

ASSET REUSE

Guide to Asset Publication and Licensing



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DE ESPAÑA

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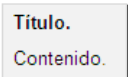


0 PRELIMINARY REMARKS

This is a guide to reusable asset licensing and publication:

- In accordance with Articles 45 and 46 of Law 11/2007, of 22 June, on Citizens' eAccess to Public Services, and with Articles 16 and 17 of Royal Decree 4/2010, of 8 January, regulating the National Interoperability Framework in Public Administration (ENI). Chapters 4, 'Preliminary analysis', 8, 'Open-source software asset management', and Appendix 2, 'Asset release checklist', discuss aspects of computer programme or application (software) asset release.
- Also in accordance with Law 37/2007, of 16 November, on the Re-use of Public Sector Information, and the associated implementing regulations, Royal Decree 1495/2011, of 24 October, implementing Law 37/2007 for the state public sector, and the Technical Interoperability Standard for the Re-use of Information Resources within the framework of Directive 2003/98/EC, amended by Directive 2013/37/EU.

This guide is intended to become a support tool in the implementation of the provisions in the above-mentioned regulations. As such, it includes quotations from these laws and directives, elaborations on them and supplementary contents.

To make it easier to understand and handle, the guide includes a series of graphics whose references are shown in the chart below.

 Titulo. Contenido.	Quotations from regulations and directives.
	Particularly relevant or important content.
	Observation for adequate content interpretation.

1 LEGAL FRAMEWORK

1. Asset re-use has been included in several EU documents and activities in association with sharing and collaboration practices:
 - The [European eGovernment Action Plan 2011-2015](#) associates re-use to the implementation of innovative technologies, interoperability, efficiency and effectiveness.
 - The [European Interoperability Strategy](#) makes reference to the re-use of items, services, infrastructure and components, and includes a package of support measures targeted at interested communities and the integration of collaboration platforms.
 - The [European Interoperability Framework](#) envisages re-use in connection with the concepts, applications, services, specifications, data models and administrative information sources. Underlying principle 10 (Re-usability) considers re-use to be essential to the effective development of public services. Likewise, Recommendation 7 states, *'Public administrations are encouraged to re-use and share solutions and to cooperate on the development of joint solutions when implementing European public services.'*
2. These EU recommendations were implemented in Spain through Law 11/2007, of 22 June, on Citizens' eAccess to Public Services, and Royal Decree 4/2010, of 8 January, regulating the National Interoperability Framework in Public Administration (ENI), analysed below.
3. In addition, the re-use of information in the public sector is regulated at EU level by Directive 2003/98/EC, amended by Directive 2013/37/EU, and at the national level by Law 37/2007, of 16 November, on the Re-use of Public Sector Information, and the associated implementing regulations and the relevant modifications stemming from the transposition of Directive 2013/37/EU.

1.1 Licensing conditions

4. Article 45 of Law 11/2007, discusses the re-use arrangements for Public Administrations, envisaging the possibility of designating applications as open-source:

Article 45. Re-use of Public Administration systems and applications.

2. The applications referred to in the paragraph above can be designated as open source when this might result in greater transparency in the Public Administration or encourage citizens' involvement with the Society of Information.

5. Likewise, Law 11/2007 defines the concept of 'open-source application' in the annex:

c) Open-source application: Application distributed with a licence that enables users to run it, know the source code, introduce changes or improvements, and redistribute it to other users.

6. Article 16 of Royal Decree 4/2010 sets forth the licensing terms applicable to open source assets:

1. The licensing conditions of applications and related documents, and of other information items whose intellectual property belongs to public administrations and which can be made available to other public administrations and/or to citizens without consideration or agreement shall take into account that the aim of the licensing is use and re-use, as well as protection against exclusive appropriation by their parties, under such terms that exempt the assignor from liability for ill-use by the assignee, as well as from technical assistance and/or maintenance, and for compensation in the event of application errors.

2. In open-source applications, public administrations shall use licences ensuring that the programmes, data and/or information being shared:

- a) Can be run for any purpose.
- b) Give access to their source code.
- c) Can be modified or upgraded.
- d) Can be redistributed to other users with or without changes provided that the derivative work abides by these four guarantees.

3. To this end, the European Union Public Licence (EUPL) shall be applied, without prejudice to other licences guaranteeing the rights set forth in paragraphs 1 and 2.

1.2 Application directories

7. With the purpose of ensuring technology transfer between Public Administrations and thus encouraging re-use, Article 46.1 of Law 11/2007 states that:

1. Public Administrations shall keep updated application directories for free re-use, especially in areas of particular interest to the development of e-government in accordance with the relevant provisions in the National Interoperability Framework.

8. This point is elaborated in Article 17 of Royal Decree 4/2010:

2. Public administrations shall link their application directories for free re-use under the terms of Article 46 of Law 11/2007, of 22 June, to other directories and to their EU counterparts.

3. Public administrations shall consider the solutions available for free re-use that might meet the needs of new systems and services in part or in full or cover the update or upgrade of those already implemented.

4. Public administrations shall make efforts to publish the codes of applications developed or in progress in application directories for free re-use, with the aim of facilitating sharing, re-use and collaboration efforts for the benefit of greater efficiency.

9. Later to Law 11/2007, new Law 40/2015 encourages the re-use of the systems and applications owned by the Administration:

Article 157: Re-use of the systems and applications owned by the Administration.

1. Public Administrations shall make available to any of them who request it the applications, developed by their services or that have been procured and which intellectual property rights are owned, unless the linked information would be subject of special protection by law. Both the assignor and the assignee Administrations might agree the acquisition or fabrication cost allocation.

2. The applications referred to in the former paragraph can be declared as open source, when it results in more transparency in the operability of the Public Administration or in case it encourages the incorporation of the citizens to Information Society.

3. Public Administrations, previously to acquisition, developing or maintenance along the lifecycle of an application, whether it is made by own resources or by procurement of the corresponding services, shall consult in the general directory of applications, dependent on the General State Administration, whether there exist available solutions for re-use that can satisfy totally or partially the needs, improvements or actualizations that are intended to be covered, provided the technical requirements of interoperability and security allow it.

This directory will contain both the available applications of the General State Administration and the ones available in the integrated directories of applications of the others Administrations.

In case that there exists an available solution for total or partial re-use, the Public Administrations will be obliged to use it, unless the no re-use decision is justified in terms of efficiency according to Article 7 of Organic Law 2/2012, of 27 April 27, of Budget Stability and Financial Sustainability.

10. Law 40/2015 also encourages technology transfer between Administrations:

Article 158: Technology transfer between Administrations.

1. Public Administrations shall keep updated applications directories for free re-use, in accordance with the National Interoperability Framework. These directories shall be completely interoperable with the general directory of the General State Administration, in such way that computer compatibility and interconnectivity are guaranteed.

2. General State Administration shall keep an updated applications directory for re-use, provide support for free re-use of applications and drive the developing of applications, formats and common standards in national interoperability and security frameworks.

1.3 Technology Transfer Centre, directories of regional governments and the connections between them

1. According to Article 46.2 of Law 11/2007:

2. The General State Administration should keep a general application directory for re-use in a technology transfer centre, giving technical assistance for the free re-use of applications and promoting the development of common standards, formats and applications of particular interest to the development of e-government within national interoperability and security frameworks.

2. This provision is realised in Article 17 of Royal Decree 4/2010:

1. The General State Administration should keep a general application directory for re-use, which shall be accessed through the Technology Transfer Centre.

3. And Additional Provision I outlines contents to ensure interoperability:

c) The application directory for free re-use shall contain the list of applications for free re-use, including at least descriptive data about application name, functions, characteristics and purpose, licence, open standards being applied and development status.

4. As mentioned above, the Law 40/2015 also refers to the directory of the General State Administration:

2. General State Administration shall keep an updated applications directory for re-use, provide support for free re-use of applications and drive the developing of applications, formats and common standards in national interoperability and security frameworks.

5. Following these regulatory provisions, the Technology Transfer Centre (CTT)¹ was established in 2008. The CTT solution directory, included in the eGovernment Web Portal, it is the right place to find re-usable solutions, projects, semantic assets and/or services for public administrations. The CTT also offers the CTT Forge, a collaborative development environment for public administration applications, inviting active participation by administration agencies, businesses and citizens. The Forge features specific advanced functions for collaborative development.

6. Every re-usable solution managed by the General State Administration shall be registered at the CTT. As a general application directory, the CTT serves the General State Administration and all the public administrations that do not have their own directories.

7. As provided by Law 11/2007 and Royal Decree 4/2010, all public administrations other than the General State Administration may have their own re-usable application directories as long as they are linked to the CTT.

