Q&A Session with Clark Asay

Moving to the ODbL

Q: Are there any problems with dual-licensing the contributions to the database during the interim period?

A: Interim contribution agreement should reserve the right to release under the either license, moving to ODbL in the future.

Q: Are there any legal issues which would prevent OSMF re-licensing the database under ODbL from CC-BY-SA if some of the original contributors are opposed to the re-licensing?

A: As long as the original contributions, and any derivative versions of those contributions are removed; No.

Q: Would removal of dissenting contributors' direct contributions prior to re-licensing resolve these issues?

A: Yes. There is no inherent virality in the database elements (e.g: roads) according to Clark's understanding of CC-BY-SA. It is sufficient to remove data directly associated with a particular user.

License Compatibility

Q: Some contributions to OSM are large enough to qualify for their own Database Rights. Under what license should we require these Substantial contributions?

A: Clark thinks that any database rights contributors may have in their contributions are separate from the rights on the contents of the database and from OSMF's rights on the OSM database, and that these rights do not conflict.

Q: OSMF is considering the DbCL license for individual Contents contributions, but the wording makes most sense as a license from OSMF to third parties. As the license has some desirable properties, would it be possible to use the DbCL for contributions (i.e: where "You" is OSMF and the "Licensor" is the individual contributor)?

A: It is possible to use the DbCL this way. For enforceability the contributor should agree to this at the point of contributing. Between the OSMF and licensees downloading data, the license should be shown wherever downloading occurs. It would be best for enforceability to package the full license in the downloaded file, or have it agreed to at the point of downloading. Could still be enforceable as long as there is a prominant notice on the site or in the file. Most jurisdictions will accept a link to the license, but the German courts tend to be more strict.

Q: If OSMF is declared as a the proxy (under 4.4d) what, if any, guarantees can be given about the decision to declare a license compatible?

A: The contribution agreement would be the place to put anything like this, where the contributor agrees to license data to the OSMF and the OSMF reciprocates with a pledge or contract. Clark isn't sure what such an agreement would look like. Clark has talked to Jordan about the circularity of the compatibility clause in the ODbL. Mike mentioned that the proxy could be external to OSM, i.e: the ODC. <mark>We need to internally figure out what</mark>

Q: Is it possible to redistribute ODbL data along with GPL-licensed applications?

A: Since GPL only deals with software, it is OK to package ODbL data along with GPL applications as long as the ODbL is also present.

Q: If Debian Linux wish to distribute OSM data within their main distributions, is the ODbL acceptable in terms of the Debian Social Contract?

A: Not relevant in the call, but Ulf later pointed out that the Debian Social Contract doesn't appear to contain anything which would prohibit this.

Produced Works

Q: Does the ODbL require the reverse-engineering clause to be propagated to the license used for Produced Works? If so, does this mean that CC-BY-SA and GFDL are not possible choices for Produced Works?

A: The creator of Produced Works has free choice of any license for the Produced Work. However, it helps enforceability to have the reverse-engineering notice prominently displayed along with the ODbL provenance notice for the Produced Works, so that anyone re-creating the database from those Produced Works can reasonably said to have been made aware that the original data was under the ODbL. This doesn't need to be part of the license, per-se, just the notice text recommended to the community.

Further questions were raised about whether the CC licenses explicit exclusion of any further restrictions means that the reverse-engineering clause cannot be enforced. Clark replied saying (thinking out loud) that the prohibition against re-creating the database from CC works comes from the OSMF enforcing its copyright and database rights over the database under the ODbL, not from restrictions in the CC license on the produced works.

It was pointed out that many OSM contributors want compatibilty with common (e.g: CC-BY-SA, GFDL) open content licenses and that we should try to ensure that this use case remains possible.

Clark thinks its an important issue and would like to think about it a little more.

Q: Is the process of creating a Produced Work restricted or affected by the ODbL in any way? Do any details of the process of creating a Produced Work need to be made Public?

A: No. The process of creating a Produced Work does not need to be revealed, so any artistic interpretation involved does not have to be made available. The only requirement of the ODbL is the notice from section 4.3.

