

Reflecting action items from

<http://opendefinition.org/2013/10/16/notes-from-open-definition-call-october-2013/>

Need clear policy on licensed rights/material exemptions which would inform conformance decision for OGL AB and BC licenses, and future decisions. Proposed Open Definition Section 12 addressed a previous round of concerns with hard to comply with restrictions (eg no misleading use with OGL UK 1.0). We don't have consensus on this proposal being the right language to bake into the definition, nor that it addresses exemptions which make it difficult to tell what material is licensed (thus further addition to Section 1, also without consensus).

Please comment on the proposed Section 12 below, and any other changes, in the following diff.

(Note an alternative is to rework the Open Definition, such that it features separate sections on open licenses and open works, addresses policy questions above potentially with a different approach rather than shoving into/expanding the current format, and potentially additional policy questions, eg how we treat non-reusable licenses. If you think that is the correct path, feel free to note here, but let's have substantive discussion of that option on-list.)

Open Definition 1.1

<https://github.com/okfn/opendefinition/blob/master/source/open-definition-1.1/open-definition-1.1.en.markdown>

Open Definition 1.2dev, as of diff below

<https://github.com/okfn/opendefinition/blob/6a42a3b64bbf77a88dc44fdda0945d183e844c7/source/open-definition-dev.markdown>

Open Definition 1.2dev proposed additional term

12. License Must Not Impose Additional Restrictions

The **license** must not place any additional restrictions or conditions on the access, use, reuse or redistribution of the data other than those explicitly described under this definition.

Comment: This clause is intended to clarify that presence of restrictions not specifically permitted above make a license non-open. Such restrictions are usually one or more of onerous, vague, unnecessary (for example, requiring following an unrelated law), and always harmful to compatibility among open licenses.

Open Definition 1.1->1.2dev diff

Open Definition

Version **~~-1.1-~~** **~~{+1.2dev+}~~**

Terminology

The term **knowledge** is taken to include:

1. Content such as music, films, **[-books-] {+images, texts+}**
2. Data be it scientific, historical, **[-geographic-] {+geographic, administrative+}** or otherwise
- [-3. Government and other administrative information-]**

Software is excluded despite its obvious centrality because it is already adequately addressed by previous **[-work.-] {+work, including the [Open Source+] {+Definition}(http://www.opensource.org/docs/osd), from which this document+} {+is derived.+}**

The term **work** will be used to denote the item or piece of knowledge which is being transferred.

The term **package** **[-may also-] {+will+}** be used to denote a collection of works. **[-Of-] [-course such a-] {+A+}** package may be considered a work in itself.

The term **license** refers to the legal **[-license-] {+terms+}** under which the work is made available. Where no license has been made this should be interpreted as referring to the resulting default legal conditions under which the work is available (for example copyright).

The Definition

A **[-work-] {+work+}** is open if its manner of distribution satisfies the following **[-conditions:-] {+conditions, which simultaneously delimit the characteristics of a suitable+} {+open license+:+}**

1. Access

The **[-work-] {+work+}** shall be available as a whole and at no more than a reasonable reproduction cost, preferably **[-downloading-] {+downloadable+}** via the Internet without charge. The **[-work-] {+work+}** must also be available in a convenient and modifiable form. **{+The license may require the work to be available+} {+in a convenient and modifiable form. The work must be clearly presented+} {+as available under the license.+}**

*Comment: This can be summarized as 'social' openness - not only are you allowed to **[-get-] {+use, modify, and share+}** the work but you can get it. 'As a whole' prevents the limitation of access by indirect means, for example by only allowing access to a few items of a database at a **[-time.*-] {+time. An example of+} {+'reasonable reproduction cost' is the cost of blank media or bandwidth+} {+required to distribute a complete database. 'Clearly presented as+} {+available' means that both the license and the means of access are clear+} {+and unambiguous on which works the rights attach to.*+}**

2. Redistribution

The **[-license-] {+**license**+}** shall not restrict any party from selling or giving away the work either on its own or as part of a package made from works from many different sources. The **[-license-] {+**license**+}** shall not require a royalty or other fee for such sale or distribution.