8. Some regional governments have chosen to keep their own application directories:

¹ <http://administracionelectronica.gob.es/ctt>

- Andalusian Government: [Andalusian Government repository](#).²
 - Catalan Government: [La Farga](#).³
 - Government of the Balearic Islands: [Programari Lliure](#).⁴
 - Galician Government: [Forxa Mancomun](#).⁵
 - Basque Government: [OpenApps Euskadi](#).⁶
9. All these directories are linked to the CTT, in compliance with Article 17, Paragraph 2 to Royal Decree 4/2010. The other regional governments chose to have their re-usable solutions included in the CTT.
10. Likewise, in compliance with Article 17, Paragraph 2 of Royal Decree 4/2010, the CTT is linked to the European repository [Joinup](#)⁷ – *Share and re-use interoperability solutions for public administrations*, where many re-usable solutions from member states can be found. Finally, the CTT is also federated with the [CENATIC Forge](#)⁸ – National Reference Centre for the Application of Open-Source ICTs.

² <http://www.juntadeandalucia.es/repositorio/>

³ <https://projectes.lafarga.cat/>

⁴ <http://programarilliure.caib.es>

⁵ <https://forxa.mancomun.org>

⁶ http://opendata.euskadi.net/w79-opendata/es/contenidos/informacion/open_apps/es_def/que_es_openapps.html

⁷ <https://joinup.ec.europa.eu>

⁸ <http://forja.cenatic.es>

1.4 Licensing and publication of public sector information assets

11. Article 8 of Directive 2003/98/EC on licensing is amended by Directive 2013/37/EU:

(8) In Article 8, Paragraph 1 is replaced by the following:

'1. Public sector bodies may allow re-use without conditions or may impose conditions, where appropriate through a licence. These conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.'

12. Article 9 of Law 37/2007 discusses the licences applicable to public sector information assets:

Article 9. Licensing.

When licences are granted, they shall contain at least information about the specific commercial or non-commercial purpose of re-use, validity, obligations of the assignor and the assignee, use responsibilities and financial arrangements, indicating whether access is free or a public price or free applies.

13. Article 7 of Royal Decree 1495/2011 states the general terms of availability for re-usable documents, while Article 8 states the terms under which they shall be made available.
14. These terms are stated in Section VII of the Technical Interoperability Standard for the Re-Use of Information Resources, containing the guidelines to specify the terms and conditions of use applicable to re-usable information:

VII. *Applicable terms and conditions of use*

VII.1. The specific terms and conditions of re-use by public bodies in the Public Administration shall be in compliance with the provisions in Law 37/2007, of 16 November, and the associated enforcement regulations. The clauses in Article 8 of Royal Decree 1495/2011, of 24 October, can be used as reference by other Public Administration agencies.

VII.2. The general terms of re-use applying to a body or agency, which shall be available and able to be handled electronically, can be complemented by special terms applicable to specific document or information resource categories through public licences, available under the same terms as the general terms.

15. For further information on this subject, the reader is referred to the *Royal Decree 1495/2011 Application Guide* and the *Technical Interoperability Standard for the Re-Use of Information Resources Application Guide* (links to texts in Appendix 3, References).

1.5 The portal datos.gob.es

16. The publication of public sector information assets is dealt with in Article 5 of Royal Decree 1495/2011:

The bodies of the Central Administration and other bodies and agencies listed in Article 1.2 shall work with the ministry departments mentioned in Paragraph 1 on the drafting and maintenance of said catalogue. Likewise, they shall be in charge of the regular update of the information on re-usable documents contained in the catalogue, ensuring consistency with the information supplied in compliance with Article 4, Paragraph 1 of this Royal Decree.

17. datos.gob.es is the national portal organising and managing the Public Information Catalogue for the public sector.
18. All information assets in the state public sector are published on datos.gob.es, where information asset catalogues from other public administrations can be federated.
19. In addition, datos.gob.es includes general information, learning materials and news about the re-use of information in the public sector.

2 PURPOSE AND SCOPE OF ASSET RELEASE



20. For the purpose of this guide, a re-usable asset is any material in electronic format that can be used recurrently. The following are examples of re-usable assets:
- Computer programmes or applications (software).
 - Application-related materials: guides and manuals, interfaces, data models, code lists, algorithms, design patterns, architectures, design, test and requirement specifications, user guides.
 - Public sector information.
 - Other assets: documents, videos, audio files, outreach materials, etc.
21. Re-usable assets can be self-standing, e.g. this guide, or they can be linked to a software application. In either case, they may have different re-use constraints which must be clearly specified.
22. Within this framework and for the purpose of this guide, the concept of asset release can be defined as an asset distribution procedure by public administrations under open source licence for software or under open licensing for other types of assets.⁹
23. The main goal of asset release is the possibility of re-use by interested parties. Organisations and public administrations in particular tend to create assets that might already exist. Re-use may enable the sharing of these resources and their results in and between public administrations, and between public administrations and society with a social or economic interest.
24. From a legal point of view, several factors and implications must be taken into account when preparing assets for publication and release as open-source applications or open licence assets. The release procedure should have specific characteristics depending on asset complexity, in particular, the ownership of rights at stake.
25. Asset release is not really difficult, but a series of steps must be taken to ensure not only that the release is legal but also that re-use is possible. Of particular interest are the cases of applications as open-source projects, which require active participation from public administrations, businesses and citizens who may contribute technical improvements, corrections of mistakes, and security, access, interoperability, continuity or transparency inputs, among others, and those of public sector information.

⁹ This guide is not concerned with software as a service (SaaS) assets in connection with the products developed by public administrations.

26. Asset release procedures can be structured into four main stages:

1. Preliminary analysis and study.
2. Licence selection.
3. Asset preparation for distribution.
4. Publication in a repository.

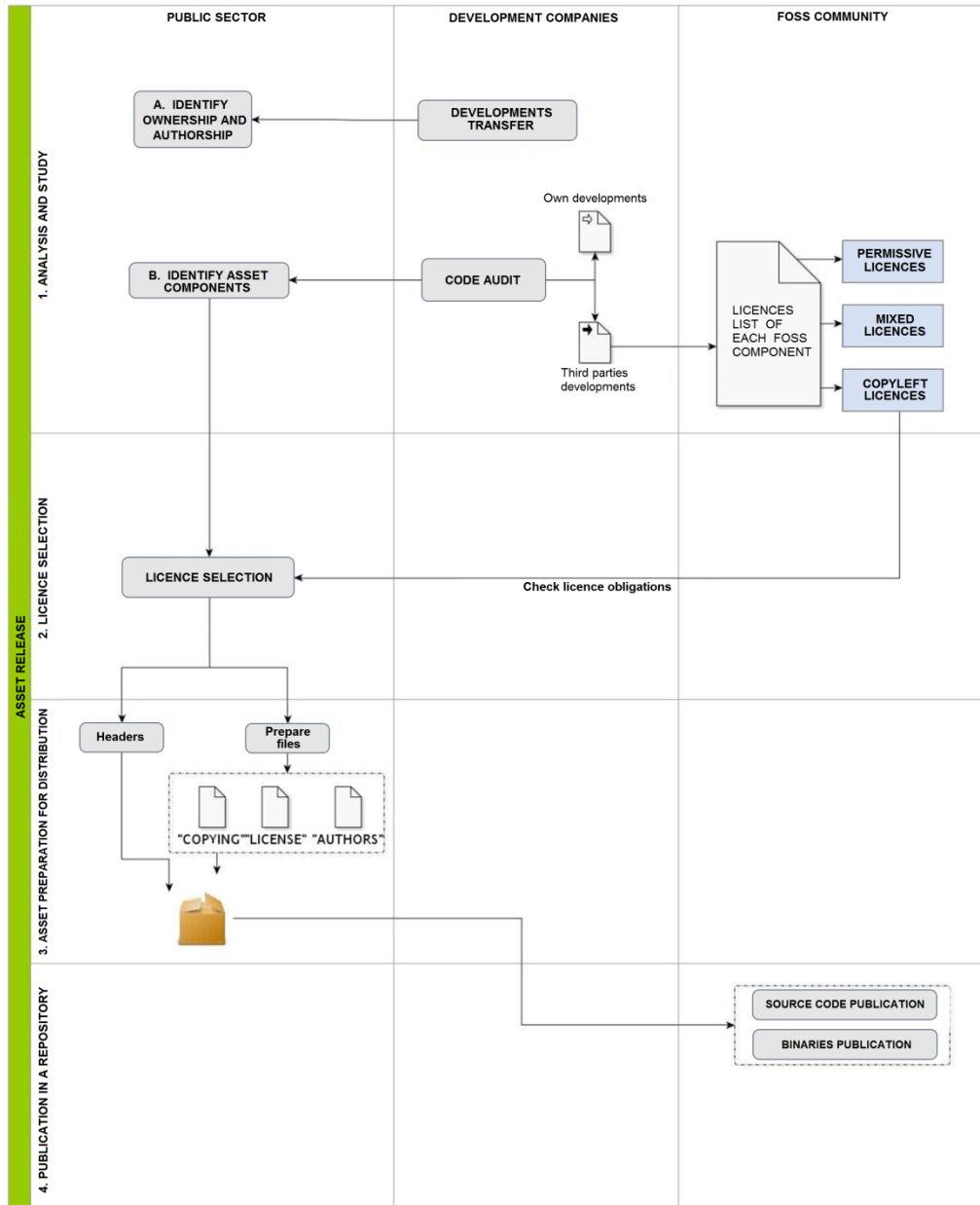


Figure 1. Software release procedure diagram.

