

New License Proposal

by The OpenStreetMap Foundation Licensing Working Group
13 October 2009

"The project was started because most maps you think of as free actually have legal or technical restrictions on their use, holding back people from using them in creative, productive, or unexpected ways. "

Who we are

We are;

- Matt Amos
- Steve Coast
- Mike Collinson
- Henk Hoff
- Ulf Möller
- Grant Slater

In addition,

- Jordan Hatcher, special advisor, Open Data Commons
- Clark Asay, pro-bono counsel for the Foundation

Why do we need a new license?

Our current user license is Creative Commons Attribution Share-Alike 2.0. It is at best ambiguous and at worst does not apply to the datasets we currently release under it. Full background can be read in a "[Why CC BY-SA is Unsuitable](#)" background document [12]

Creative Commons themselves have said several times that CC BY-SA is not suitable for OSM. For example [\[0\]](#),

"Creative Commons does **not** recommend using Creative Commons licenses for informational databases, such as educational or scientific databases."

"In the United States, data will be protected by copyright only if they express creativity. Some databases will satisfy this condition, such as a database containing poetry or a wiki containing prose. Many databases, however, contain factual information that may have taken a great deal of effort to gather, such as the results of a series of complicated and creative experiments. Nonetheless, that information is not protected by copyright and cannot be licensed under the terms of a Creative Commons license."

Creative Commons now recommend, effectively, that data should be public domain, (CC0 license). A substantial portion of the community however feel that the project should remain under a reciprocal license in the same spirit as our current license.

What is the license recommendation?

"ODbL is CC BY-SA without the problems", remark made by Andrea Rossato, a lawyer helping OSM mappers in Italy.

The LWG is recommending the Open Database License (ODbL), the only open and reciprocal database license with a (two year+) development history.

The ODbL has resulted from pioneering work originally done to form a reciprocal license for Science Commons but was abandoned for a PD (Public Domain) approach. The OSMF amongst others have taken up the cause and sponsored its development over a 21 month period, working hard with its original authors who developed the license with OpenStreetMap use in mind.

The LWG has spent over 200 man hours between its members meeting twice a week to form the communications hub between the community, the ODbL team and the OSMFs council. We have driven the process of license release candidates, guidance from community and oversight from council. An unknown number of man hours have also been donated by members of the community in the form of informed debate on our [legal-talk] mailing list and contributions to wiki pages, especially a set of Use Cases [9] giving practical examples of how OSM data might be used.

This groundbreaking work has been fully documented on an ongoing basis in minutes published on the OSMF website and in numerous communications on the OSM mailing lists.

The ODbL is hosted by the Open Data Commons, a longstanding group committed to open data based in Cambridge, England. Mike Collinson, an OSMF board and LWG member is on the advisory board of the ODC and provides a vital communications link.

This has resulted in version 1.0 of the ODbL formally released on June 29th 2009 which we now present for adoption.

Is this the same as CC BY-SA?

It is similar in intent and basic form. Our existing Creative Commons License 2.0 (CC BY-SA) [1], [2] is an Attribution and Share-Alike license.

The ODbL 1.0 [3] is an Attribution and Share-Alike license.

But it has some major benefits above CC BY-SA

- It *is* for databases, unlike CC BY-SA.
- CC BY-SA protects using copyright law only, if at all as it is poorly protected in the USA [0], [12], and is untested as to how far this applies to our database. The ODbL protects using copyright, contract, and database rights.
- CC BY-SA does not distinguish between mapping data and a map. The ODbL does do this, ("Database" (say planet.osm) versus "Produced Work" (say, a paper map). This allows us to separate protecting the core data under a reciprocal license whilst freeing end user creativity with the maps they create and encourage wider adoption of maps made from our data. If they improve OSM data to make a map they are required to make those raw data improvements available, something we do not have now.

- OSMF is the Licensor, and this creates clarity amongst many end users over whether they are indeed allowed to use the maps and data created and removes the worry of being liable to legal attack from any one contributor. This also gets over the impractical problem of having to attribute each and every contributor. An attribution process is still available, see Contributor Terms item 4 (below).

How it works

There are two documents;

- The Contributor Terms is to put data **into** the database
- and the ODbL is to take data **out** or use the database.

We will now outline these.

Putting data in: Contributor Terms

This document is for individual contributors and can in most cases be used for bulk contributors (like AND, who usually want some form of attribution provided in item 4 below).

