

https://dspace.org/

Wits Face Database: WFD

Bacci, Nicholas; Davimes, Joshua; Steyn, Maryna; Briers, Nanette

2020-11-02
http://doi.org/10.17605/OSF.IO/WMA4C

Downloaded from a DSpace repository. https://dspace.org/

Phillip V Tobias Health Sciences Building, 29 Princess of Wales Terrance, Parktown 2193; Johannesburg; South Africa T +27 11 717 2000

Conditions of Use Agreement for the Wits Face Database (WFD)

1. Preamble

1.1. The terms and conditions contained in this document govern the right to access and use the Wits Face Database ("WFD") belonging to the University of the Witwatersrand, Johannesburg ("University").

1.2. The participants who have graciously allowed their facial photographs and/or recordings to be captured ("Participants") have done so on the understanding that the WFD will only be used for purposes of non-commercial research in accordance with best academic practice and ethical regulations.

1.3. By accessing, browsing or using the WFD/part thereof, the User agrees and accepts that the terms and conditions contained herein are binding and undertakes to comply with the stipulated terms and conditions.

1.4. A detailed description of the WFD can be found at:
http://doi.org/10.17605/OSF.IO/WMA4C
To see a descriptor and access a sample of the WFD please use the following link: http://wiredspace.wits.ac.za/handle/10539/29924 .

2. Definitions and Interpretations

In this document, unless the context clearly indicates otherwise the following terms are used:

2.1. **"Agreement"** means the terms and conditions of use contained in this document and any annexures and/or schedules hereto.

2.2. **"Applicant"** means anyone who has submitted a formal application for access and to make use of the WFD/part thereof, for non-commercial research purposes;

2.3. **"Collaborator"** means any member of a research group or team authorised to access and to use the WFD/part thereof, for research purposes;

2.4. **"Editor"** means the Editor of the WFD, Nicholas Bacci, who was the principal investigator and creator of the WFD at the University and who is involved in the processes of reviewing applications for access to the WFD;

2.5. "**HoS"** means the Head of the University's School of Anatomical Sciences;

2.6. **"Institutional Review Board"** means the University's School of Anatomical Sciences Collections Committee which acts as a Research Ethics Committee for the purpose of

the WFD (hereinafter referred to as the "IRB" and "REC" respectively) regulating access to the WFD;

2.7. **"Participants"** refers to the participants who have provided written consent for their facial photographs and/or recordings to be captured for inclusion in the WFD;

2.8. **"Personal Information"** in terms of the Protection of Personal Information Act 4 of 2013 (available at the following URL: https://www.gov.za/documents/protection-personal-information-act), is data that can be used to identify a person. It is defined as "information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person." and includes any data, images, and video recordings of Participants;

2.9. **"School"** means the School of Anatomical Sciences, University of the Witwatersrand, Johannesburg;

2.10. **"Third party**" means any individual, research group, organisation or institution other than the approved User/s;

2.11. **"University"** means the University of the Witwatersrand, Johannesburg;

2.12. **"User"** means a person to who has been granted access to the WFD and who agreed to abide by the terms and conditions of this Agreement and any additional terms and conditions imposed by the IRB/REC**;**

2.13. **"WFD"** refers to the Wits Face Database published under the following DOI: http://doi.org/10.17605/OSF.IO/WMA4C

3. Terms and Conditions of Access and Use

3.1 The WFD is an open access resource for use in strictly non-commercial research. Users may not carry out any work on the WFD unless authorised in writing to do so by the IRB/REC.

3.2 Users and/or Third parties wishing to obtain access to the WFD for research purposes must be affiliated to an academic institution for a minimum period of 6 (six) months prior to the application date. This affiliation, whether as a student or staff member of the institution, may require verification if deemed necessary by the IRB/REC.

3.3 Users and/or Third parties must use their institutional contact details (i.e. email address) for any communications regarding the WFD. These contact details must be verifiable as belonging or being affiliated to the institution.

3.4 Applicants wishing to make use of the WFD must submit their request in writing to the Editor and the IRB/REC. The application must include:

3.4.1 a succinct research protocol, outlining the aim of the study, the procedures and processes to be employed in collecting data, and specifying the type and quantity of images required as well as how the results will be disseminated and how long data generated will be preserved.

3.4.2 a completed application form as well as a signed copy of this Agreement with name, surname and detailed affiliations of all persons applying for use.

3.5 External Applicants must submit proof of ethical clearance approval from their own institution.

3.6 If the research is for the purposes of a post-graduate degree, evidence of approval of the project proposal from the student's institution must be submitted.

