

OpenStreetMap Data Licence - Use Case Review

The following are Use Cases submitted by the OpenStreetMap community as of 19th January 2009. Legal counsel at Wilson Sonsini Goodrich & Rosati acting on behalf of the OSM Foundation has kindly reviewed each Use Case in turn. License references are to the review version 0.9 of the Open Database Licence (OdbL). I have inserted each response with what I believe is the corresponding Use Case. The Use Cases were made on a wiki page that changes over time; looking at the wiki history page, I assume but cannot absolutely guarantee that review has been made of the version extant 19th Jan (there were then no edits for a month).

Mike Collinson, OSMF, 2009-02-26

1. Publishing a simple map in a book, newsletter or similar work

The licence should allow maps or other visualisations created from the Dataset to be included as part of a printed publication. The maps may be licenced as using a share-alike licence (such as CCBYSA) or all rights reserved but must not be published as Public Domain. If the Dataset used is OpenStreetMap, then OpenStreetMap should be credited.

Legal counsel says: Yes, this example would be covered under the OBdL. Section 4.3 of the OBdL requires that notice and credit be given when "Produced Works," as defined in the license (includes maps, images, and sounds which are based upon the Database) are publicly Used (in a book, on a website, in software, on TV, or otherwise).

Section 4.3 also requires that the notice include information regarding where the user can obtain a copy of the Database or Derivative Database. The OBdL imposes no license restrictions on the Produced Works, although it does restrict reverse engineering the Produced Work in order to re-create the Database and place it under a different license.

2. Including OSM data in a hand-made map

A designer produces a hand-made map derived from OSM data for example to produce a tourist map of a town. The designer adds some additional elements, removes others, moves things around so they look better (avoiding overlap etc) and styles the maps as they see fit. The designer should not be forced to make the edited raw data available and it should be possible to license the resulting maps in any way that is preferred.

Legal counsel says: The example suggests that the map is a "Produced Work" that would require notice under Section 4.3 of the OBdL; access to the "Derivative Database" upon which the Produced Work is based would also have to be made available.

Again, though, the OBdL imposes no license restrictions on the Produced Works, but does restrict reverse engineering the Produced Work in order to re-create the Database and place it under a different license.

3. Including a map or visualisation on a website

The licence should allow maps or visualisation based on the Dataset to be used on a website. The image may be released as share-alike (ccbysa) or with all rights reserved. The rest of the web page should be able to be licenced as required by the publisher. The

map or visualisation should be acknowledged in an appropriate manner.

Legal counsel says: *See #1 above.*

4. On-line slippy map service

The licence should allow the Dataset to be used to present slippy-map service both as raster data and using vector data (such as SVG). There should be protection to ensure that any systematic collection of vector data, or other reverse engineering techniques of substantial amounts of data should be considered as a Derived Dataset and be covered by 1) below.

Legal counsel says: *I probably need to be walked through this in order to understand how the OBdL would apply.*

5. Including a map or visualisation on a Mobile Application

When a map or visualisation is used on a device with a small screen the licence should allow for the acknowledgement for the Dataset to appear on a dialog page, an about page or on a credits page rather than on every page.

Legal counsel says: *Yes, the OBdL would cover and permit this example. The OBdL's notice requirements provide for flexibility with regards to how notice is provided: "You must include a notice within, on, or as part of the Produced Work reasonably calculated to make any Person that uses, views, accesses, interacts with, or is otherwise exposed to the Produced Work aware that content was obtained from the Database, Derivative Database, or the Database as part of a Collective Database (the "Source"), and that the Source is available under the terms of this License."*

6. Using a map derived from OSM data in a TV news piece about an event in a certain location

The licence should allow a a map or visualisation to be shown in to TV news story where the map is minor to the story with no attribution in circumstances where no attribution would be expected if a commercial map were used in a similar situation. It may however be appropriate to supply credits on an associated website if that is conventional practice for use of other similar datasets.

Legal counsel says: *See #5 regarding the flexibility for notice. With regards to the Derivative Database question, yes, access to it would be required under Section 4.3 of the OBdL. See #1 above.*

7. On-line slippy map service in conjunction with commercial data

The licence should allow rendered slippy map services to be offered where Collective Dataset containing the Dataset together with other, possibly commercial data is used. The rendered map tiles can use ccbysa, or all rights reserved as required where some areas are provided by OpenStreetMap and other areas are provided by commercial map data, provided that where it is clear for each area which mapping source is being used and provided that of the Collective Dataset is distributed then it is distributed on this licence. Note the negative use case 'Commercial map company wants to sell OpenStreetMap data blended with its own map data'.