3 PRELIMINARY ANALYSIS AND STUDY

27. In this initial stage, a thorough analysis must be carried out of key asset elements or components. This involves the following:

28. **1. Identifying the proprietor(s) and/or author(s) of the asset being released.**

In order to legally distribute an asset under an open-source licence for computer programmes or applications (software) or under an open licence in the case of other assets, the agency that is releasing the asset must make sure there are not violating intellectual property rights. This means that they should be the original holder of the asset's rights or a licensor of the rights of the asset created by third parties (suppliers, outsourcing, etc.), who must in turn authorise the distribution under this licence.

29. **2. Identifying the components in the asset.**

Two aspects must be taken into account:

- The licences under which the components are being released, the rights they entitle to and, above all, the obligations they entail when it comes to distribution.
- Licence compatibility: finding and replacing the components in conflict or contacting the owners to get a special authorisation.

3.1 Identifying asset ownership and authorship

30. In order to release an asset, the agency releasing it must hold the sufficient and necessary rights to do so. In practice, this means holding the operating rights as an original or secondary owner or holding the licence to distribute the asset (e.g. under open-source licence).

31. The [Intellectual Property Law](#) ¹⁰ identifies as objects of intellectual property original human creations – literary, artistic or scientific – using any kind of media, tangible or intangible, present or future. This means that every asset contained in documents, videos, images or any other media are protected by intellectual property law.

32. However, the protection by copyright affects the shape, content and expression of the creative idea; but not the content. Ideas are not protected by copyright. For instance, in the case of computer programmes, codes are protected by intellectual property law whereas algorithms, functions, programming languages and/or file formats are not.

¹⁰ Law 21/2014, of 4 November, amending the recast text of the Intellectual Property Law, approved by Royal Decree 1/1996, of 12 April, and Law 1/2000, of 7 January, on Civil Procedure.

33. Software in particular (including the associated preparatory and technical documents) is considered as 'intellectual' work and copyright-protected in accordance with intellectual property law, which entitles the original holder (usually the author) to the right to make copies, modify and/or (re) distribute his creations, and/or to authorise copying, modification and/or (re) distribution. This exclusive right enables software owners to authorise and restrict the access to and use and operation of software by third parties under contracts or licences.
34. The Intellectual Property Right includes computer programmes in its non-exhaustive list of copyright-protected works and defines them as:

'any sequence of instructions or indications to be directly or indirectly used in computer systems to perform tasks or functions, or to obtain certain results, irrespective of the means or form of expression. (...) The phrase "computer programmes" includes preparatory documents.'

35. **NB: Copyright protection extends to any form or means of expression of computer programmes and their preparatory documents**, for it is understood that every stage in software development is protected, from the moment when there is a graphic or verbal description (flowcharts, UML, voice recording) of the programme with enough detail to define a set of instructions.



36. **Computer programmes, copyright-protected works**

The legal definition encompasses all kinds of programmes, namely:

1. Operating systems, standard programmes for general use and taylor made software.
 2. Compilers, libraries and other software components, scripts, Java servlets, JavaBeans, stored procedures, APIs, etc.
 3. Database engines.
 4. Development environments (IDEs, e.g. Eclipse, Sun's JDK, Microsoft's .NET) and runtime environments (runtime engines).
 5. Application and web servers, etc.
 6. Chip-level instructions (microcodes and firmware).
 7. Telecommunication network programmes (routers, switches, servers, firewalls, etc.).
37. In these programmes, copyright extends to:
8. Source code and programme software object.
 9. Programme images, icons, graphics, etc.
 10. Compilation and installation scripts.
 11. Preparatory documents: designs and diagrams, specifications and lists, data models.

12. Technical documents, installation and user manuals.
13. Subsequent programme versions.
14. Modified (derivative) works.
15. Separately and especially, database content and structure.

38. Except in two cases, the original holder of an asset's rights shall initially be the same as the author(s) who created the asset. The author(s) include all the people involved in asset creation: analysts, project managers, graphic designers, and so on.
39. The two cases in which the holder of the operation rights is not the same as the author(s), considered as a natural person, are:
- a) Assets created under working relationships: Unless otherwise agreed, the operation rights for software developed by employees in the context of their jobs and following the employer's instructions belong to the latter.
 - b) Collective works: The operation rights for assets created by initiative and under coordination of an editor resulting from the contributions made by several authors *merged into a unique, independent creation without any of the individual authors being able to claim a right on the software as a whole* belong to the editor.



40. **Proprietary notice in headers**

There is a legal presumption whereby the software author and/or owner is the person identified in the signature (e.g. in the copyright notice) or the person publishing the asset.

Ownership of open-source software files is indicated in the header, as in:

© 2013 MINHAP, Government of Spain

Original authors: José García Pérez, María Sánchez.

Modifications: © MINETUR 2014 – Author of modifications: Pablo Gómez.

41. In business and institutional projects, proprietary issues are particularly relevant. The assets created by permanent staff (employees and officials, professors and researchers) belong to the institution or organisation, unless otherwise stated in the employment contract. If the author is not an employee, they shall be the owners of their creations and transfer the rights to the institution or organisation so that the latter can operate the asset, unless otherwise agreed.

42. Assets created by outsourced staff who do not work in the Public Administration shall in principle belong to the company this staff works for, unless otherwise agreed. The company shall transfer the rights to the public agency it provides services to.
43. The companies working under the Public Contract Law¹¹ may understand that the transfer of ownership by a concession company in accordance with Article 301.2:

Unless otherwise stated in the administrative specifications or the contract document, the service agreements for the development and/or available of products protected by intellectual or industrial property law shall entail the transfer of property rights to the contracting agency.

44. A typical example of this is a development resulting from a contract with a company (a common situation in the Public Administration): if it was created by an employee of this company, the company owns the asset but transfers the rights to the Public Administration in compliance in accordance with the Public Contract Law.
45. However, Article 301.2 clashes with the Intellectual Property Law in so far as it does not specify the scope, duration or manner of the transfer of rights.¹² Thus, if the transfer is not explicitly mentioned in the tender document or the contract, it could be understood that it shall be valid only within Spanish territory and for five years. This could not be enough for the asset to be released with guarantees in the public administration.
46. As a result, most of the difficulties faced by public administration agencies intending to distribute assets under open-source licences are rooted in contractual issues. Accordingly, the ISA programme of the European Commission has issued [standard 'sharing and re-using' clauses for contracts](#)¹³ for public administrations to use in procuring services.

¹¹ Royal Legislative Decree 3/2011, of 14 November, approving the recast text of the Public Contract Law.

¹² The Public Contract Law does not stipulate a scope, duration or manner for the transfer or rights. Article 43 of the Intellectual Property Law stipulates for the inter vivos transfer of operation rights that the 'temporal blank restricts the transfer to five years and the territory of the country where the transfer takes place. Unless the arrangements for the use of a work are explicitly and specifically mentioned, the transfer shall be limited to the terms derived from the contract that are essential to fulfil its purpose.' With these constraints – five years, Spanish territory, purpose of the contract –, some experts consider that the future release of an asset is possible if nothing is specified in the tender document or the contract, or in a transfer document henceforth signed.

¹³ https://joinup.ec.europa.eu/community/open_standards_ict/topic/standard-sharing-and-re-using-clauses-contracts-contractual-clauses-service-procurem



47. In line with the aforementioned, a standard clause is shown below to include in tender documents or contracts for the procurement of software assets that will be subsequently distributed under EUPL.¹⁴ (This clause could also apply to other open source licences, replacing the references to EUPL by the licence selected.)