The Contributor Terms [4] will be provided to contributors when the register. It provides two basic functions.

1. It clearly states under what terms individuals can put data in.
2. It ensures that the Foundation remains true to the wishes of the contributor community. We feel that that is much stronger than altering the Foundation's constitution.

The following is a summary of the OpenStreetMap Contributor Terms ,:

1. You have the right to enter the data, (you collected it yourself, you have permission to add it or the data source clearly allows you to add it).

2. You grant the OSM Foundation a copyright and database rights license for the bits of data that you add:

- worldwide, royalty-free, non-exclusive, perpetual, irrevocable copyright license. These rights explicitly include commercial use, and do not exclude any field of endeavour. These rights include, the right to sublicense the work.

3. The OSM Foundation agrees to use or sub-license your contents only under the ODbL 1.0 or, (only while we change over) CC-BY-SA 2.0. To keep future flexibility it can change to another another free and open license chosen by a vote of the OSM Foundation membership and approved by a vote of active contributors.

An "active contributor" is defined as:

- a contributor that has edited the map in any 3 calendar months from the last 6 months, (*i.e. there is a demonstrated interest over time,*); and
- has maintained a valid email address in their registration profile and responds within 3 weeks. (*3 weeks allows people to be on holiday*)

4. If the Contributor or the copyright holder want attribution, there will be a web page <http://wiki.openstreetmap.org/wiki/Attribution>.

5. Liability Terms - This is here to protect both the Foundation and Contributors as much as possible.

Using data: The Open Database License (ODbL) v1

To keep the legalese to a minimum, the sole place for end users to look is the ODbL 1.0. For that reason the conditions under which individual data items are added into the database are deliberately less controlled.

There is now a "human-readable" summary of the ODbL based on work done by the LWG hosted on ODC's site at: <http://www.opendatacommons.org/licenses/odbl/summary/>

Community Guidelines

The OSMF's mission is to support but not control OpenStreetMap. OSMF's role as Licensor and publisher of the database should not involve dictating policy. To that end, we have evolved a process called Community Guidelines which we propose being a permanent feature of our process. On legal advice, what a Licensor says carries weight with users of our data and, potentially, to a judge.

The OSM Community evolves a consensus of "Substantial", "Produced Work" and anything similar over time and produces a guideline (not the same as a definition, that is up to case precedent). The OSMF will then normally adopt that guideline as its official policy and allow it to incrementally improve or clarify over time.

"Substantial" is a term which comes from the European Database Directive.

- http://wiki.openstreetmap.org/wiki/Open_Data_License/Substantial_-_Guideline

"Produced Work" is a term used by ODbL to broadly separate something created from a database but not a database itself. For OSM, this generally means a map.

- http://wiki.openstreetmap.org/wiki/Open_Data_License/Produced_Work_-_Guideline

What does the new license cover?

The ODbL will cover the geodata (nodes, ways, relations) and the GPX traces. That is, anything that is in the Postgresql database and which we explicitly publish, like planet.osm.

It does not cover tiles, which are a produced work. It does not cover the wiki which will remain CC BY-SA and is explicitly covered by CC. It does not cover software and software source code, which are usually but not always GPL.

Difficulties? / Issues discussed on legal-talk

The LWG in concert with the ODC has driven the ODbL license through several iterations and the wider community has returned with comments each time. The number of comments on the license text comments site significantly decreased:

- ODbL 0.9 - 89 comments
- ODbL 1.0rc1 - 9 comments
- ODbL 1.0rc2 - 4 comments

An "Open Issues" page [10] was kept which also attracted a lot of comments. Most issues have been reasonably resolved and moved for the record to a "Closed Issues" page [11].

The LWG feels that the following issues still remain open, but we do not believe are serious enough to hold up moving to the new license:

