



26 June 2020



Reference: OIA-2019/20-0564

Dear 

Official Information Act request relating to Creative Commons licensing on the Unite Against COVID-19 website

Thank you for your email on 4 June 2020, copied to Hon Phil Twyford, Hon Kris Faafoi, and Mandy Henk. I have taken your message to be a request made under the Official Information Act 1982 (the Act). You wrote:

"Since our last email exchange I have revisited the Unite Against COVID19 website and I note with disappointment and concern that the Creative Commons Attribution copyright license has also been removed from the main page of the Unite Against COVID19 website. It now appears to an uneducated member of the New Zealand public that their ability to reuse the website content and in particular the COVID19 resources on that website is restricted to non-commercial reuse only. As explained in my previous email it is my understanding that Creative Commons licenses are not revocable and once something is published under a particular Creative Commons license, licensees can continue to reuse the licensed content in accordance with the license it was originally published under for the duration of the copyright.

I should make you aware that on the April 1st 2020 I spent the day reusing many of the resources published on the Unite Against COVID19 website under the Creative Commons Attribution CC BY 4.0 license. I downloaded many of the resources published on the Unite Against COVID19 website and then proceeded to upload them into the WikiCommons website, appropriately attributed and with links to the original source. The reason I did this is because once images are placed in WikiCommons, internet search engines such as Google are better able to discover them and to surface them as a result of an internet search. I donated my time and effort doing this to help Unite Against COVID19 resources reach a wider audience and to help New Zealanders to more easily find the information contained within them. The link to see these uploads in WikiCommons is https://commons.wikimedia.org/wiki/Category:Unite_against_COVID-19.

I am sure you are aware that the Unite Against COVID19 website has been archived in the Internet Archive. You can see the general archive for the website here [https://web.archive.org/web//https://covid19.govt.nz](https://web.archive.org/web/*/https://covid19.govt.nz) as well as the archive for the resources portion of the Unite Against COVID19 website here https://web.archive.org/web/*/https://covid19.govt.nz/resources/. It is possible to see via the various archive links the original Creative Commons Attribution license on the main page of the website, on the resources page and on the terms of use page. It was under this Creative Commons Attribution license that I reused the United Against COVID19 website content.*

Since that time not only has the Creative Commons Non Commercial license been added to the terms of use of the website (as I pointed out in my original email), the general Creative Commons Attribution license has also been removed from the Unite Against COVID19 website. As I have previously explained, because the website was originally licensed for reuse under a Creative Commons Attribution license, I believe that the Creative Commons Non Commercial license currently present in the terms of use section of the Unite Against COVID19 website is unenforceable. I would also like to emphasize that the Creative Commons Attribution Non Commercial Use license is also inconsistent with the NZGoal framework policy. For further information see <https://www.data.govt.nz/manage-data/policies/nzgoal/>.

Could you please explain the actions that will be taken to rectify this legal error. If needed please treat this query as an Official Information Act request..."

I appreciate the points you have raised, as well as your effort and intentions in sharing our COVID-19 material from the COVID19.govt.nz website. Your point regarding revocation is correct, however the change in license was nonetheless required from our perspective, as outlined below.

On 24 April 2020 the All-of-Government National Crisis Management Centre sought legal advice regarding the terms and conditions of the COVID19.govt.nz website, as it had become apparent that the brand was being used for commercial purposes, mainly by retailers. There was concern that the use of the brand implied official Government endorsement in instances where there was no endorsement. One such instance involved the sale of personal protection equipment. We felt, and still believe, that we need to mitigate potential misleading of the public where the use of the brand gives an incorrect impression.

Accordingly, a decision was made to shift to a version of the licence that restricted commercial use. This licence was not used when the COVID19.govt.nz website was launched as the extent and impact of problematic commercial use was not anticipated at the time. In shifting the licence, we discussed the difficulties in preventing somebody from using material that they had accessed under the previous Creative Commons Attribution CC BY 4.0 license, and the difficulty of enforcing this in relation to material that already existed on the website. We opted for a soft approach to these retailers; most were very understanding about these exceptional circumstances. As you noticed, the website's footer was later changed too, for consistency, following further legal advice.

For completeness, please be aware that you have the right to ask the Ombudsman to investigate and review my response under section 28(3) of the Act.

This response will be published on the Department of the Prime Minister and Cabinet's website during its regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Yours sincerely



John Ombler
AOG COVID-19 Controller