

Thursday, 22 August 2013  
[Almost] Welcome to the 4.0 Licenses  
1030h - 1200h

We have been fairly consumed with Version 4.0, but other major projects CC Legal has been working on:

- \* IGO port for intergovernmental organizations
- \* Egyptian 3.0 port - first Arabic translation of the CC licenses

We'd hoped to have 4.0 done but it's not quite there yet.

Status/schedule

- \* after the summit we'll publish the 4th draft of the legal code for comment
- \* the revised deed is ready
- \* the revised chooser is ready
- \* we're working on FAQs and educational materials

Elevator pitch for 4.0

Internationalization

- \* we've had amazing consultations with affiliates around the world
- \* terminology is more suitable for international use
- \* looked at and addressed countless jurisdiction-specific issues

Rights outside of copyright

- \* in prior versions database rights weren't mentioned, in EU-port database rights mentioned but waived
- \* in 4.0 db rights licensed alongside copyright
- \* we keep the scope of rights open ended but tailored so it's not too broad
- \* now uniform treatment of moral rights - moral rights waived or not asserted but only to extent necessary to exercise the rights granted
- \* express treatment of publicity/privacy/personality rights - where licensor holds those rights they agree to waive or not assert but only to extent necessary to exercise the rights granted

User-friendly in form and function

- \* easier to understand with simplified structure and simpler language
- \* more clarity about how the license works
- \* attribution is much simpler and more flexible in 4.0 - attribution via link
- \* cure period - licensees can get rights back if they fix it within 30 days

State of the legal code – [based on interim post-d3 draft that was not published]

- \* license grant has changed slightly - in draft 3, it was completely open-ended
- \* we have removed "including" - "you are granted the right to reproduce and share..." - back to how it was worded in Version 3.0

- \* the "share" definition is still open-ended, the definition of "copyright and similar rights" is still open-ended
- \* still very broad license grant, but not as broad as in draft 3

#### Sui generis database rights

- \* everything lumped together in Section 4 for clarity and to avoid over-compliance
- \* database rights only relevant in limited parts of the world
- \* there are minor language changes, including the grant
- \* changed language slightly to align with the EU Database Directive

#### Effective Technological Measures

- \* we added definition of ETMs (see 4.0 draft)
- \* it's not intended to change the meaning from prior versions
- \* the goal is to add clarity
- \* discussion:
  - \* why "fulfilling obligations" instead of "implementing"?
  - \* adding the ETM definition does not make it any clearer; the design goal was to make it easier to understand for non-lawyers
  - \* trying to make it as simple as possible but no simpler
  - \* adding the ETM definition made it more complicated than we would have liked, but it might make more sense to keep the ugly thing in the license and then provide explanation outside the license
  - \* we would have to double the length of the license text if we were to explain it within the license
  - \* a shorthand way of introducing something very complicated within the license - this is a pragmatic compromise
  - \* the ultimate test of the licenses is what a judge says the provision means
  - \* we haven't settled on the perfect language yet so we can still change it if we can make it easier to understand

#### Circumvention provision

- \* it uses the definition of ETM
- \* used to say that this provision only applied to ETMs applied by licensors themselves
- \* now it's broadened to avoid any argument that licensor would ever prohibit circumvention to access the licensed material
- \* discussion:
  - \* would this cover technical systems that don't apply on the work itself, but on the platform? example: you're on a platform but you can only access the work after registering, etc.
  - \* in general, we've only thought of things applied to the work, not the platform; so yes, you'd be allowed to put a CC licensed work behind a paywall

#### Removed interpretation clause

- \* removed provision explaining applicable law – "...where the work is used.."
- \* not informative to most non-lawyers
- \* got feedback that it could do more harm than good

## Customizing the license

- \* used to have options for waiving provisions or adding other permissions
- \* no reason to include this and have it be part of the CC license
- \* now the only way you can customize the license is by tailoring disclaimer of warranties or limitation of liability (e.g., by offering warranties)
- \* licensor can still waive conditions or offer extra permissions, but not part of the CC license itself

### \* discussion:

- \* how do you apply this? how do the disclaimers stay with the license?
- \* you should include it with the work if you want it to stay with the work
- \* we do not have guidelines for this at this time
- \* why are we going from 6 to 1 million licenses?
- \* affiliates said they needed this in their ports
- \* the only tweaks are providing warranties or making changes that are necessary for licensors in specific jurisdictions
- \* people could always have provided warranties in earlier versions
- \* now we're just including that if a licensor wants a warranty then that can become a part of the license for enforceability purposes
- \* this may be dangerous; what is the upside to it? if we didn't have this in the older licenses then why now?
- \* well, we used to have ported licenses earlier
- \* this is potentially opening up CC to more fragmentation than even the ported licenses
- \* this could affect the enforceability of the licenses generally
- \* we've tried to draft this in a way that is enforceable in as many jurisdictions that we can
- \* this is not a new addition to the 4.0 draft; actually more limited in this latest draft
- \* this increases uncertainty - you know where the licenses are, but you don't know where the warranties are
- \* if the work has traveled a lot you won't be able to keep the warranties along with the work
- \* even if you can keep them together you won't solve the proliferation problem
- \* I think the main reason we haven't seen this as a large problem--the default state of the license is that everything is disclaimed
- \* the danger if you don't know the warranties exist is that you don't know that you are protected by the warranty - being overly cautious, but not the other way around; too cautious rather than too reckless
- \* part of danger I'm worried about is that people will start taking this clause as authorization to build their own CC licenses; danger is confusion in the marketplace; e.g. original design principles point to a static URL with static text
- \* is adding flexibility for users worth the risk of enforceability of the license itself?
- \* what about customization with this and different languages?

