

3 FUNCTIONS OF A CUSTODIAN

3.1 Responsibilities and Rights

As outlined in Volume 4, custodianship of a dataset carries with it certain **responsibilities** (see Box 1). Each of these contributes to the well-being of a dataset and, thus, to internal productivity gains within the organisation as well as an increased capacity to collaborate with others. Naturally, custodians may harbour concerns at the prospect of providing access to their data. For this reason they are also invested with certain **rights**, consistent with broader government, corporate and other applicable policies and agreements, which determine the conditions under which the dataset can be used (see Box 1). Such rights are not intended to prevent legitimate use of a dataset. Indeed, the aim is to foster an environment in which data access is straightforward and encouraged.

Where a custodian does not have sufficient resources to undertake all of its responsibilities, certain of these may be delegated or contracted to other organisations, known as **stewards** (Janzen 1993). Custodianship, however, remains with those responsible for the content of the dataset.

3.2 Custodians and Owners

Copyright does not protect facts, so it is not clear whether ‘data ownership’ has any legal status. However, the concept is useful when describing those individuals or organisations that have some claimed intellectual property rights (whether enforceable or not) over certain data. In the majority of cases these ‘rights’ are claimed on the grounds of original collection of the data.

Although, in most cases, data owners are also the custodians, it is important to recognise that **data custodianship differs from data ownership**. Custodianship does not necessarily signify ownership, although the distinction is important only when the data custodian is a different entity from the owner. Box 2 presents a variety of situations in which this occurs.

Box 1 Responsibilities and rights of custodians

Responsibilities

- To build a dataset (with partners, as appropriate).
- To maintain a dataset (i.e. keep it up to date, abreast of standards, structured as necessary).
- To ensure the quality of a dataset (i.e. ensure that it is valid, maintained, documented, secure).
- To provide access to a dataset (to legitimate users).
- To provide advice on appropriate uses of a dataset (e.g. suggested/unwise/improper uses).
- To coordinate the development of a dataset (with appropriate partners).

Rights

- To regulate access to a dataset (depending on category of user).
- To safeguard intellectual property (e.g. acknowledgement, regulation of copying).
- To recover costs (e.g. recover market value, investment, cost of supply).

The owner retains intellectual property rights over the data, although these rights can, in practice, be virtually non-existent, as is the case with public-domain data. The owner may choose to delegate some of these rights to a custodian. The custodian may be likened to a trustee in terms of its relationship with the data. The degree of freedom that the custodian has to either use or distribute the data depends on how rights are delegated by the owner. In general, there will be a formal agreement between the owner and the custodian which specifies what the custodian is allowed to do with the data and the circumstances in which the owner needs to be consulted.

Box 2 Where data ownership and custodianship differ

- In most government jurisdictions, data may be ‘owned’ by the supreme executive authority, whereas the custodian may be just one of many agencies created by that authority, designated to act on its behalf.
- Data may be in the public domain but managed by a custodian organisation acting, at least to some extent, ‘in the public interest’.
- The owner of a dataset may be one or more persons, for example scientists or naturalists, who originally collected the data, and who maintain ownership rights, but who may be unable or unwilling to manage the data effectively over the long term.
- The owner may be an organisation that built a dataset for a particular purpose but has since lost interest in managing the data. It may then delegate its custodial responsibilities to another organisation, which becomes the custodian. The original owner may still retain some residual intellectual property rights over the data, which the new custodian would be obliged to respect.

In some cases, the custodian may choose to contract some of their responsibilities to another organisation, perhaps one of its partners in a network. Provided the contracted organisation has no authority to use or distribute the data without approval by the custodian, this arrangement would not ordinarily affect the custodian’s rights or responsibilities over the data.

3.3 Custodians and Users

Properly organised custodianship is beneficial to users of both data and information. For example, confusion over where to obtain accurate data is minimised, and reliable advice on the source, currency and completeness of information products is forthcoming. In return, **users should assist custodians by providing feedback on the usefulness of data**, and by keeping them informed of their future requirements (e.g. quality-assurance requirements). This helps the custodians plan their data collection and management strategies.

Where a user collects data on behalf of a custodian, with the intention of submitting it for entry into a dataset, this should be done according to the standards and procedures established by the custodian. Users should also return any data that they have corrected or otherwise upgraded and, in turn, the custodian needs to ensure that the upgraded data is made available to subsequent users.