3. Reuse

The **[-license-] {+**license**+}** must allow for modifications and derivative works and must allow them to be distributed under the terms of the original work.

*Comment: Note that this clause does not prevent the use of **[-'viral'-] {+'copyleft'+}** or share-alike licenses that require **[-redistribution-] {+any distribution+}** of modifications **{+to be+}** under the same terms as the original.*

4. Absence of Technological Restriction

The **[-work-] {+**work**+}** must be provided in such a form that there are no technological obstacles to the performance of the above activities. This can be achieved by the provision of the work in an open **[-data-]** format, i.e. one whose specification is publicly and freely available and which places no restrictions monetary or otherwise upon its use. **{+The **license**+} {+may prohibit technological restrictions.+}**

5. Attribution

The **[-license-] {+**license**+}** may require **{+providing attribution to the creators of the+} {+work+}** as a condition for redistribution and **[-re-use-] [-the attribution of the contributors and creators to the work.-] {+re-use.+}** If this condition is imposed it must not be onerous. For example if attribution is required a list of those requiring attribution should accompany the **[-work.-] {+**work**.+}**

6. Integrity

The **[-license-]** **{+**license**+}** may require as a condition for the work being distributed in modified form that the resulting work carry a different name or version number from the original work.

7. No Discrimination Against Persons or Groups

The **[-license-]** **{+**license**+}** must not discriminate against any person or group of persons.

*Comment: In order to get the maximum benefit from the process, the maximum diversity of persons and groups should be equally eligible to contribute to open knowledge. Therefore we forbid any **[-open-knowledge-]** **{+open+}** license from locking anybody out of the process.*

[-*Comment: this is taken directly from item 5 of the OSD.*-]

8. No Discrimination Against Fields of Endeavor

The **[-license-]** **{+**license**+}** must not restrict anyone from making use of the work in a specific field of endeavor. For example, it may not restrict the work from being used in a business, or from being used for genetic research.

Comment: The major intention of this clause is to prohibit license traps that prevent open material from being used commercially. We want commercial users to join our community, not feel excluded from it.

[-*Comment: this is taken directly from item 6 of the OSD.*-]

9. Distribution of License

The rights attached to the **[-work-]** **{+**work**+}** must apply to all to whom it is redistributed without the need for execution of an additional license by those parties.

Comment: This clause is intended to forbid closing up knowledge by indirect means such as requiring a non-disclosure agreement.

[-*Comment: this is taken directly from item 7 of the OSD.*-]

10. License Must Not Be Specific to a Package

The rights attached to the **[-work-]** **{+**work**+}** must not depend on the work being part of a particular package. If the work is extracted from that package and used or distributed within the terms of the work's license, all parties to whom the work is redistributed should have the same rights as those that are granted in conjunction with the original package.

[-*Comment: this is taken directly from item 8 of the OSD.*-]

11. License Must Not Restrict the Distribution of Other Works

The **[-license-]** **{+**license**+}** must not place restrictions on other works that are distributed along with the licensed work. For example, the license must not insist that all other works distributed on the same medium are open.

Comment: Distributors of open knowledge have the right to make their own choices. Note that 'share-alike' licenses are conformant since those provisions only apply if the whole forms a single work.

[-*Comment:-]

{+### 12. License Must Not Impose Additional Restrictions+}

{++}

{+The **license must not place any additional restrictions or conditions+}**

{+on the access, use, reuse or redistribution of the data other than those+}

{+explicitly described under+} this **{+definition.+}**

{++}

{+*Comment: This clause+} is **[-taken directly from item 9-]** **{+intended to clarify that presence+}** of **[-the OSD.*-]** **{+restrictions+}**

{+not specifically permitted above make a license non-open. Such+}

{+restrictions are usually one or more of onerous, vague, unnecessary+}

{+(for example, requiring following an unrelated law), and always harmful+}

{+to compatibility among open licenses.*+}