

What's the difference between all those open data licenses?

This is not legal advice; I am not your attorney, etc....

Why am I doing this presentation

- I am attorney and compliance engineer for CivicActions
- CivicActions recently acquired several support contracts for a free software open data platform
- People started asking which license to use

Outline

- 1. What is “open data”**
- 2. What are the sui generis database rights**
- 3. Overview of significant “licenses”**

What is “open data”

“Open means anyone can freely access, use, modify, and share for any purpose (subject, at most, to requirements that preserve provenance and openness).”

<http://opendefinition.org/>

Open Definition

- **Primarily concern with “database” and database “content”**
- **Includes requirements for a “open work” and a “open license”**
- **Sponsored by the Open Knowledge Foundation**

<http://opendefinition.org/>

Open Work

1. **Open License or Status**
2. **Accessible**
3. **Machine Readability**
4. **Open Format**

<http://opendefinition.org/>

Conformant Licenses

1. **Conform with the principles set forth in the Open Definition**
2. **Current: Widely used generally considered best practices**
3. **“A license should be compatible with other open licenses.”**

The Open Knowledge compatibility standard:

Share-alike: GPLv3.0+, CC-BY-SA-4.0, and ODbL-1.0

Permissive/Attribution-only: Apache-2.0, CC-BY-4.0, and ODC-BY-1.0

Required Permissions

An Open license must:

Allow **Use** of the work

Allow **redistribution** of the work

Allow **modification** of the work

Allow **distribution** of modifications

Allow **Separation** of parts of the work from the rest of it

Allow **compilations** to include the work

Must **not discriminate** against any person or group

Rights must **propagate** with the work

Application of the rights to **any purpose**

No Charge can be required in the license

Allowed Restrictions

An open license may not limit any of the permissions, except:

Require **Attribution**

Protect **integrity** by requiring derivatives use different names

Require **Share-alike** (i.e. derivatives remain under the same license)

Preserve **Notices** of copyrights and license identification

Require access Source in the preferred form for making modifications

Msy include Technical Restriction Prohibition that would prevent exercising other rights

Require modifiers to grant additional permissions to promote

Non-aggression

Database copyright

- Copyright does protect compilations that “features an original selection or arrangement”
- But, copyright does not reward the “sweat of the brow”
- And, “no one may copyright facts or ideas.”

**Feist Publications, Inc. v. Rural Telephone Service Co.,
499 US 340 - Supreme Court 1991**

***sui generis* Database right**

- **“Constituting a class alone : unique or particular to itself”**
- **Does not diminish copyright, it is a independent right**
- **Primarily associated with EU countries (*Directive 96/9/EC*)**
- **Directive only provides protection to nationals of EU states and those with a “habitual” residence in EU countries**
- **Effectively rewards the “sweat of the brow”**

***sui generis* Database right**

- Database is a “collection of independent works, data ... arranged in a systematic ... way and individually accessible . . .” Art. 1(2)
- Obtained by “a substantial investment in either the obtaining, verification, or presentation of the contents . . .” in a database or a “substantial part” of the database. Art. 7(1)

Note: does not apply to computer database programs or software generally

sui generis Database right

- **15 year term** *Art. 10*
- **A “substantial change” may result in a new database protected by another 15 year term**
- **Restricts rights to**
 - reproduction
 - translation, adaptation, arrangement, alteration
 - distribution
 - communication, display, performance*Art. 5*
- **Doesn't restrict extracting/use of “insubstantial parts of its content”** *Art. 8(1)*

OKI Recommended Licenses

License	Scope	By	SA	
Creative Commons CCZero (CC0)	Content, DB	N	N	Public Domain
Open Data Commons Public Domain Dedication and Licence (PDDL)	DB	N	N	Public Domain
Creative Commons Attribution 4.0 (CC-BY-4.0)	Content, DB	Y	N	
Open Data Commons Attribution License (ODC-BY)	DB	Y	N	
Creative Commons Attribution Share-Alike 4.0 (CC-BY-SA-4.0)	Content, DB	Y	Y	
Open Data Commons Open Database License (ODbL)	Data	Y	Y	

Other Licenses

License	Scope	By	SA	
UK. Open Government License	Content, DB	Y	N	
Community Data License Agreement - Permissive (CDLA-Permissive)	Content, DB	Y	N	
Community Data License Agreement - Sharing (CDLA-Sharing)	Content, DB	Y	Y	

Creative Commons CCZero (CC0)

Public Domain Dedication

- Applies to Copyrights
- Applies to Database rights
- **Falls back to a world wide license**
- Waiver of Moral Rights

Scope

- Content of the database protected by copyright
- Structure of the database protected by sui generis right

Representations

- No warranties
- No license for Patent and trademark rights
- No clearance of privacy or other third party rights

Open Data Commons Public Domain Dedication and License (PDDL)

Public Domain Dedication

- Applies to Copyrights
- Applies to Database rights
- Falls back to a world wide license
- Waiver of Moral Rights
- ***Suggests using “Community Norms”***

Representations

- No warranties
- No license for Patent and trademark rights
- Does not address other rights
- **Liability Limitation**

Scope

- Content of the database protected by copyright
- Structure of the database protected by sui generis right
- ***Does not apply to computer programs***

