

Description of the changes Draft No. 1 retranslated according to

Guatemalan Law

**Change No. 1 adding the reference of the Constitution and Decree 33-98**

According to the Legal hierarchy in Guatemala nothing is above the Constitution, not even international treaties, and copyright is a constitutional right that is protected primarily by Guatemalan Constitution, providing that the authors rights are protected by the State.

License

THE WORK (AS DEFINED BELOW) IS PROVIDED UNDER THE TERMS OF THIS CREATIVE COMMONS PUBLIC LICENSE ("CCPL" OR "LICENSE"). THE WORK IS PROTECTED BY THE CONSTITUTION of the Republic of Guatemala, THE LAW OF AUTHORS (Decree 33-98 and any further modification), international treaties and other applicable law. ANY USE OF THE WORK OTHER THAN AS AUTHORIZED UNDER THIS LICENSE IS PROHIBITED.

***Change No. 2 adding that the acceptance has to be unconditional and plain.***

*According to the Civil Code is the way that the acceptance must be expressed, either if is a contract or a unilateral affirmation, to affirm that someone gave some rights to others.*

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***Change No. 3 Adding “original”***

*Originality is the requirement to be fulfilled by collections in order to be protected according to Guatemalan Law.*

**"Collection"** means a collection of literary or artistic works, such as encyclopedias and anthologies, or performances, phonograms or broadcasts, which, by reason of the selection and arrangement of their contents, constitute intellectual creations, in which the Work in its entirety in unmodified form, along with a number of other

contributions, constituting separate and independent works in themselves, are assembled into a collective whole and is “original”.

A Work that constitutes a Collection will not be considered an Adaptation (as defined below) for the purposes of this License.

***Change No. 4. Considerations regarding folklore expressions in “original author definition”***

*I had to delete folklore expressions because according to Guatemalan law, a folklore expression is not protected by this system but is considered a sort of collective property to be regulated by other body of laws. It is important to understand that Guatemala is rich in folklore expressions of indigenous peoples and for them is communal property, protected, defended and practiced by their communities.*

"Original Author" means, in the case of a literary or artistic work, the individual, individuals, entity or entities who created the Work or if no individual or entity can be identified, the publisher; and in

addition (i) in the case of a performance the actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform literary or artistic works. **IT WAS DELETED FROM HERE:**

*Change No. 5 “Original Authors in the case of Cinema and movie producers”* The law provides a presumption that in a cinema or movie production that the Commercial rights have been transferred to the producer if it has no provision of it.

. (iv) In the case of cinema or movie producers, it is considered author the director of the play, however the law assumes that the commercial rights have been transferred to the producer. (

*Change No. 6 “Original Authors and work made for hire”*

*The law provides a presumption that for employees even when they keep the moral rights, the commercial rights are property of the employer.*

v) in the case of works made for hire during their labor activities, the worker retain the moral rights related with the work, however the commercial rights are assumed to be given to the company or entity hiring them.

***Change No. 7 Added meaning to “distribute” It has been regulated by the law that distribution is also the peer to peer system or any system that might allow someone to obtain copies from somewhere.***

It also includes the possibility of making available the work by a system of individualized digital transmission that allows someone of the public to obtain copies of it.

*Change no. 8 Two additional references to Publicly Perform It has been provided by Law the explanation that the means of public performance can be others discovered in the future, and that it does not matter if the work is accessed at different time by the people, in all the cases is considered a public performance.*

“Publicly Perform” means to perform public recitations of the Work and to communicate to the public those public recitations, by any means or process known or to be discovered in the future, including by wire or wireless means or public digital performances; to make available to the public Works in such a way that members of the public may access these Works from a place and at a place and time individually chosen by them; to perform the Work to the public by any means or process and the communication to the public of the performances of the Work, including by public digital performance; to broadcast and rebroadcast the Work by any means including signs, sounds or images.

***Change No. 9 Reproduce: reproduction, according to Guatemalan***

***Law can be partial***

“Reproduce” means to make copies of part of the Work or the whole work by any means

***Change No. 10 License elements as essential elements of the contract. The interpretation of the elements of the contract, even when case law is not binding in our civil system, has provided that essential elements are those so important that can define the nature of the relation. However this reference can be removed.***

“License Elements” means the following “essential elements” or high-level license attributes as selected by Licensor and indicated in the title of this License: Attribution, Noncommercial, ShareAlike.

*Change No. 11 License grant literal c. According to Guatemalan law, to public perform a phonogram or to make exhibitions is required to provide a written consent to the authorities, that is why I clarify that this license is the valid written permission of use of the work.*

to Distribute and Publicly Perform the Work including as incorporated in Collections; in the case of phonograms this license will satisfy the consent required by law to perform a Work, in the case of public performances and exhibitions this license will satisfy the requirement of the law, to prove the Authorities that the work is authorized by the author to be used under the terms specified.

***Change No. 12. Restrictions, literal a. When an audiovisual work is distributed, one has to mention those names of the author of the soundtrack, of the dialogues and of the producer.***

If *the work* is an audiovisual work, when distributed or publicly performed, it is mandatory to mention the name of the producer, the name of the author of the musical compositions and of the line producer or script writers.

***Change No. 13. Restrictions, literal b. If someone removes the cc icons, the electronic codes, or other elements that identifies the work, author and any condition of the license is acting against Guatemalan law and is a provision that can be enforced both by criminal or civil procedures.***

When you Distribute or Publicly Perform the Work, You may not impose any effective technological measures on the Adaptation that restrict the ability of a recipient of the Adaptation from You to

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***Change No. 14 Restrictions literal c. To remove DRMs measures is against the law.*** You may not exercise any of the rights granted to You in Section 3 above in any manner that is primarily intended for or directed toward commercial advantage or private monetary compensation. The exchange of the Work for other copyrighted works by means of digital file-sharing or otherwise shall not be

considered to be intended for or directed toward commercial advantage or private monetary compensation, provided there is no payment of any monetary compensation in connection with the exchange of copyrighted works. It is considered commercial use by Guatemalan law to deactivate or decodified any work protected with digital or other measures that not allow to copy.

*Change No. 15 Restrictions literal d. Deleted the exception of “unless a request...” because is against a mandatory provision which considers forbidden to remove such notices.*

If you Distribute, or Publicly Perform the Work or any Adaptations or Collections, You must, unless a request has been made pursuant to clause 4(a) DELETED, keep intact all copyright notices for the Work and provide, reasonable to the medium or means

*Change No. 16 Miscellaneous literal d. I deleted and signed because signature is not a requirement to modify the license*

*according to Guatemalan law. Also is important to consider that electronic signature is not yet valid in Guatemala.*

No term or provision of this License shall be deemed waived and no breach consented to unless such waiver or consent shall be in writing **DELETED AND SIGNED** by the party to be charged with such waiver or consent.

*Change no. 17 Clarification that Guatemalan Law incorporates all the conventios mentioned by the license and the interpretation of the terms has to be in harmony with all of them, and with the Constitution.*

The rights granted under, and the subject matter referenced, in this License was drafted utilizing the terminology of the Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979), the Rome Convention of 1961, the WIPO

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