Q: Is a vector map a Produced Work or a Database or both?

A: The definitive answer would have to be determined by a court. Community guidelines and the intent of the licensor would be taken into account by the court. We should put together a document describing what our interpretation of this issue is (i.e: like we did for "Substantial").

Upgrading and Re-Licensing

Q: Is there a legal guarantee that OSMF can provide to reassure contributors that the database will not be re-licensed without due process?

A: OSMF can agree to be bound by a contract requiring (e.g.) a full membership vote for a license change. But we should consider if OSMF actually wants to do this.

Q: If Substantial Contributions are licensed to OSMF under the ODbL, does that impose any additional restrictions on the use of the OSM database or on the operations of the OSMF?

A: Large contributions to the OSMF would come with the right to sub-license that data.

Liability

Q: How can OSMF reduce or remove potential liability issues in cases of alleged copyright infringement?

A: Getting representation (as to copyright or lack thereof) from contributors is helpful. However, contributors aren't necessarily going to read or adhere to this agreement and copyrighted information is bound to make it into OSM. It would be helpful to have a DMCA agent and sign up to the "safe harbour" system, at least in the US.

Q: If OSMF requires individual contributors to assert that the data which they have contributed can be re-licensed under ODbL, what are the liability issues that OSMF may face?

Covered in the previous answer.

Global Issues

Q: How does the ODbL protect the OSM database in jurisdictions where copyright and database rights are not applicable.

A: There are so many variations across all jurisdictions, its very difficult to say which combination of rights apply. The best that any group can do is to structure our approach to meet with the requirements of the most relevant jurisdictions and hoping for the best in the others, knowing that the others are minor players. Its not possible to fully protect ourselves in all possible jurisdictions (e.g: Microsoft spends millions and millions trying to achieve this). Also, intent of the licensor is pretty crucial.

Questions about the law in Japan were raised, but Clark isn't aware of any major differences in copyright and database rights there.

Q: Are there any obvious/major jurisdictions in which the ODbL is not enforceable?

A: "You never know what a court is going to say." Not that we forsee.

Q: Would it strengthen the license to define a jurisdiction? What would be the impact of doing so?

A: Clark doesn't quite follow Jordan's reasoning on leaving the choice of law out of the license. Clark thinks its useful to define a choice of law, as a lot of courts in other jurisdictions will honour that choice. It provides greater predictability. Clark thinks the "other" rights granted in that section is already covered in the other section about rights

granted. We should be looking at choosing UK or US law, although there will be elements of local law and procedure creeping in. "All contracts have a choice of law" -- and there's a reason for that.

Clark thinks this is a pretty complex issue and he would like to think about it further. It might be an issue that can be left for v2.0.

Protection of Share-Alike-ness

Q: If contributors agree to name OSMF as the proxy (under 4.4d) does this close the loophole in which licensees are able to "un-ODbL" the data?

Answered previously.

Q: Would it be possible to create derivative databases that are available, fulfilling the letter of the licence, but still unusable for the public (e.g: because of IPR issues), thus violating the idea?

A: ODbL expressedly doesn't cover patent rights, so it would be possible to comply with the ODbL by releasing patented derivative databases.

Obligations under the ODbL

Q: How often does a Derived Database have to be made available? Must this be as often as my produced work or can I do this on a less frequent basis? How soon after the Produced Work is published must I make it available?

A: Under the current version of the license, it isn't necessary to make the derived database available. Assuming that this is changed, Clark thinks this would be addressed in the changed version of the license. e.g: licenses like the GPL have a 3 year offer period. The GPL says there is an offer, which is then replied to. Although there is no explicit time limit, it violates the spirit of the license if there is a deliberately large gap before the source is provided. But, if the ODbL is similar, there would be no requirement to make it available instantaneously, just within a reasonable time.

Q: Does the ODbL make any requirement for released databases or produced works to be made available for any length of time?

A: There's currently no requirement in the ODbL that databases must be maintained and re-issued, etc...