- \* the theoretical proliferation adds complexity and would this negatively affect the enforceability?
- \* does anyone have an actual and not theoretical example of risk?
- \* this will not harm any licensees because these differences do not affect reuse
- \* you can only add very limited things in this section; this is not different than 3.0; if there were problems in 3.0 then we have them now
- \* if the wording about "form part of this Public License" is problematic, then why not go back to the 3.0 language

#### Attribution

- \* simplified formatting
- \* author/attribution parties only if supplied
- \* only substantive change is to change back to 3.0 - link to licensed material is always required, not just when you modify the work

#### ShareAlike

- \* only applies to people that have actually adapted the work
- \* switched from "adaptation license" to "adapters license" - avoid giving the impression that only a single license applies to an adaptation

#### Before Licensing section

- \* added a prose section at the beginning that does not form a part of the legal code
- \* explanatory material for licensors and licensees
- \* got a lot of feedback that people using the licenses incorrectly
- \* putting in warranties was problematic, but are there other things you can do?
- \* tried to put in section that explains risks and considerations that you may want to have before applying a license to your own work
- \* licensor can't license personality, trademark, third party rights
- \* need to mark third party rights
- \* licenses are irrevocable
- \* make people as informed as possible
- \* don't promise too much
- \* point out these important considerations at the beginning in the most prominent place possible
- \* recommend that licensors clear any third party rights if they can do that
- \* point out limitations and exceptions, public domain
- \* mark material not subject to the license
- \* respecting non-required requests; such as attributing a funder or other "good things to do"
- \* again, this does not form a part of the legal code
- \* we plan on putting this on all CC licenses, not just 4.0

#### Clarity around licensing adaptation

- \* trying to provide clarity for both SA and non-SA
- \* making things clear that weren't very clear before

- \* for non-SA, idea is that you can make derivatives under any license that you want; you can make a derivative and put under any license/PD; but, you may not want to
- \* you must always comply with terms of original license: two licenses apply to the adaptation ("license stacking")
- \* when you're making something on top of it, unless there's a SA license, you may make derivatives under any terms you want, as long as you're not violating any terms of the original license
- \* need to mark things properly

#### ShareAlike:

- \* there's no question under which licenses you can release an adaptation under
- \* this means SA or compatible license
- \* no compatible licenses named - what will it mean for SA?
- \* we have slightly changed the def of compatible license
- \* there were criteria in the license itself that said what it meant, but we took those out
- \* keep open discussion with compatibility with GPL, no way GPL can be backwards compatible with SA
- \* we've changed the def to make those conversations possible
- \* like non-SA, two licenses apply to the adaptation, but what does this mean for reusers?
- \* when you reuse an adaptation, should you be able to just refer to the later license to cover all of your licensing obligations? or do you have to refer to the original license as well?
- \* we think this is something important to get right; looking at different ways to handle it in 4.0; to be discussed in detail in the unconference session tomorrow afternoon

#### Are the deed and legal code meant to be together?

- \* currently separate - human readable and lawyer readable
- \* we don't want to give the impression that the legal code is only for lawyers and no one else should read it
- \* we want people to have some exposure to it
- \* what if the deed and legal code were on the same page?
- \* but, there are technical challenges to this
- \* the page you see with legal code on it is all together
- \* would have to include the legal code in an iframe or similar if we are to combine them
- \* there is broad support for the concept of doing it but the implementation might be difficult

#### Language translations

- \* we're planning to have official translations of the licenses in 4.0
- \* goal is to make them "as equivalent as possible"
- \* been working on CC0 translations - we have translation policy that says in case of dispute, English language version controls; is this the right approach?
- \* translations won't be perfect
- \* we don't want to introduce new problems by including a provision about the relationship between the language versions in the legal code
- \* right now the license draft is silent on whether they are legal equivalents or not
- \* should we take out sentence in CC0 translations that English controls?

- \* English has gotten the most scrutiny from affiliates and legal staff
- \* discussion:
  - \* will you just have one Spanish, Portuguese, etc translation?
  - \* yes as much as possible; this is the ideal
  - \* also, the word “copyright” not translated into civil society countries? can this be resolved in the legal code or translations?
- \* other discussion:
  - \* we should reconsider not porting, because older ports include terms that boost enforceability and adoptability in particular jurisdictions
  - \* note: we have not closed the discussion on porting yet; we can decide on a case by case basis on whether ports can be necessary in jurisdictions

#### Affiliate input

- \* We are seeking ideas about ways HQ can help affiliate teams encourage adoption and understanding of Version 4.0.
- \* Anyone interested in ShareAlike discussion should join us for unconference session tomorrow afternoon.