Creative Commons Attribution 4.0 (CC-BY)

License

- **Applies to Copyrights**
- **Applies to Database rights**
- Waiver of Moral Rights
- ***Contemplates being a contract***

Scope

- Content of the database protected by copyright
- Structure of the database protected by sui generis right
- ***Prohibits “Effective Technology Measures***
- ***May not limit rights granted on work***
- ***Automatic termination & reinstatement***

Representations

- No warranties
- No license for Patent and trademark
- No license for publicity/personality
- Does not address other rights
- Liability Limitation

Conditions

- **Retain name, notices, and URI**
- **Indicate modification**
- **Indicate License on original work**
- **Conditions done in reasonable manner**

Creative Commons Attribution 4.0 (CC-BY-SA)

License

- Applies to Copyrights
- Applies to Database rights
- Waiver of Moral Rights
- Contemplates being a contract

Scope

- Content of the database protected by copyright
- Structure of the database protected by sui generis right
- Prohibits “Effective Technology Measures
- May not limit rights granted on work
- Automatic termination & reinstatement

Representations

- No warranties
- No license for Patent and trademark
- No license for publicity/personality
- Does not address other rights
- Liability Limitation

Conditions

- Retain name, License, notices, and URI
- Indicate License
- Indicate modification
- Attribution done in reasonable manner
- **Derivatives need to be BY-SA**

Open Data Commons Attribution License (ODC-BY)

Contract

- License grant applies to Copyrights
- License grant applies to Database rights
- **Explicitly a contract**
- **Selects law of jurisdiction of place of enforcement**

Scope

- **Does not include Content of the database protected by copyright and moral rights**
- Structure of the database protected by sui generis right, *copyrights and moral rights*
- **No sublicensing**
- Automatic termination & reinstatement

Representations

- No warranties
- No license for Patent and trademark rights
- Liability Limitation

Conditions

- Preserve notices
- **When copying Include notices in the database file**
 - **Unless not possible**
- **Must include notice when publishing Produced Work publically**

ODC Open Database License (ODbL)

Contract

- License grant applies to Copyrights
- License grant applies to Database rights
- **Explicitly a contract**
- **Selects law of jurisdiction of place of enforcement**

Representations

- No warranties
- No license for Patent and trademark rights
- Liability Limitation

Scope

- **Does not include Content of the database protected by copyright and moral rights**
- Structure of the database protected by sui generis right, ***copyrights and moral rights***
- ***No sublicensing***
- Automatic termination & reinstatement

ODC Open Database License (ODbL)

Conditions

- Copies and derivatives must be under this license (copyleft) **or permitted license**
- **Permitted license is a**
 - **this license**
 - **a later version of ODbL**
 - **a “compatible” license**
- Preserve notices
- When copying Include notices *in the database file*
 - Unless not possible
- **Must include notice when publishing Produced Work publically**

Conditions continued

- “If you Publicly Use ... ”:
 - **a Derivative Database, or**
 - **a *Produced Work* from a Derivative Database**
 - “must offer recipients of the Derivative Database or Produced work”
 - “a copy in machine readable form”
 - **a copy of the Derivative Database**
- **No additional restrictive terms or technologies**

Community Data License Agreement - Permissive (CDLA-Permissive)

Contract

- License grant applies to Copyrights
- License grant applies to Database rights
- Waives moral rights
- **Explicitly a contract**

Scope

- Content protected by copyright and *sui generis right*
- **Sublicensing allowed**
- Automatic termination on “awareness” of violation & automatic reinstatement
- **Litigation retaliation clause**

Representations

- No warranties
- No license for Patent and trademark
- **Represents no Private/Confidential data**
- Liability Limitation

Conditions

- Derivatives/Enhanced data may be under different terms
- Must provide copy of the agreement when copying
- **Preserve notices “in Data”**
- Indicate modification of files

Community Data License Agreement - Sharing (CDLA-Sharing)

Contract

- License grant applies to Copyrights
- License grant applies to Database rights
- Waives moral rights
- **Explicitly a contract**

Scope

- Content protected by copyright and *sui generis right*
- Automatic termination on “awareness” of violation & automatic reinstatement
- **Litigation retaliation clause**

Representations

- No warranties
- No license for Patent and trademark
- **Representation that there is no Private/Confidential data**
- Liability Limitation

Community Data License Agreement - Sharing (CDLA-Sharing)

Conditions

- **Derivatives/Enhanced Data must published under this Agreement**
- Must provide copy of the agreement when copying
- **Preserve notices “in Data”**
- Indicate modification of files
- **May not restrict public publication**
- **May not restrict publication in designated Ledgers**
- **No additional restrictions on Derivative works.**

UK Open Government License

License

- License grant applies to Copyrights
- License grant applies to Database rights

Scope

- Content protected by copyright and *sui generis right*
- **Does not cover personal information (and other various UK government carve outs)**
- **Governed by the law of jurisdiction of the Information Provider**

Representations

- No warranties
- No license for Patent, trademark or other rights

Conditions

- Must include notice provided by publisher
- **If no notices then must provide default License notice in the license.**

Open Discussion

Thank you.

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