existing guidance was suitable.

Case study 1

A data centre has been approached by a government agency for species and habitat records. It needs the records at the highest geographic resolution so it can conduct a detailed scientific analysis. It also wants to publish the records it uses for the analysis as open data for reasons of transparency. The agency only needs records taken from within the last fifteen years.

The data centre has data agreements in place with the variety of people who provide it with the data that is being sought by the agency. However, the agreements were drawn up without foresight of the data request from the agency and the data centre is now unsure whether they are mandated to release the data, or even mandated not to release it, under these circumstances. Nor is it sure if it is mandated to negotiate with the agency on whether the data can be used by them but not then published as full resolution open data. The data centre has suggested that it could attempt to contact the recorders, but this will take time and it's likely that not all the recorders will respond anyway.

Comments:

- What may be damaged from not sharing data?
- What do data owners think?
- Funding vs ownership: agency cuts funding of data centre if data are not available for free
- Can a compromise be reached between the centre and the agency to protect commercial interests and GDPR etc.
- Flow diagram would help
- Not just copyright
- Concerns over data sharing may vary over time
- Records centre: interpret best practice guidance into specific scenarios
- More transparency towards data collections

Case study 2

A data centre wanted to publish a large set of records for a specific taxonomic group as open data, under a CC-BY licence. The records go back a long way in time and were produced by a very large number of individuals. Most of the records were not submitted to the centre under any kind of agreement, and the agreements that are in place had never considered the need to cover the issue of open data.

The centre has decided to make contact with the recorders to ask them whether their records can be published on the NBN Atlas under the CC-BY licence, allowing them to be used by anyone for any purpose. However, approval from only a small number of recorders was gained, although this did cover a relatively large proportion of the records. There were several reasons for this:

- The centre had none, or obsolete contact details for some recorders.
- The recorders had received contact from the centre on a number of occasions but had not responded.
- The recorders have died.

The centre decided that it had taken all reasonable action to make contact with all the recorders and therefore was justified in withholding only those records from recorders who actively did not give their permission for their records to contribute to the open dataset.

Comments:

- Following current advice is not necessarily pragmatic
- Current approach of ignoring best practice is open to risk
- Textbook example is not repeatable
- 'implied contracts' exist between recorders and recording schemes / LERCs
- Cannot apply consent retrospectively, difficult to implement going forward for all streams of received data
- Organisations don't want to take risks
- Organisations may not have the resources to trace ownership and ask permission
- Not necessarily a priority to share data beyond own organisation

Case study 3

This hypothetical case study was devised on the day.

A recorder has many years' experience with a particular taxonomic group. This has enabled them to recognise what they think is a species new for an area. They are able to identify it and have their identification accepted by the national authority. This is a culmination of a life's work. The recorder wishes to have their finding published, but also have their efforts recognised.

Comments:

- Is a biological record a fact?
- Using experience learned to be able to identify a species adds something 'intellectual'
- Does this then make it a work rather than fact?
- Does the fact of identifying a species make it a record? Or is it only when it's crystallised by writing it down? (even if not by the identifier)
- If a specimen / photo is determined by an expert, is the record then jointly owned?
- This has all evolved into the general expectation among biological recorders that both recorder and determiner are actually jointly acknowledged in a record
- Discussion re. CC licensing of individual species vs whole dataset, e.g. in iRecord and NBN
- "in submitting your record you are agreeing to its use for xyz"
- Policy on record sheet / website etc.
- Recommendation: Treat every record as if it is intellectual property and could be copyrighted in order to avoid problems
- Expectation amongst recorders that they own their records and can exert IP
- Ethics is more important than law, as well as trust amongst recorders
- Respect + Trust

Questions

Was the best outcome realised?

Why?

What would a better outcome have been?

Was the current advice followed?

Was the current advice suitable, or does it need modification?