Legal counsel says: *I probably need to be walked through this in order to understand how the OBdL would apply.*

8. Using OSM data in a computer game together with other commercial data

The licence should allow the Dataset to be used together with other significant distinct datasets to support a computer game. An example of this would be a flight simulation where the OpenStreetMap Dataset is used for land use, natural and man made features, and is combined with other potentially copyright material, including aeronautical data, airfield data, DEM (more likely SRTM based), description for various planes and other structures.

The combination of the OSM Dataset with other datasets should constitute a Collective Dataset. The rendered scenery produced by the gaming code would be an 'end user experience' so could be provided with 'all rights reserved' is required by the game maker. The end-user experience should include an acknowledgement to Dataset on a credits page along with other data sources. Note: Any changes to the Dataset prior to integration with other significant distinct datasets would need to be distributed as per 1).

Legal counsel says: *Collective Databases are a defined term in the OBdL (“this Database in unmodified form as part of a collection of independent works in themselves that together are assembled into a collective whole”) and, in such a case, the other databases are not subject to the OBdL.*

Any Produced Work arising from use of the Database or Derivative Database as part of a Collective Database is subject to the same notice requirements as above (i.e., under Section 4.3). Access to the Database or Derivative Database is also required per Section 4.3.

9. Combining OSM mapping data with proprietary public transport schedules

The licence should allow a student a write a thesis on public transport, who gets lots of data from local transport authority under the provision that it is only used for academic purposes (maybe proprietary; maybe legally protected because drivers' whereabouts can be derived from the data etc.) and who then combines it with OSM data for analyses. The student wants to make the resulting analysis available to the bus company any others. The licence should ensure that any this is allowed but that any future changes to the OSM Data part is released to OSM as a derivatative Database.

Legal counsel says: *This use case is somewhat unclear. This use may be covered under Section 6 dealing with exceptions (i.e., for academic or scientific purposes granted under applicable law).*

[Use Case 10 is omitted as it was inserted after January 19th]

11. Routing

If I create a routing service or gadget, I should be able to use OSM data for this. I should be able to convert the data into any format I like, including one that works with a proprietary routing software that I don't want to disclose. I should not be forced to make

this data available in any form, because it might allow people to easily reverse engineer my routing algorithm.

Legal counsel says: *I may need more clarification on this example. If no Produced Work is publicly Used ("Produced Work" and "Use" are both defined terms in the OBdL), then no notice or access to the Database is required. If a Produced Work is publicly Used, then both notice and access to the Database are required.*

12. Geotagged photos, blog posts and other entities using the Dataset for locational data

The licence should allow people to geocode moderate numbers photos, blog postings, microblogs such as Twitter or Jaiku, articles such as a Wikipedia article from the dataset and then licence the resulting work in any suitable manner, including as public domain, ccbysa, and all rights reserved without acknowledgement to the Dataset.

Legal counsel says: *So long as this example does not rise to the level of publicly Using a Produced Work, then this use should be permitted under the OBdL without notice. The example given does not appear to meet the definition of "Produced Work," in which case no notice would be required.*

13. Geocoding

If I run my database of 1000 customers addresses through OSM to derive the geolocation of those customers, the resulting dataset should not come under the OSM license. The same is true for the reverse way: If I have 1000 geographic locations and want to know the nearest street, I should be able to derive that information from OSM data without having the result be under OSM license.

Legal counsel says: *I believe this example would be considered a Derivative Database under the OBdL, which is defined as follows: "a database based upon the Database, and includes any translation, adaptation, arrangement, modification, or any other alteration of the Database or of a Substantial part of the Data. This includes, but is not limited to, Extracting or Re-utilising the whole or a Substantial part of the Data in a new Database."*

As such, it would be covered under the OBdL and certain obligations would be triggered if it were publicly Conveyed, or if a Produced Work based on it were publicly Used.

14. Using OSM data to geocode a directory of data

Business has information about companies. OSM has locations of companies. Business geocodes their own data with osm data. Business uses new improved data to sell targeted advertising, no maps produced.

Legal counsel says: *I believe this example would be considered a Derivative Database under the OBdL, would be covered under the license, and certain obligations would be triggered if the Database were publicly Conveyed, or if a Produced Work based on it were publicly Used.*

15. Using data to create or augment a business directory

Business has minimal information about companies. OSM has information about opening times, contact details, location, relations etc. Business makes searchable database to create directory of businesses for each region. Customers of their database can correct and update their records, for a fee.

Legal counsel says: *I believe this example would be considered a Derivative Database under the OBdL, would be covered under the license, and certain obligations would be triggered if the Database were publicly Conveyed, or if a Produced Work based on it were publicly Used.*

However, this example seems to indicate that the Database is neither being publicly Conveyed, nor being used to create a Produced Work that will be publicly Used. As such, charging a fee to use the Database in the manner described appears to be permitted under the OBdL (see, e.g., Section 4.7(c) and the definition of "Convey").