Problem	Solution
<p>Complexity. The licensing is necessarily complex (conciseness does not equal clarity to legal professionals) in order to generate the maximum protection of for Share-Alike ethos in the field of digital data.</p>	<p>LWG has created an analogue to the CC "human readable" documents, which has been shown to the ODC and they are considering accepting it.</p>
<p>Choice of Law. The current version does not have a choice of law. It is a matter of continuing legal debate between the ODC and other counsels, including our legal counsel, whether choosing a specific law such as US or UK might make contract provisions more predictable, without affecting statutory rights such as copyright and database rights.</p>	<p>Re-address in future version of ODbL.</p>
<p>Reverse Engineering of Produced Works. This was a clause in the draft ODbL to the effect that if someone reverse-engineered (traced or digitised a map for example) then ODbL would apply. There is question as to whether that conflicts with CC licenses (on maps) that say no other conditions shall apply. For caution, the clause was removed.</p>	<p>ODC will confirm directly with Creative Commons and similar bodies and potentially re-introduce the clause later. For now, we will rely on residual Intellectual Property rights. The OSMF has also taken legal advice about any danger in removing the clause.</p>
<p>Mass data imports and going back to the big contributors.</p>	<p>We believe that this is not an issue as the license is still attribution, share-alike but some individuals who have previously got permission from big contributors have expressed doubts. Certainly the task may be onerous.</p>

The implementation process

We recommended [6] an initial procedure for adoption:

- OSMF board acceptance review. We went through several cycles of presenting earlier versions of this proposal document to the board and answering and refining from comments and concerns raised.
- OSMF board acceptance (THIS NEEDS EDITING TO SUIT ACTUAL CIRCUMSTANCE)
- OSMF members review. NOW.
- OSMF members vote.
- OSM contributors able to agree to switch their contributions to the new license.

http://wiki.openstreetmap.org/wiki/Open_Data_License/Timeline

Implementing Future License Changes

This is dealt with in the Contributor Terms. A procedure for any future updates will include the "Active Users" rather than every single contributor. This will provide a practicable and manageable process but at the same time maintaining high standards of fairness.

Background documents

If you have specific questions or concerns about how the new license might work, many of them have been dealt with in detail over the last year. The following documents might help.

"Use Cases" looks at usage scenarios prepared in order to test the proposed ([ODbL](#)) against real situations.

http://wiki.openstreetmap.org/wiki/Open_Data_License/Use_Cases

"Closed Issues" documents concerns that were raised and resolved.

Closed Issues - http://wiki.openstreetmap.org/wiki/Open_Data_License/Closed_Issues

"Open Issues" documents concerns that were raised and not fully resolved.

Open Issues - http://wiki.openstreetmap.org/wiki/Open_Data_License/Open_Issues

Appendix - References and Other Useful Links

[0] [Databases and Creative Commons](http://sciencecommons.org/resources/faq/databases), <http://sciencecommons.org/resources/faq/databases>

[1] [Creative Commons License 2.0](http://creativecommons.org/licenses/by-sa/2.0/), <http://creativecommons.org/licenses/by-sa/2.0/>

[2] [CC license full text](http://creativecommons.org/licenses/by-sa/2.0/legalcode), <http://creativecommons.org/licenses/by-sa/2.0/legalcode>

[3] [Open Database License \(ODbL\) v1](http://www.opendatacommons.org/licenses/odbl/1.0/), <http://www.opendatacommons.org/licenses/odbl/1.0/>

[4] [OpenStreetMap Contributor Terms](http://docs.google.com/View?id=dd9g3qjp_1kqzg8dhr), http://docs.google.com/View?id=dd9g3qjp_1kqzg8dhr

[5] [Database Contents License \(for reference, not part of proposal\)](http://www.opendatacommons.org/licenses/dbcl/1.0/), <http://www.opendatacommons.org/licenses/dbcl/1.0/>

[6] [Implementation Plan](http://wiki.openstreetmap.org/wiki/Open_Data_License/Implementation_Plan), http://wiki.openstreetmap.org/wiki/Open_Data_License/Implementation_Plan

[7] ["Substantial" definition Guideline](http://wiki.openstreetmap.org/wiki/Open_Data_License/Substantial_-_Guideline), http://wiki.openstreetmap.org/wiki/Open_Data_License/Substantial_-_Guideline

[8] ["Produced Work" definition guideline](http://wiki.openstreetmap.org/wiki/Produced_Work_definition_guideline), http://wiki.openstreetmap.org/wiki/Produced_Work_definition_guideline

[Open Data License/Produced Work - Guideline](#)

[9] [Use Cases \(real examples of how ODbL licensing works\)](#)
http://wiki.openstreetmap.org/wiki/Open_Data_License/Use_Cases

[10] [Open Issues](#) http://wiki.openstreetmap.org/wiki/Open_Data_License/Open_Issues

[11] [Closed Issues](#) http://wiki.openstreetmap.org/wiki/Open_Data_License/Closed_Issues

[12] ["Why CC BY-SA is Unsuitable"](#)