'[Entity] is acquiring ownership of all the products (all forms and formats of software, data and/or information, including preparatory documents, specifications, presentations, DLLs, scripts, etc.) developed by the tenderer [including the tenderer's employees and subcontractors] in the fulfilment of this contract (hereinafter referred to as 'results') and all the intellectual and/or industrial property rights they entail. This includes the global exploitation rights of the results in any form or format, [Entity] reserving all other prerogatives associated with intellectual and/or industrial property.

[Entity] shall be the holder of all the aforementioned rights for the maximum duration and for global territorial scope, and the only entity entitled to the exploitation of the results before or after end of contract, the author(s) and/or inventor(s) only being entitled to the rights granted by Article 14 of the Intellectual Property Right and/or Article 14 of the Patents Act, if applicable. For the purposes provided in the paragraph above, the tenderer undertakes to submit all the technical documents and materials produced during analysis, design, development, implementation and testing to [Entity], which shall keep them after end of contract. The tendered shall not use said documents and materials with other entities or individuals unless authorised by [Entity].

[Entity] may decide to make available the computer programmes, data and/or information that this contract refers to, using the European Union Public Licence (EUPL, (<http://joinup.ec.europa.eu/software/page/eupl/licence-eupl>), to this end or other licences that ensure compliance with the provisions in Article 16 of Royal Decree 4/2010.

Unless the results include products, modules or elements owned by third parties and subject to open-source licence (in accordance with the Annex in Law 11/2007), the tenderer shall guarantee and prove that they can be distributed to third parties as part of the results under the corresponding EUPL licence (or another licence ensuring compliance with the provisions in Article 16 of Royal Decree 4/2010). Exceptions to this requirement shall only be possible by authorisation from [Entity]. In case the results include products, modules or elements owned by third parties or subject to other types of licence, they shall get permission from the holder(s) of these products' rights to transfer ownership of the results to [Entity] in accordance with these terms and conditions, thus enabling [Entity] to proceed to licensing as described in the paragraph above.'

¹⁴ European Union Public Licence.

3.2 Identifying asset components

48. Most software projects include components from third parties, either to expand, integrate or improve the functions of the existing asset or to add functions to a self developed asset. Examples:
- Cutting and pasting codes from the Internet.
 - Codes that are in fact licensed assets from third parties (proprietary or open source licences).
 - Codes contributed by external developers who are employees of other entities and did their job within their own working framework without the transfer having been formalised by their employers.
49. These situations, which could also emerge with proprietary developments, must be identified in a code audit so that they can be adequately resolved by management of contributions.
50. The terms of use (licensing) must be reviewed for every third-party component that is part of the application for two main reasons:
1. A transfer of rights to the project (under open-source license or contribution agreement) will be necessary for subsequent asset release.¹⁵
 2. Licence compatibility must be checked to ensure that all the components can be jointly distributed and distributed as part of an application as a whole. Besides, it must be checked whether the licences determine or enable the distribution of the project as a whole (i.e. whether and to what extent copyleft obligations obtain).
- These tools could be useful:
- [Joinup Licence Wizard](#)¹⁶
 - [CENATIC licence calculator](#)¹⁷
51. Finally, it must be ensured that asset release does not violate other third-party rights, including confidentiality issues (e.g. in assets included in the new product), patent concerns (if existing and valid) and trademark questions.



¹⁵ More information in the [Joinup section on open-source licences and complementary agreements](#).

¹⁶ <https://joinup.ec.europa.eu/software/license-wizard/home>

¹⁷ <http://operaciones.cenatic.es/comunidad-legal/CalculadorLicencias>

4 LICENCE SELECTION

4.1 Software licences

52. After identifying the assets to be distributed, a distribution licence must be selected, provided that the third-party components in the asset do not determine one for the application they are part of.
53. There are significant differences between open-source licences in the field of software, their terms varying greatly across licence types. This must be taken into account when using open sources and, above all, when integrating this kind of assets and distributing them to third parties.
54. The copyleft open-source licences go beyond the four freedoms usually granted to licensees and direct users. The licences that grant the four freedoms without further terms or conditions (i.e. without copyleft) allow licensees to include source codes in other software and redistribute the results under restrictive (or closed) licence, so that the users of the new programme will not be entitled to the freedoms originally granted.
55. To ensure that any software user can enjoy these freedoms at any time, copyleft licences mean that licensees must:
 - a) Use the same free licence for both the redistribution of the original software and derivative works created out of it.
 - b) Give access to the source code to all users.
56. This twofold condition, known as copyleft, prevents software from being distributed under proprietary licence.
57. Figure 2 shows the most common classification of software licences:

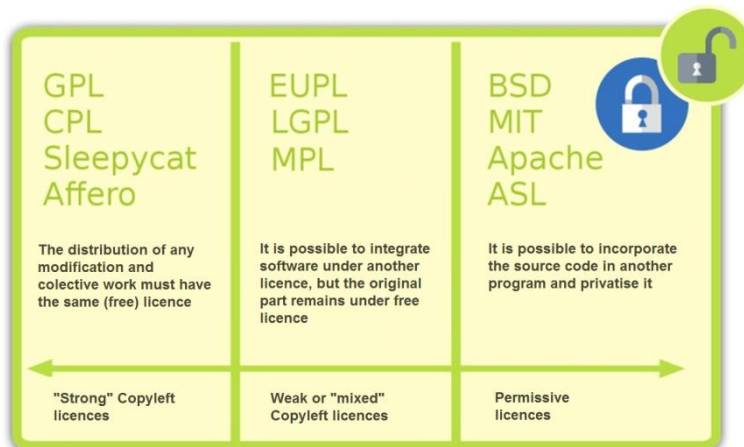


Figure 2. Classification of open-source licences.

58. Article 16 of Royal Decree 4/2010 sets forth a series of licensing conditions to be applied by public administrations when releasing assets:

2. In open-source applications, the public administrations shall use licences ensuring that the programmes, data and/or information being shared:

- a) Can be run for any purpose.
- b) Give access to their source code.
- c) Can be modified or upgraded.
- d) Can be redistributed to other users with or without changes provided that the derivative work abides by these four guarantees.

59. On the basis of Paragraph 2.d, it can be understood that, in compliance with the National Interoperability Framework, public administrations must use a licence with some degree of copyleft. In line with this, permissive licences are not discussed below.



4.2 Software licences with strong copyleft

60. Licences with strong copyleft, like the GNU General Public Licence (GPL), require the same licence to be used when redistributing an asset and to apply to all modifications too, as well as to projects using or including the asset (in the form of libraries, etc.). This final condition is what makes strong copyleft different from weak copyleft. In addition, strong copyleft forces licensees to give users copies of the source code or at least give them the means to get it (e.g. online repositories).
61. Licences with strong copyleft seek to ensure that all (direct and indirect) users have access to the source code at any time under the same terms as the licence itself. Consequently, they prevent copyleft assets from being distributed in proprietary applications (i.e. from being 'privatised' or 'closed'). This does not mean that no commercial applications can be created and sold out of copyleft assets, but rather that redistributing the assets under another licence (involving the payment of royalty, for instance, or preventing an asset's target audience from introducing modifications) would be a violation of the original licence.
62. Importantly, the source codes of projects under strong copyleft licences and/or modifications of these projects must be revealed only at the time of redistribution.
63. GPL is the software licence known to have the strongest copyleft terms. Developed and promoted by the Free Software Foundation (FSF), it is the most widely used free software licence at SourceForge. Three GPL versions have been released so far, in 1989, 1991 and 2007. Versions 2 and 3 are still active.¹⁸ Other strong copyleft licences are the GNU Affero General Public Licence and the Sleepycat Licence.

¹⁸ More info about the GNU General Public Licence in Appendix 1 of this guide.

4.3 Mixed software licences or weak copyleft

64. In mixed software licences, the copyleft clause applies to the original code only, leaving the projects including or using this code (e.g. libraries), with or without modifications, unaffected. Copyleft weakening is done in either of two ways:
- a) Enabling use of an asset (in the form of library) by programmes distributed under a different licence (GNU Lesser General Public Licence, LGPL).
 - b) Enabling the inclusion of an asset in a larger work, also under a different licence (Mozilla Public Licence, MPL, or EUPL, among others).
65. In either case, a new programme can be added and/or linked to the original code, and the result can be distributed under a new (proprietary or free) licence. However, the original asset and its modifications have to be distributed under the original licence, usually with the associated source code.
66. Article 16 of Royal Decree 4/2010 recommends:



3. To this end, the European Union Public Licence (EUPL) shall be applied, without prejudice to other licences guaranteeing the rights set forth in paragraphs 1 and 2.