3.7 The facial images and/or recordings of the Participants may not under any circumstances whatsoever be published in any form (e.g. published journal article, news article, thesis/dissertation, conference podium or poster presentation etc.).

3.8 The IRB/REC and Editor will review the application and determine the scientific and ethical merit of the intended research project in order to recommend granting the School's blanket ethics waiver to the HoS. The HoS is the legal custodian of all collections housed within the School, including the WFD, and is authorised to grant the ethics waiver.

3.9 An application can be deemed approved with no changes or approved subject to minor adjustments or requiring re-submission with major edits or rejected if it is in direct violation of any of the terms and conditions stipulated in this document

3.10 Successful Applicants will be informed of the status of the application and will be provided with an ethics template for completion. The ethics template accompanied by a letter from the HoS indicating that he/she has approved the ethics waiver for the study, will be sent to the chair of the Human Research Ethics Committee (Medical) bi-annually for each project approved within the School that makes use of a collection, including the WFD. Once the Applicant has submitted the ethics template, they will be provided directions on how to access the component of the WFD relevant to their study.

4. Copyright and Intellectual Property

4.1 All Intellectual Property rights in the WFD are owned by the University.

4.2 Subject to compliance with the terms and conditions of this Agreement, Users are, for the period of access approved by the IRB/REC hereby granted a temporary, non-

exclusive, revocable, non-transferable licence to access and to use the WFD/part thereof solely for non-commercial research purposes.

4.3 Such license as may be granted in terms of this Agreement may not be sub-licenced, assigned, pledged, encumbered or otherwise transferred by the User, voluntarily or involuntarily, by operation of law or otherwise, without University's prior written consent, which consent may be withheld in University's sole discretion, and any attempt to do so in violation of this Agreement will be without legal effect and void in terms of this Agreement.

4.4 The data on the WFD is provided "as is", and the University assumes no responsibility for errors or omissions. The User assumes the entire risk associated with its use of these data. The University shall not be held liable for any use or misuse of the data described and/or contained herein. The User bears all responsibility in determining whether these data is fit for the User's intended use.

4.5 For the avoidance of doubt, it is recorded that the WFD/part thereof:

4.5.1 may not be reproduced and/or publicized in any form or nature;

4.5.2 the images and/or recordings and the associated metadata, included in the WFD must not be reproduced without prior written consent of the University and the IRB/REC, which consent may be withheld in University's sole discretion;

4.5.3 the distribution of any constituents of the WFD to any third party is prohibited;

4.5.4 the distribution of any constituents of the WFD for commercial purposes is prohibited; and

4.5.5 as far as possible and where appropriate, projects including the WFD must be carried out in collaboration with the Editor and/or co-developers of the WFD.

4.6 Any screenshots, photographs, reproductions or any other information (hereafter referred to as "Data") obtained from the original facial images and/or recordings belongs to the University. This includes, but is not limited to, data generated through the study of the WFD/part thereof. Data may not be made available on any Internet website, ftp-site, or any other similar public access point.

4.7 Users must comply with all applicable legislation including but not limited to the provisions of the Data Protection Legislation governing the collection, use and processing of Personal Information as defined in Protection of Personal Information Act 4 of 2013 (POPI).

4.8 Users must not process Personal Information/data obtained from the study of any part of/the whole WFD for any purpose other than in terms of the approved research project, without the express written permission of the IRB/REC. The distribution of data to any Third Party by Users is not permitted. Any Third Party requesting access to the data obtained through a study of the WFD, by a previous User must submit a written request to said User as well as the IRB/REC. Each request will be addressed in an *ad hoc* manner by the Editor and the IRB/REC.

4.9 On completion of the research work, the User undertakes to ensure that copies of all Data and research outputs or part thereof whether in his/her possession or not, is immediately handed over to the Editor.

4.10 Users may not keep copies of the raw data/WFD, delete remove or in any way interfere with the University's Intellectual Property without permission of the IRB/REC. The School reserves the right to use any of these Data in future research and teaching projects. Users will be allowed a moratorium period of maximum 2 (two) years to complete the research goals (i.e. publication, dissertation etc.). After which the Data will be made available for use for competing research projects or teaching. If the User is not able to complete the project within this time period, then the User must submit a progress report stipulating all limiting challenges together with a completion plan.

4.11 This WFD may not in any shape or form be incorporated into any semi- or fully automated facial recognition/detection system. It may, however, be used to test the efficacy of non-commercial systems for face recognition and face detection. All Participants included in this database must be referred to by the commonly accepted terminology and they may not be discussed in any derogatory way.

