

Adopt a Common and True Open Data License for Canada

Issue

Innovation and information-based businesses depend upon data. A key part of ensuring the prosperity of data-based businesses is open data, most especially where that data has been gathered with public funds and resources. While Canada has made some tentative steps towards open data, the current landscape is marred by a patchwork of different and non-interoperable licenses, inconsistent adoption, and jurisdictional open data policies that, ironically, violate the key principles of open data.

Background

Previous policy resolutions passed in 2014 and 2015 have spoken to the Canadian business community's need for open data, and those needs are, if anything, even stronger today. The modern digital economy depends in large part upon access to data. Some tech businesses, most famously but not limited to Google and Facebook, have built their entire business models on the generation and dissemination of data. Disruptive innovators such as Uber and Netflix depend upon a constant flow of rich data.

The global economy is configured so that almost any business that wishes to expand, innovate, and go global must embrace data. The World Wide Web Foundation's Open Data Index ranked Canada eighth in open data policy and adoption, behind the United States, Mexico, Singapore, the United Kingdom, New Zealand, Ireland, and Australia.¹ If Canada wishes to be a leader in innovation, we also need to embrace and enable the free flow of data. One means of doing so is through an open approach to public data. Open data, at the risk of oversimplification, puts raw data into the public domain (subject to safeguarding privacy), with free license to redistribute and utilize the data, including for commercial purposes.

Open data has more than an indirect impact. The European Commission found that by 2016, open data in Europe had saved the European public sector 1.7 billion euros and created 75,000 direct jobs. By 2020, they anticipated that the number of direct jobs created would grow to 100,000. The E.U. also reports that open data saved 7,000 lives due to quicker emergency response times, and reduced road fatalities by 5.5 per cent.²

"Open Data" is not a monolithic term. There are several possible licensing interpretations. Multiple Creative Commons licenses can be applied to data, for example, although some jurisdictions have been reluctant to do so, mistakenly believing that they are only applicable to copyrighted or patented works. The U.K. produced its own Open Government License, owing to the need for compatibility with *sui generis* database rights in the E.U., but designed to be interoperable with Creative Commons licenses. The City of Toronto and the provincial government of British Columbia have adopted licenses based on the U.K.'s model, while the Government of Canada currently uses the Open Government License – Canada 2.0. Nine provinces and territories have adopted open data licenses, each unique, and while many of their licenses were mutually developed, there is nothing which binds them to continue their interoperability in the future. Manitoba, New Brunswick, Yukon, and Nunavut have no open data policy at all, and those Canadian cities which have moved to an open data policy have adopted or created a variety of licenses individually.

The varied approaches of Canadian municipalities illustrate the problems which arise when a common and truly open data model is not adopted. To name some examples, Vancouver, Toronto, and Ottawa have had to reform their open data licenses to address a lack of versioning and a reserved right to arbitrarily and retroactively ban users from the data, which made their previous licenses "open" in name only. The City of Edmonton still reserves this right in their license; thus, their open data license violates two of the Eight Principles of Open Data from the Open

¹ World Wide Web Foundation, *Introducing the Open Data Index*, 2012 (retrieved from <http://webfoundation.org/2012/09/introducing-the-open-data-index/> on May 30, 2017).

² European Commission, *Creating Value through Open Data: Study on the Impact of Re-use of Public Data Resources* (Luxembourg: Publications Office of the European Union, 2015).

Government Working Group, and two of the ten principles of the Sunlight Foundation.^{3 4} Without a guiding set of principles and standards on open data, there is nothing to prevent other jurisdictions in Canada adopting a restrictive and false-open approach as the City of Edmonton has.

The adoption of the Creative Commons Attribution (CC-BY) license is recommended as a truly open, international, and interoperable standard. Jurisdictions such as the governments of Australia, Austria, Greece, Italy, New Zealand, and the Basque government in Spain have successfully adopted and applied Creative Commons licenses, including CC-BY. The U.K. Open Government License is fully interoperable with the CC Attribution License by design. The licensor remains free to place stipulations on the use of data to protect personal information and to review and adopt new iterations of the license at-will. Creative Commons licenses are designed for worldwide interoperability.

The CC-BY license offers benefits that the common Creative Commons CC0 or Open Data Commons Public Domain Dedication and License (ODC-PDDL) alternatives do not, such as a termination clause for breach of license terms (although this has not been an issue so far for government licensors under the CC0 or ODC-PDDL licenses). Although CC-BY is preferable to CC0 or PDDL, the differences are slight, and either CC0 or ODC-PDDL would nevertheless be acceptable.

Adopting a common standard is important because of the need for interoperability between data sets. Businesses and other organizations using data frequently need to combine datasets from cities, provinces, and/or countries. When jurisdictions use different licenses, frequently unique to that jurisdiction, their data sets are rendered completely non-interoperable with those from other jurisdictions due to popular “share-alike” license clauses.⁵

The recommendations below overcome these problems. By adopting a common license for open data, Canada can avoid the pitfalls of non-interoperability between different datasets and institute a common standard for open data. By utilizing the CC-BY license as that common license, the Government of Canada can adopt a model that is an international standard, well-scrutinized, and wholly compatible with the guiding principles of open data. Finally, since a top-down approach would yield the best results, the Government of Canada should start by adopting this model itself, and then working to encourage provincial and municipal governments do likewise.

Recommendations

That the federal government:

1. Adopt one of the Creative Commons Attribution (CC-BY), CC0, or Open Data Commons Public Domain Dedication and License (ODC-PDDL) models for its open data portals.
2. Encourage other levels of government to adopt either the CC-BY or CC0 license or the ODC-PDDL standard for their own open data portals as appropriate.
3. Encourage other levels of government to adopt a true open data policy and to make all permissible public data available under it.

³ Open Government Working Group, *8 Principles of Open Government Data*, 2007 (retrieved from <http://workspace.unpan.org/sites/internet/Documents/UNPAN042947.pdf> on May 30, 2017)

⁴ Sunlight Foundation, *Ten Principles for Opening Up Government Information*, 2010 (retrieved from <https://sunlightfoundation.com/policy/documents/ten-open-data-principles/> on May 30, 2017)

⁵ Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic, *An Analysis of Share-Alike Obligations in Municipal Open Data Licenses*, 2011 (retrieved from https://cippic.ca/en/publications/analysis_of_share_alike_obligations on May 29, 2017)