67. EUPL was drafted in 2006-2008 at the request of the European Commission for EC and other European institutions' software distribution. The current version of this licence is [EUPL v1.1](https://joinup.ec.europa.eu/software/page/eupl/licence-eupl).¹⁹

¹⁹ <https://joinup.ec.europa.eu/software/page/eupl/licence-eupl>

European Union Public Licence 1.1

Rights granted

- EUPL grants the right to use, reproduce, modify, communicate to the public, distribute, lend, rent and sublicense programmes and derivative works, available as a source code or a binary code.
- EUPL also grants usage rights to any patents held by the licensor, to the extent necessary to make use of the rights granted on the work under this licence.

Obligations

- Proprietary notices must be kept in the source code and modifications must be indicated.
- When the asset is redistributed, all modifications must be indicated and the legal.txt file (a file with legal comments) must be kept with the code or the associated documents.
- **Weak copyleft clause:** When the asset or the modifications (of the original files) are redistributed, it must be done under the same licence, supplying the source code or indicating where it can be obtained easily and for free.

Others

- The licence is governed by the law of the EU country where the licensor resides or has their registered office (or by Belgian law if the EC is the licensor).
- The licensor warrants that they own the original work. Other warranties and liabilities are disclaimed to the extent permitted by applicable law.
- Digital distribution requires acceptance of the licence by clicking an icon. The provider must publish the legal information required by law on their website.
- EUPL was translated into the EU official languages. In fact, it is the only FOSS licence with official translation. EUPL v1.1. was certified by OSI as an open-source licence in February 2009.
- Compatibility: EUPL is compatible with most permissive and mixed licences (weak copyleft). The text also includes a compatibility clause that states that if the licensee distributes and/or communicates derivative works or copies thereof based upon both the original work and another work licensed under a compatible licence (GPL v2, CPL v1, EPL v1, OSL v3, CeCILL v1), the distribution and/or communication can be done under the terms of the compatible licence.
- Weak copyleft clause: Programmes under EUPL can be integrated into assets distributed under any other licences.
- The EC is currently working on EUPL v1.2, whose main differences with version 1.1 are:
 - The list of compatible licences (based on a 2006 study) is now obsolete. New licences have been added (GNU GPL v3, AGPL v3 and others that are still being discussed).
 - Semantic changes: In EUPL v1.2, the differences between 'the Work', 'the Original Work' and 'the Software' will be more clear-cut. In version 1.1., 'the Work' may refer to software and to other protected works as well: data, specifications, documents, etc.

Table 1. Information on licence EUPL v 1.1.

68. The EU collaborative platform Joinup²⁰ makes available a series of documents for the understanding and use of EUPL:
- a) [Guidelines for Users and Developers](#),²¹ containing very useful information for the proper use of the licence.
 - b) [EUPL compatible open-source licences](#),²² offering a global compatibility matrix between all OSI-approved licences and EUPL to understand the correct use of third-party components in an asset being released.



Derivative works

One of the gaps in the discussion of open-source licences and copyleft has to do with derivative works. What should we consider as derivative work? And, therefore, what shall comply with the obligation to use the same open-source licence?

The most common view is that a software B is considered to be derivative work from a software A if B uses A's source code. Accordingly, kernel modules loaded at runtime are not derivative works because they do not use the kernel's source code (are not compiled as a whole) but use the public APIs to connect. The kernel and the modules are compiled separately and there is a runtime binary connection between them.

For instance, if a Java development accesses remote APIs at runtime, there is usually no problem with the use of those APIs. On the contrary, if the API is a local library that is copied and integrated into the programme's code or remote access requires the local inclusion of a piece code, it will then be necessary to check the specific licensing conditions under which the library is being distributed.

This is a simplified account of the legal implications of the various forms of software interaction. For a deeper analysis, the reader is referred to the paper written by the Free Software Foundation Europe Software Interactions Working Group: [Working Paper on the legal implication of certain forms of https://clinic.nl/wp-content/uploads/LinkingDocument.pdf](https://clinic.nl/wp-content/uploads/LinkingDocument.pdf) Software Interactions (aka linking).²³

²⁰ <https://joinup.ec.europa.eu/>

²¹ <https://joinup.ec.europa.eu/system/files/guidelines/EUPL%201.1%20Guidelines%20EN.pdf>

²² <https://joinup.ec.europa.eu/software/page/eupl/eupl-compatible-open-source-licences>

²³ <https://clinic.nl/wp-content/uploads/LinkingDocument.pdf>

4.4 Other assets' licences

69. The intellectual work that cannot be classified as computer programmes or software also requires adequate licensing. It includes such re-usable assets as:
- Application-related materials: guides and manuals, interfaces, data models, code lists, algorithms, design patterns, architectures, design, test and requirement specifications, user guides.
 - Public sector information.
 - Other assets: documents, videos, audio files, outreach materials, etc.
70. The efforts to make intellectual property law more flexible resulted in the establishment of the non-profit organisation Creative Commons in 2002. Creative Commons developed a series of licences to share intellectual works under more flexible yet standard terms.
71. These licences are recommended for the assets described in Paragraph 78.
72. There is a wide range of Creative Commons licences. However, the only that complies with the provisions in Article 16 of Royal Decree 4/2010 is the one below.
- 73.



Attribution-ShareAlike (CC BY-SA): This licence enables other users to remix, transform and build upon your material for any purpose, even commercially, as long as they give you appropriate credit and distribute their contributions under the same licence as the original. This licence can be compared to copyleft free and open-source software licences.

74. If Article 16 is understood to refer to computer applications only, then all the other assets can be distributed under different conditions. Should this be the case, other Creative Commons licences may apply:

75.



Attribution (CC BY): This licence enables other users to distribute, remix, transform and build upon your material for any purpose, even commercially, as long as they give you appropriate credit. This is the most flexible of all licences.

It is recommended for maximum use and outreach of licensed materials, so it is highly **suitable for the release of semantic assets** (data models, code lists, interfaces, etc.).



Attribution-NonCommercial-NoDerivs (CC BY-NC-ND): This licence enables other users to copy and redistribute for material for any purpose, even commercially, as long as they give you appropriate credit and distribute the material unmodified and in full.

76. Creative Commons licences come in three formats:

- *Commons Deed:* A simple summary of the legal text containing the relevant icons.
- *Legal Code:* The full legal text the licence is based on.
- *Digital Code:* The digital code that can be read by computers, whereby search engines and other applications can identify the work and its terms of use.

4.5 Public sector information asset licences

77. The special terms of re-use that apply to bodies governed by public law in the Public Administration must comply with Directive 2013/37/EU, Law 37/2013 and the associated implementing regulations.
78. The provisions in Article 8 of Royal Decree 1495/2011 for the state public sector can be a reference for other public administrations.
79. Royal Decree 1495/2011 in particular envisages the possibility of re-use under terms set forth in standard licences, so that if standard licences are used, they must be preferably free, automatically processed and based on existing standards.
80. The EC notice on guidelines for the re-use of public sector information²⁴ state that Creative Commons licences can enable the re-use of public sector information and assets with no need to develop ad hoc licences, highlighting the CC0 licence²⁵ and its flexibility for re-using actors while reducing the complications that come with handling too many licences.

²⁴ European Commission Notice, 'Guidelines on recommended standard licences, datasets and charging for the re-use of documents' (2014/C 240/01), http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?action=display&doc_id=6421

²⁵ CC0 1.0 Universal (CC0 1.0) Public Domain Dedication, <http://creativecommons.org/publicdomain/zero/1.0/>

5 PREPARATION FOR DISTRIBUTION

5.1 Source code publication

81. After analysing the asset and selecting the most adequate licence, a series of preparatory tasks should be performed leading to asset distribution.

- a) Reviewing the list of components and their licences and distribution obligations.
- b) Including the project's proprietary and licence notices in the original code file headers. Regarding licence, a brief text should be included indicating the actual licence being used. Most licence types are associated with standard texts.



```
/*  
  
    *      copyright 2014 Ministry of Industry, Energy and  
    Tourism  
  
    *      Licence in accordance with EUPL, version 1.1 or -  
    when approved by the European Commission - later («the  
    Licence»);  
  
* This work can only be used if its licensing conditions are  
  met.  
  
* A copy of the Licence is available at:  
  
* http://joinup.ec.europa.eu/software/page/eupl/licence-eupl  
  
    *      Unless required by applicable law or agreed in  
    writing, the programme distributed in accordance with the  
    Licence is distributed «AS IT IS», WITHOUT WARRANTIES OR  
    CONDITIONS WHATSOEVER, express or implied.  
  
    *      View the Licence in the specific language in which  
    the permissions and restrictions set forth by the Licence  
    are stated.  
  
*/
```

Figure 3. Example of header for assets licensed under EUPL.