4.12 Under no circumstances may any Data not strictly belonging to consenting Participants of the study be used for research of any kind. Any passer-by or unintentionally recorded individual's facial or other data may not be used for any purpose, including research. No image or video data may be published in any format or any platform if originating from the WFD, regardless of modifications.

4.13 If a scientific publication results through unauthorised actions of the User and/or Third Party for which approval was not granted in writing by the IRB/REC, the relevant journal/publisher will be notified of this and the journal/publisher will be requested to remove the publication from their issues.

5. Acknowledgement

5.1 Any publication, book or dissertation / thesis arising from the use of data through the WFD must be sent to the Editor for curation in the School's archive, as close as possible to publication. In all of these publications, clear reference must be made to the DOI of the WFD and the publication describing its composition.

5.2 The funders, contributors and individuals that aided in creating the database both as Participants and volunteers should be acknowledged in all publications, books and theses. The following credit line of acknowledgement must be included:

"The authors would like to thank the School of Anatomical Sciences of the University of the Witwatersrand, Johannesburg, the Wits Library, Protection Services and ICT Services as well as the database participants and the individuals (Gideon LeRoux, Nina Lewin, Mark Allen) who assisted in the development and curation of the database. The WFD was developed with support from the South African National Research Foundation (Grant Nos.: 11858; CSUR160425163022 (UID:106031)) and JJJ Smieszeck Fellowship. Any opinions, findings and conclusions or recommendations expressed in this study are those of the authors and therefore the NRF and University of the Witwatersrand, Johannesburg do not accept any liability in regard thereto."

6. Breach

6.1 Failure to comply with the terms and condition of this Agreement, will result in the User's/Third Party's and their institution's licence granted in terms of clause 4.2 being immediately revoked. Future access to the WFD and other collections or databases that fall under the management of the School will be denied. In addition, the academic institution of any Users in breach of this document will be notified of the User's unethical and illegal conduct.

6.2 The University will be entitled, without prejudice to any other rights it may have in terms of this Agreement or at law, to terminate this Agreement and to claim any damages it may have suffered as a result of the breach.

6.3 Notwithstanding anything contained herein, the cancellation of this Agreement shall not affect the University's rights that had accrued at the date of termination.

7. Indemnity

Users hereby indemnify and hold the University harmless from any claim which may arise in terms of this Agreement. Users/Third Parties will not under any circumstances hold the University liable for any indirect, contingent or consequential loss sustained or incurred by them howsoever arising and of whatsoever nature, including but not limited to loss of profits, whether or not the Users/Third Parties contemplated such losses or damages at any time.

8. Domicilium Citandi et Executandi

The Parties select as their respective domicilia citandi et executandi for the purposes of legal proceedings and for the purposes of giving or sending notices provided for or necessary in terms of this Agreement, the following addresses:

8.1 **The University:**

8.1.1 Operational Notices

Attention: Collections Committee of the School of Anatomical Sciences

Physical address: 7 York Road

2nd Floor, Wits Medical School

Parktown,

Johannesburg

2193

8.1.2 Legal Notices

The Director: Legal Services

Physical address**:** 1 Jan Smuts Avenue

5th Floor Solomon Mahlangu House

Braamfontein

Johannesburg

2001

8.2 **The User:**

8.2.1 Operational Notices

Attention:

Physical address:

8.2.2 Legal Notices

Attention:

Physical address:

I acknowledge that I have read and understood the terms and conditions stipulated in this Agreement and I undertake to abide by the terms and conditions contained herein.

Signed at_____ on this _____ day of _____20__ .

_____

Principal Investigator

Full name: _____

Affiliation: _____

Signed at_____ on this _____ day of _____20__ .

_____

Collaborator #1

Full name: _____

Affiliation: _____

Signed at_____ on this _____ day of _____20__ .

_____

Collaborator #2

Full name: _____

Affiliation: _____

Signed at_____ on this _____ day of _____20__ .

_____

Collaborator #3

Full name: _____

Affiliation: _____

Signed at_____ on this _____ day of _____20__ .

_____

Collaborator #4

Full name: _____

Affiliation: _____

Signed at_____ on this _____ day of _____20__ .

_____

Collaborator #5

Full name: _____

Affiliation: _____

Signed at_____ on this _____ day of _____20__ .

_____

First Witness

Full name: _____

Affiliation: _____

Signed at_____ on this _____ day of _____20__ .

_____

Second Witness

Full name: _____

Affiliation: _____