16. Business cards on a web page

The licence should allow an organisation to extract geocode information for inclusion in electronic business cards such as The hCard, which includes coordinates for addresses (see <http://microformats.org/wiki/hcard-examples> for more information) with no attribution required.

Legal counsel says: *See the response to #11. So long as this example does not rise to the level of publicly Using a Produced Work, then this use should be permitted under the OBdL without notice. The example given does not appear to meet the definition of a "Produced Work."*

17. Tracing areas and locations

The licence should allow people to trace or extract moderate numbers of point, area or linear features without acknowledgement and then licence the resulting work in any suitable manner, including as public domain, ccbysa, and all rights reserved without acknowledgement to the Dataset.

Legal counsel says: *I believe this example may be considered a Derivative Database under the OBdL, which is defined as follows: "a database based upon the Database, and includes any translation, adaptation, arrangement, modification, or any other alteration of the Database or of a Substantial part of the Data. This includes, but is not limited to, Extracting or Re-utilising the whole or a Substantial part of the Data in a new Database."*

As such, it would be covered under the OBdL and certain obligations would be triggered if it were publicly Conveyed, or if a Produced Work based on it were publicly Used.

However, if this example is meant to describe a situation where a user obtains output from the Database to create a work (i.e., a Produced Work), this example may not rise to the level of a "Produced Work" under the OBdL because only moderate amounts of data are being used.

18. Freely distribute OSM data without registration/user tracking

The licence should allow OSM data to be distributed freely and anonymously via an API, from a download site or on a DVD and in other forms. Programs may automatically download updates and merge them into another database, to again produce images or derived datasets which can then be downloaded in turn as described above. Users should not be required to register an account or click some "I agree" page each time one accesses an update.

Legal counsel says: *From the description provided, this example seems to fit within the OBDL's permissions so long as all appropriate notices are provided.*

19. Production of a DVD containing the Dataset

The licence should allow a games maker to create a production run of DVDs and this in itself should not be considered to be "publication" so the share-alike clause for any Derivative Dataset should not come into force (yet). This should come into force once the DVDs are publicly distributed.

Legal counsel says: *Yes. Such internal use does not rise to "publicly Conveying" the Database, which is required before certain obligations are triggered (i.e., share-alike).*

20. Wikimapia?

To use OSM mapping to add places to Wikimapia. Example area:

<http://wikimapia.org/#lat=60.2261751&lon=24.9588776&z=11&l=0&m=a&v=2?>

Legal counsel says: *It is unclear from the description provided what the community's preferences are for this situation.*

Negative Use Cases (that should not be allowed)

1. Commercial map company wants to sell OpenStreetMap data blended with its own map data

The licence should not allow a commercial map company wants to use OpenStreetMap data to plug holes in its own data which it then supplies as a database. A commercial map company way want to use OpenStreetMap as a source for local detail, such as footpaths, zebra crossings and do this in a systematic way, or may want to add territory to its dataset and sell it. Easter Eggs and errors in the OpenStreetMap data can be used as signatures for such use of the data but it should be clear that this is not allowed.

Legal counsel says: *Yes, such use would be prohibited under the OBDL.*

2. Having to grant access to postgresql data base

The licence should clarify that automatic processing of the Dataset into a new format, indexing the data in a new way, filtering out categories of features, or removing detail, does not constitute a derived dataset which has to be made accessible. Otherwise, if someone who downloads a planet file and converts it using osm2pgsql, then continues to

apply daily or even minutely dumps and makes public a work based on this database - like our Mapnik tiles! - that person would be forced to make his database accessible to the public. This is not practical (we ourselves would have to permit anyone to log in to our psql database or provide an API to download stuff from there, or provide regular psql dumps).

Legal counsel says: *Need clarification here. From my reading, this example would seem to constitute a Derivative Database under the OBdL. The OBdL does not provide for the specific exceptions listed in the example.*

3. OSM in Google Map Maker

(stating the obvious but then again may not be obvious to a lawyer dealing with it!)

We would like to avoid someone like Google loading the whole of OSM into their Map Maker system, where Google then lay claim to any further improvements made by users. It is ok for them to load OSM, but improvements must then be shared back.

Legal counsel says: *Yes, such use would be prohibited under the OBdL.*

4: Use of maps in Wikipedia and Wikitravel

When OSM maps are incorporated into a page on a site such as Wikipedia and Wikitravel, the entire page, including the OSM map, can then be licenced under the GFDL or CC-SA (respectively).

Legal counsel says: *Yes, there are no license restrictions on Produced Works (other than the restriction in 4.6 that restricts users from reverse engineering Produced Works to re-create the Database and place it under a different license), although notice must be given that also makes the user aware of where he/she may obtain the Database.*