- c) Keeping the headers of open-source files that have not been modified without changes.
- d) Adding a note in the headers of open-source files that have been modified (including the type and date of modifications, ownership and contact information for future collaborators).

```

/*

* copyright 2014 Ministry of Industry, Energy and Tourism

* Licence in accordance with EUPL, version 1.1 or - when
approved by the European Commission - later («the
Licence»);

* This work can only be used if its licensing conditions
are met.

* A copy of the Licence is available at:

* http://joinup.ec.europa.eu/software/page/eupl/licence
eupl

* Unless required by applicable law or agreed in writing,
the programme distributed in accordance with the Licence
is distributed «AS IT IS», WITHOUT WARRANTIES OR
CONDITIONS WHATSOEVER, express or implied.

* View the Licence in the specific language in which the
permissions and restrictions set forth by the Licence are
stated.

*/

*
* October 2014

* Modifications: © MINETUR 2014 - Author of modifications:
Pablo Gómez
* Email address: pgomez@minetur.es

* Interface modifications

*/

```

Figure 4. Example of header for modified assets.



- e) Adding a 'LICENCE'-type file for the project's licence. In addition to the proprietary and licence notices included in the source code files, a file should be added containing the full licence text.
- f) Having an 'AUTHORS'-type file containing the names and email addresses of all main developers. This information, which is usually included in free software projects, makes project management and support easier after release.

```
# This file contains the contact information of the main
# developers who have contributed to the development of the project.
# It is arranged in alphabetical order by surname and formatted
# for filtering and processing from scripts.
# The fields are: name (N), email address (E), PGP key ID
# and fingerprint (P), description (D).
# Thank you,
#
#-----

N: Pablo Gómez
E: pgomez@gmail.com
D: Head of development team.

N: Juan Gómez
E: jgomez@gmail.com
D: NetBSD support.

N: Pilar Sánchez
E:
psanchez@empresa.com
D: PCIPPC6 support.
```

Figure 5. Example of 'AUTHORS' file.

- g) Adding a 'COPYING' file containing information on asset ownership, as well as legal data (components, project and component licences, contact email address).

```

This programme is distributed as a whole under licence EUPL, version
1.1 or later.

The components developed by MINHAP to be found the folders below are
distributed under the same licence (EUPL v1.1).
[folder list]

A copy of the Licence is available in the LICENSE.txt file or at the
URL below:

*      http://joinup.ec.europa.eu/software/page/eupl/licence-eupl

This programme includes the following third-party components with
their own licensing conditions:

• Alfresco ECMS - Licence GPL v2 or later, with FLOOS exception. The
original source code for this programme can be downloaded at
www.alfresco.org
• Apache Tomcat - Apache Software Licence 2.0
• Apache Web Server- Apache Software Licence 2.0
• MySQL v5 - Licence GPL v2 or later
• Mondrian - Common Public Licence
• JPivot- Common Public Licence
• Ruby on Rails - MIT Licence
• RubyGems - Ruby Licence
• OpenOffice Server - LGPL v3.0

Copies of these licences can be found in the folder /legal

Date 01 September 2014

Application ownership: Ministry of Finance and Public
Administration. nombreakaplicacion@minhap.com

```

Figure 6. Example of 'COPYING' file.

- h) Creating a 'Legal' folder containing all legal documents: 'COPYING.TXT', 'LICENCE.TXT', 'AUTHORS.TXT' and the open-source licenses of third-party components.
- i) Making sure that binary distributions are accompanied by the associated source code (or an indication of where to find it).

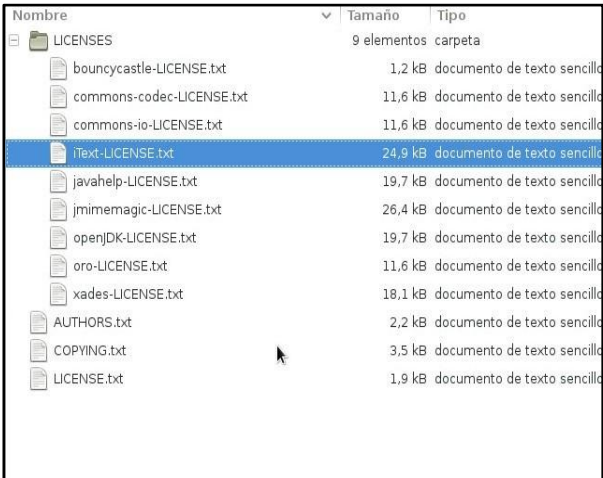


Figure 7. Example of 'Legal' folder.

82. In addition, the following tasks should be performed as well:
- a) Including a licence acceptance process during installation (in case for end-user executable programmes).
 - b) Asking for registration of the project's trademark in the relevant jurisdiction.
 - c) Including a useful legal information section for users on the project's website. This section should contain information about:
 - Product licensing.
 - List of third-party components included in the project.
 - Contribution agreements²⁶, etc.

5.2 Publication of other assets

83. The following tasks should be performed to use a Creative Commons licence in assets other than computer applications:
- a. Inserting *Commons Deed*, targeted at non-specialised users and using simple language and graphics to state licensing conditions.

There are two possible versions:

- Abridged Common Deeds for the type of licence selected:

```
This work is licensed under a Creative Commons International
Attribution-ShareAlike licence 4.0. For a copy of this licence,
go to http://creativecommons.org/licenses/by-sa/4.0/
```

Figure 8. Abridged Common Deeds for Creative Commons Attribution-ShareAlike.

```
This work is licensed under a Creative Commons International
Attribution licence 4.0. For a copy of this licence, go to
http://creativecommons.org/licenses/by/4.0/
```

Figure 9. Abridged Common Deeds for Creative Commons Attribution.

```
This work is licensed under a Creative Commons International
Attribution-NoDerivatives licence 4.0. For a copy of this licence,
go to http://creativecommons.org/licenses/by-nd/4.0/
```

Figure 10. Abridged Common Deeds for Creative Commons Attribution-NoDerivatives.

- Expanded Common Deeds for the type of licence selected:

²⁶ More information in the [Joinup section on open-source licences and complementary agreements](#).



You are free to:

- Share – copy and redistribute the material in any medium or format
- Adapt – remix, transform, and build upon the material for any purpose, even commercially.

The licensor cannot revoke these freedoms as long as you follow the licence terms.

Under the following terms:



- Attribution. You must give appropriate credit, provide a link to the licence and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.



- ShareAlike. If you remix, transform or build upon the material, you must distribute your contributions under the same licence as the original.

No additional restrictions – You may not apply legal terms or technological measures that legally restrict others from doing anything the licence permits.

Notices:

You do not have to comply with the licence for elements of the material in the public domain or where your use is permitted by an applicable exception or limitation.

No warranties are given. The licence may not give you all of the permissions necessary for your intended use. For example, other rights such as publicity, privacy or moral rights may limit how you use the material.

This is a human-readable summary of (and not a substitute for) the licence. The full legal text is available at:

<https://creativecommons.org/licenses/by-sa/4.0/legalcode>

Figure 11. Expanded Common Deeds for Creative Commons Attribution-ShareAlike.



You are free to:

- Share – copy and redistribute the material in any medium or format.
- Adapt – remix, transform, and build upon the material for any purpose, even commercially.

The licensor cannot revoke these freedoms as long as you follow the licence terms.

Under the following terms:



- Attribution – You must give appropriate credit, provide a link to the licence, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.

No additional restrictions – You may not apply legal terms or technological measures that legally restrict others from doing anything the licence permits.

Notices:

You do not have to comply with the licence for elements of the material in the public domain or where your use is permitted by an applicable exception or limitation.

No warranties are given. The licence may not give you all of the permissions necessary for your intended use. For example, other rights such as publicity, privacy or moral rights may limit how you use the material.

This is a human-readable summary of (and not a substitute for) the licence. The full legal text is available at:

<https://creativecommons.org/licenses/by/4.0/legalcode>

Figure 12. Expanded Common Deeds for Creative Commons Attribution.



You are free to:

- Share – copy and redistribute the material in any medium or format
- Adapt – remix, transform, and build upon the material for any purpose, even commercially.

The licensor cannot revoke these freedoms as long as you follow the licence terms.

Under the following terms:



- Attribution – You must give appropriate credit, provide a link to the licence, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.



- NoDerivatives – If you remix, transform, or build upon the material, you may not distribute the modified material.

