

Open Data User Group response to the consultation on the code of practice for datasets and beta charged licence

Revisions to the Freedom of Information Act 2000 in the Protection of Freedoms Act 2012 are intended to establish an enhanced right to data by introducing a statutory duty for public authorities to publish datasets for re-use. The Open Data User Group entirely supports this intent. Successful implementation of a right to data is a precondition of releasing social and economic benefits derived from open data: transparency, accountability of public bodies, technical and business innovation.

Much of the draft code of practice restates existing government policy on the default use of the Open Government Licence by central government departments and the desirability of progress towards the five star standard for release of public datasets. ODUG concurs with these aspects of the consultation code.

The Open Data Institute has produced a comprehensive response to the consultation. The detailed ODI commentary indicates where revisions to the code would assist progress towards easy and scalable re-use of public data using the Open Government Licence. ODUG supports the ODI response.

In ODUG's view the key instrument for implementing the right to data is the Open Government Licence. Progress from 3 star to 5 star data publishing, data analysis of massive datasets and adoption of semantic web technologies depend upon this legal framework. We have the licence in place. It needs to be widely adopted to make the right to data a reality. Conversely, if publishing under the OGL does not become the default action for public bodies, the right to data will remain an aspiration.

ODUG recommends the code of practice is reframed to require publication of data under the OGL as a primary duty of public bodies.

Other licensing options would then be considered as exceptions to the general duty to publish.

We note the opportunity for organisations to meet their Freedom of Information and

open data obligations through a common technology and licensing approach, by using open data formats and the OGL. Both aspects, technical and legal, offer cost savings. This is in line the recommendation of the Justice Committee post legislative review of the FOIA that organisations complaining about the cost of FOI should review their methods of fulfilment.

The rest of this briefing refers largely to the introduction of a charged licence. It references:

- sections 25 to 32 of the consultation
- the beta charged licence

We note a disconnect between the code of practice consultation and the introduction of a charged licence which threatens to derail the stated purpose of the exercise: offering clarity to public authorities about how they should fulfil their responsibilities under the FOIA regarding datasets.

In the absence of guidance expressing a coherent policy on open data and FOI the introduction of a new paid-for licence risks undermining

- the conclusions of the Justice Committee post-legislative review of the FOIA
- the government's response to the review
- the ICO guidance on both FOI requests for datasets and publication schemes and
- existing government policy encouraging the default application of the Open Government Licence to data from all public bodies.

We note that the guidance proposes the use of the charged for licence in exceptional circumstances. However no guidance is offered which defines the exceptional circumstances in which a paid-for licence is appropriate. In the draft code and the National Archives website the option to claim copyright on a dataset appears as a free choice for any authority which does not come under Crown Copyright and therefore the Open Government Licence (central government departments).

A working hypothesis is that the option of a charged licence will lead public authorities to seek to realise an assumed value by asserting copyright over datasets.

Note it is not necessary for the belief to be well-founded as no evidence has been presented of the size and value of a market of willing buyers. It may not exist.

Absent a robust OGL directive several negative impacts of the charged licence are likely. ODUG's primary concern is that public bodies which are not part of central government will opt for the paid-for licence and may be incentivised by the charged licence to make copyright claims about datasets in the belief that 1. they can raise revenue and 2. to exempt themselves from FOIA requests. The position of private companies (for example, large IT contractors) holding data on behalf of a public authority to carry out a public task is a particular concern. The use of a charged for licence undermines the benefits and simplicity of licensing under OGL; improved public service and economic growth resulting from re-use of public data will be lost where the paid-for licence is used.

Other potential disbenefits of the charged for licence are the likelihood of public organisations generating increased fees for copyright lawyers. Disputes about the definition of a dataset, reasonable return on investment and what constitutes copyright material will be encouraged by lack of clarity in the guidance and the resulting confusion may need to be resolved in the courts.

The beta licence itself seems unlikely to appeal to many willing buyers. It gives the lessor extensive control over the uses the licensee can make of the dataset. Notably restricted sub-licensing extends the reach of derived data problems. The lessor can require a copy of the product and access to company accounts to verify royalty payments. The contract offers no guarantee of level of service or warranty of accuracy. It seems likely to encourage rent-seeking behaviour and extended copyright claims by public authorities.

The consultation period is very brief and leads ODUG to believe that the impact of a paid-for licence has not been adequately researched and evidenced.

We therefore recommend that introduction of the charged licence is held back for 6 months pending the following.

1. An impact assessment which studies the wider social and economic effects of the three licences (OGL, non-commercial and charged) with particular reference to transparency, open data and re-use of public sector information. The research would review the empirical costs and revenues of some existing data services supplied by public bodies under charged contracts. ODUG would be willing to participate in this research.
2. A consultation with participation by open data users, FOI researchers and public bodies, in particular authorities such as local authorities which are not mandated to use the OGL.
3. Based on this consultation, preparation of a revised code of practice which provides detailed guidance for public bodies.

We are not asking for delay in commencement of the open data provisions of the Act. We suggest a timetable of: April first release of the code of practice with enhanced open data provisions, followed by an October final release with guidance for use of an improved charged-for licence.

The Open Data User Group (ODUG) exists to help government understand the requirements of people who are using, or could use, the datasets it collects.
<http://data.gov.uk/odug>