No additional restrictions – You may not apply legal terms or technological measures that legally restrict others from doing anything the licence permits.

Notices:

You do not have to comply with the licence for elements of the material in the public domain or where your use is permitted by an applicable exception or limitation.

No warranties are given. The licence may not give you all of the permissions necessary for your intended use. For example, other rights such as publicity, privacy or moral rights may limit how you use the material.

This is a human-readable summary of (and not a substitute for) the licence. The full legal text is available at:

<https://creativecommons.org/licenses/by-nd/4.0/legalcode>

Figure 13. Expanded Common Deeds for Creative Commons Attribution-NoDerivatives.

These texts include links to the Legal Codes, where the full legal text of the licences can be read.

- b. Inserting the Digital Codes for information processing. This code enables end users to add logos and copyright information for each licence in their digital documents or websites. It also helps identify the works licensed under Creative Commons on the Internet. Thus, it could be a good idea to include the Digital Codes on the websites where the contents are published.

```

<a rel="licence" href="http://creativecommons.org/licenses/by
sa/4.0/"></a><br
/>This work is licensed under a <a rel="licence"
href="http://creativecommons.org/licenses/by-sa/4.0/"> Creative
Commons International Attribution-ShareAlike 4.0 licence</a>.

```

Figure 14. Digital Code for Creative Commons Attribution-ShareAlike.

```

<a rel="licence"
href="http://creativecommons.org/licenses/by/4.0/"></a><br/>This
<span xmlns:dct="http://purl.org/dc/terms/"
href="http://purl.org/dc/dcmitype/Text" rel="dct:type">work</span> is
licensed under a <a rel="licence"
href="http://creativecommons.org/licenses/by/4.0/">Creative Commons
International Attribution licence 4.0</a>.

```

Figure 15. Digital Code for Creative Commons Attribution.

```

<a rel="licence" href="http://creativecommons.org/licenses/by
nd/4.0/"></a><br
/>This <span xmlns:dct="http://purl.org/dc/terms/"
href="http://purl.org/dc/dcmitype/Text" rel="dct:type">work</span> is
licensed under a <a rel="licence"
href="http://creativecommons.org/licenses/by-nd/4.0/">Creative
Commons International Attribution-NoDerivatives licence 4.0</a>.

```

Figure 16. Digital Code for Creative Commons Attribution-NoDerivatives.

For semantic assets, a notice should be included on the website where they are published indicating that all the materials associated with the assets are being published under the licence selected, inserting the associated Digital Code.

6 PUBLICATION IN REPOSITORIES

84. When the asset is ready for publication, a site must be chosen to share it. Assets are released for re-use by other agencies, and this can only be possible if other agencies are aware of the existence of the assets being released. Consequently, they must be published in one or more sites ensuring visibility within the community that might be interested in them.
85. In the case of computer programmes, both the binary codes and the source codes must be shared. For other assets, a [standard format](#) must be chosen that enables editing.

6.1 Publication of software assets at the Technology Transfer Centre (CTT)

86. Public administrations must include all re-usable assets in the general solution directory at the CTT either by registering them at the CTT directly or by including them in the regional repositories the CTT is federated with. All assets must include their main descriptive data to encourage and facilitate re-use: brief description of functions, use, characteristics, licensing, main open standards applied, development status, and so on.
87. The source codes associated to released re-usable assets with open licences can be located in the CTT or in external repositories as long as exact references are available to where to get the source codes and the source codes themselves are available for free.

6.2 Publication of public information assets at datos.gob.es

88. Information assets in the state public sector are published at datos.gob.es, which can be federated with the information asset catalogues of other public administrations.
89. Vocabularies, ontologies and other common elements related to public information are published at the Semantic Interoperability Centre.

7 OPEN-SOURCE SOFTWARE ASSET MANAGEMENT

90. This section briefly discusses some relevant legal aspects of open-source software asset management.
91. In addition to the steps described above for asset release, the most relevant legal aspects of open-source software asset management are:
 - Ensuring rights over the assets, giving the project's contributors the recommendations to adequately preserve the project's legal information across the modifications that could eventually be introduced.
 - Defining contribution agreements and policies.
 - Looking to open-source licence compatibility in assets' components (between components and with the licences of assets as a whole).
 - Fulfilling open-source licence obligations when redistributing the assets.
 - Setting forth a use policy and seeing to it that it is complied with.

7.1 Processes and documents

92. Legal management of open-source software assets has to do with the creation and implementation of a series of processes and associated documents:
 - a. Identifying the person(s) in charge of legal issues and defining their tasks for every asset (levels of authority and decision-making roles – integration of other free assets, internal and external distribution, auditing, etc. –, decision-making flowchart).
 - b. Defining the process to deliver new contributions to existing assets by third parties (and to produce related documents): individual commissions, contributions from the community, etc.
 - c. Laying out the documentation process for asset development and distribution.
 - d. Identifying critical points for approval and decision-making: road map, inclusion of third-party components and contributions, distribution of versions, publication of key documents.
 - e. Establishing monitoring procedures for the use of assets by third parties and sanctioning methods for improper use.
 - f. Auditing and taking corrective action.
 - g. Training developers and other people in charge in open-source legal matters.
 - h. Drafting the documents below:
 - Documents on asset components (components, authors, modifications).
 - Documents on project processes (decisions on component integration, asset release, etc.).

- List of valid open-source licence.
- Contribution agreement template.²⁷

²⁷ More information in the [Joinup section on open-source licences and complementary agreements](#).

Appendix 1: ANALYSIS OF OTHER OPEN-SOURCE SOFTWARE LICENCES

GNU GPL 2.0
<p>Rights granted</p> <ul style="list-style-type: none"> • GPL 2.0 grants the right to use, reproduce, modify and distribute programmes, available as a source code or a binary code.
<p>Obligations</p> <ul style="list-style-type: none"> • Proprietary notices must be kept in the source code and modifications must be indicated. • Strong copyleft clause: The same licence must be used to redistribute the programme and its modifications and to integrate either of them into a new asset. • In binary distribution, the source code must be distributed with the binary code or be available to all users for three years. • No additional restrictions may be added to programme distribution.
<p>Others</p> <ul style="list-style-type: none"> • The source code is defined as 'the preferred form of the work to make modifications' and includes the scripts for compilation and running, as well as any API. • No reference is made to patents or trademarks, nor to applicable laws or jurisdictions. • Warranties and liabilities are disclaimed to the extent permitted by applicable law.
<ul style="list-style-type: none"> • FSF, the licence's author, argues that it prevents the use of dynamic links to connect a programme to another licensed under GPL without applying this licence to the asset 'as a whole' (although this opinion is not shared by all members of the free software community). However, the GPL copyleft clause does not apply to programmes integrated and/or distributed in the same support (e.g. a CD/DVD). • Compatibility: Since the programme must be redistributed under the same licence, it is only compatible with the most permissible licences (BSD, MIT, etc.). For a full list of compatible licences, the reader is referred to www.gnu.org. • Some GPL variants have exceptions that make them more compatible, e.g. the Classpath Exception of the Classpath Project, enabling dynamic linking to other programmes under any licence, or the FOSS Exception from MySQL, with the same result as long as the other programme is distributed under an open-source licence. • The programmes using this licence tend to indicate that it is 'GPL v2 or later'. This way, users can get the programme under GPL v3 if they want to.

Table 2. Information on licence GPL 2.0.

GNU GPL 3.0

Rights granted

- GPL v3 grants the right to 'propagate' a programme, with or without modifications, and works based on it. To 'propagate' a work means to do anything with it that, without permission, would make you directly or secondarily liable for infringement under applicable copyright law, except executing it on a computer or modifying a private copy. In Spain, propagation includes copying, distribution (with or without modification) and making available to the public.
- GPL v3 grants unlimited patent licence.
- It enables programmes to be linked to assets under Affero GPL licence.
- With the aim of improving flexibility and licence compatibility, it enables assets with additional restrictions to be linked to assets under licence GPL v3 (only in connection with certain aspects: trademarks, compensations, warranties, etc.).
- It also allows for additional permissions (as in LGPL v3) that can be eventually deleted.

Obligations

- Proprietary notices must be kept and modifications must be indicated.
- **Strong copyleft clause: The same licence must be used to redistribute the programme and its modifications and to integrate either of them into a new asset.**
- In binary distribution, the source code must be distributed with the binary code or be available to licensees for three years.
- No additional restrictions may be added to programme distribution.

Others

- No reference is made to applicable laws or jurisdictions.
- Warranties and liabilities are disclaimed to the extent permitted by applicable law.

- The source code is defined in more specific and thorough terms than in GPL v2, but the basic concept is the same: 'the preferred form of the work to make modifications', including the scripts for compilation and running, as well as any API. In the case of consumer goods, it must also include the codes or passwords required for the asset to be operated.
- New ways of making the source code available are introduced, including websites and P2P networks.
- It is stated that copyleft affects programmes dynamically linked to assets under licence GPL vs. However, as was the case with GPL v2, the GPL v3 copyleft clause does not apply to programmes integrated and/or distributed in the same support (e.g. a CD/DVD). Exceptionally, the copyleft clause does not apply to programme distribution and/or modifications between consultants/integrators and their clients.
- Compatibility: The GPL v3 compatibility scenario is quite complex. There is compatibility with assets under licences GPL v2 and LGPL, while 'permitted restrictions' extend compatibility to other licences (specially Apache 2.0).
- Although assets licensed under GPL v3 can be included in copyright protection and control systems (DRMS), licensors may not forbid licensees' circumvention of technological measures.
- Licence is revoked when a licensee files a claim based on patent rights and it contains additional conditions if special protection is agreed upon with third parties.

Table 3. Information on licence GPL 3.0.

Mozilla Public Licence 2.0
<p>Rights granted</p> <ul style="list-style-type: none"> • Licence MPL grants the rights to use, reproduce, make available, modify, display, perform, distribute, and otherwise exploit assets, available as a source code or a binary code. • It also grants a patent licence that is revoked under patent claims concerning any of the owner's assets.
<p>Obligations</p> <ul style="list-style-type: none"> • Copy of the licence, proprietary notice, and warranty and liability disclaimers must not be removed from the source code. • When redistributing the asset, modifications must be indicated and the 'legal.txt' file (a file with legal contents) must be kept with the code or the documents. • Weak copyleft clause: When the asset or the modifications (of the original files) are redistributed, it must be done under the same licence, supplying the source code. The programme, however, can be integrated into other assets, distributed under any kind of licence.
<p>Others</p> <ul style="list-style-type: none"> • No reference is made to applicable laws or jurisdictions. • Warranties and liabilities are disclaimed to the extent permitted by applicable law.
<ul style="list-style-type: none"> • Compatibility: MPL is compatible with most licences, since version 2.0 has added compatibility with GPL licences.

Table 4. Information on licence MPL 2.0.

Lesser GPL (LGPL)
<p>Rights granted</p> <ul style="list-style-type: none"> • LGPL includes the same freedoms and restrictions as GPL regarding original assets, the exploitation of modifications being covered by the copyleft clause. On the other hand, it applies different legal terms (even restrictive or not-free conditions) to the distribution of programmes 'using the library'.
<p>Others</p> <ul style="list-style-type: none"> • The text LGPL v2 is very complex when discussing links between programmes. LGPL v3 is an explicit variant of GPL v3, i.e. it is a GPL v3 licence with additional permissions, accepting that a third programme under any kind of licence uses a LGPL-licensed asset and allowing for distribution of the whole under a licence that is not LGPL.

Table 5. Information on licence LGPL.

Appendix 2: ASSET RELEASE CHECKLIST

- 93. **Proprietary notice:** Decide on and show information.
 - 94. Identify asset ownership and authorship.
 - 95. Create 'COPYING' text file containing information about the work's owners.
 - 96. Include 'COPYING' in 'Legal' folder.
- 97. **Licence:** Select and show a licence for the asset.
 - 98. Select compatible licence that is consistent with the goals of the project.
 - 99. Create 'LICENCE' text file containing information about the licence selected.
 - 100. Include 'LICENCE' FILE in 'Legal' folder.
- 101. **File header:** Add information about licencing and copyright to source code.
 - 102. Add information about copyright ownership as a comment in source code file header.
 - 103. Add authorship notice as a comment in source code file header.
 - 104. Add information about licensing in source code file header.
- 105. **'AUTHORS' file:** Add contact information for the project.
 - 106. Add names and email addresses of main contributors.
 - 107. Include 'AUTHORS' file in 'Legal' folder.
- 108. **'README' file (optional):** Include all the relevant information about the project.
 - 109. Create 'README' text file containing project description.
 - 110. Include 'README' file in main folder.
- 111. **'INSTALL' file (optional):** Include all the relevant information about installation.
 - 112. Create 'INSTALL' text file giving instructions for asset installation.
 - 113. Include 'INSTALL' file in main folder.
- 114. **'CHANGES' file (optional):** Include the full record of the changes made.
 - 115. Create a 'CHANGES' text file containing the asset's record and its most important reviews.
 - 116. Include 'CHANGES' file in main folder.
- 117. **Share:** Upload the code to a public repository.
 - 118. Choose the repository that best suits the characteristics of the project.
 - 119. Follow the instructions in the repository to create a project.
 - 120. Upload code.
 - 121. Register the solution as a re-usable element at the CTT.

Appendix 3: REFERENCES

Laws

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[BOE-A-2007-12352](#)
- Royal Decree 1671/2009, of 6 November, implementing Law 11/2007, of 22 June, on Citizens' eAccess to Public Services
[BOE-A-2009-18358](#)
- Law 40/2015, of 1 October, on the legal regime of the public sector
[BOE-A-2015-10566](#)
- Royal Decree 4/2010, of 8 January, regulating the National Interoperability Framework in Public Administration
[BOE-A-2010-1331](#)
- Law 21/2014, of 4 November, amending the recast text of the Intellectual Property Law, approved by Royal Decree 1/1996, of 12 April, and Law 1/2000, of 7 January, on Civil Procedure
[BOE-A-2014-11404](#)
- Royal Legislative Decree 3/2011, of 14 November, approving the recast text of the Public Contract Law.
[BOE-A-2011-17887](#)
- Directive 2003/98/EC of the European Parliament and of the Council, of 17 November 2003, on the re-use of public sector information
[DOUE-L-2003-82244](#)
- Directive 2013/37/EU of the European Parliament and of the Council, of 26 June 2013, amending Directive 2003/98/EC, on the re-use of public sector information
[DOUE-L-2013-81251](#)
- Law 37/2007, of 16 November, on the Re-use of Public Sector Information
[BOE-A-2007-19814](#)
- Royal Decree 1495/2011, of 24 October, implementing Law 37/2007, of 16 November, on the Re-use of Public Sector Information, for the state public sector
[BOE-A-2011-17560](#)
- Resolution of the Secretary of State for Public Administration, of 19 February of 2013, approving the Technical Interoperability Standard for the Re-Use of Information Resources
[BOE-A-2013-2380](#)
- Amendment of the Resolution of the Secretary of State for Public Administration, of 19 February of 2013, approving the Technical Interoperability Standard for the Re-Use of Information Resources
[BOE-A-2013-5858](#)

Instruments

- Technology Transfer Centre

http://administracionelectronica.gob.es/pae_Home/pae_SolucionesCTT.html

- datos.gob.es

<http://datos.gob.es>

- Semantic Interoperability Centre

<http://administracionelectronica.gob.es/PAe/CISE>

Working documents and bibliographical references

- Interoperability Solutions for European Public Administrations: Sharing and reuse strategy

http://ec.europa.eu/isa/actions/04-accompanying-measures/4-2-5action_en.htm

- Joinup Communities: EUPL

<https://joinup.ec.europa.eu/community/eupl/home>

- Schmitz, Patrice-Emmanuel (2013) 'The European Union Public Licence (EUPL)', *International Free and Open Source Software Law Review*, 5(2), pp. 121-136

<http://www.ifosslr.org/ifosslr/article/view/91/164>

- Open Source Licences

<http://opensource.org/licenses>

- Creative Commons

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<http://es.creativecommons.org/licencia/>

- European Commission Notice, 'Guidelines on recommended standard licences, datasets and charging for the re-use of documents' (2014/C 240/01)

http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?action=display&doc_id=6421

- Free Software Legal Issues Community – CENATIC

<http://www.cenatic.es/comunidadlegal/>

- Guide to legal procurement – CENATIC

http://wiki.cenatic.es/wikiesp/index.php/Guia_legal_contratacion

- OSS Procurement Guide: Guide to the procurement of open-source software in the Public Administration (Spanish) – Open Source Observatory and Repository (OSOR)/European Commission

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- <http://www.oss-watch.ac.uk/resources/developers.xml>
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<http://ilegal.cpl.upc.edu/>
 - St. Laurent, Andre M. (2004), *Understanding Open Source and Free Software Licensing*, O'Reilly Media
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<https://clinic.nl/wp-content/uploads/LinkingDocument.pdf>
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