

**Re-translation of the Armenian Draft
English explanation of substantive legal changes to
Creative Commons Legal Code
Attribution-NonCommercial Use-ShareAlike 3.0**

CREATIVE COMMONS CORPORATION IS NOT A LAW FIRM AND DOES NOT PROVIDE LEGAL SERVICES. DISTRIBUTION OF THIS LICENSE DOES NOT CREATE *LEGAL RELATIONSHIP BETWEEN THE PARTIES AND CREATIVE COMMONS*.

CREATIVE COMMONS PROVIDES THIS INFORMATION WITHOUT MAKING ANY WARRANTIES. CREATIVE COMMONS MAKES NO WARRANTIES REGARDING THE CONTENT PROVIDED, AND *DISCLAIM LIABILITY FOR DAMAGES THAT WOULD RESULT FROM ITS USE*.

[Attorney-Client relationship is subject to separate agreement and, in this regard, is not appropriate. It would be sensible to use "legal relationship" term].

Non-Exclusive License Agreement (License)

[According to Law on Copyright and Related Rights, Article 39 (2) this License in its essence is a License Agreement with non-exclusive feature that "shall" be mentioned].

THE RIGHTS TO USE THE WORK (AS DEFINED BELOW) ARE PROVIDED UNDER THE TERMS OF THIS CREATIVE COMMONS PUBLIC LICENSE ("CCPL" OR "LICENSE"). THE RIGHTS OF LICENSOR (RIGHTS HOLDER) WITH RESPECT TO HIS/HER WORK ARE PROTECTED BY THE REPUBLIC OF ARMENIA LAW ON COPYRIGHT AND RELATED RIGHTS (hereinafter referred to as LAW), AND/OR OTHER APPLICABLE LAW. ANY USE OF THE WORK OTHER THAN AS AUTHORIZED UNDER THIS LICENSE OR ~~COPYRIGHT~~ OTHER APPLICABLE LAW IS PROHIBITED.

[1. According to Armenian Law, the parties to Copyright contract are only Rights Holders that should be mentioned and Licensees. 2. In contrast to US legislation, Armenian Law varies Authors (Copyright) and Performers' (Related) rights that are equally essential for the purpose of this License. 3 Specification of legal act, in the last sentence limits contractual perception of scope of protection].

BY EXERCISING ANY RIGHTS TO THE WORK PROVIDED HERE, ~~YOU~~ LICENSEE ACCEPTS AND AGREES TO BE BOUND BY THE TERMS OF THIS LICENSE.

~~TO THE EXTENT THIS LICENSE MAY BE CONSIDERED TO BE A CONTRACT, UNDER THIS LICENSE, THE LICENSOR GRANTS LICENSEE THE NON-EXCLUSIVE RIGHTS CONTAINED HERE IN CONSIDERATION OF LICENSEE'S ACCEPTANCE OF SUCH TERMS AND CONDITIONS.~~

["TO THE EXTENT THIS LICENSE MAY BE CONSIDERED TO BE A CONTRACT," is deleted because this License is in fact one kind of a contract (agreement) the fact of which shall not be prejudiced].

1. Definitions *[To ensure the greatest harmonization of this license with Armenian legal system, terms below are defined taking into account Law on Copyright and Related Rights of Armenia]*

- a. **"Derivative Work"** means an independent work based upon the Work, or upon the Work and other pre-existing works, such as:

i. translations, adaptations of works, changes, arrangements and rearrangements of music or other alterations of a literary or artistic work, stage versions, audiovisual adaptations and other transformations of works in the scientific, literary and art domain, which are unique outcome of a creative activity in the domain of science, literature and art created individually or jointly, which are expressed in spoken, written or any other objectively perceivable manner, including permanently or temporarily storage in electronic form, regardless of the scope, significance, merits and purpose of creation (hereinafter referred to as **Adaptations**). For the avoidance of doubt, where the work is a musical work, performance or phonogram, the synchronization of the work in time relation with a moving image ("synching") will be considered an Adaptation for the purpose of this license.

ii. collections of works (encyclopedias, anthologies), databases and other composite works, which are, by the reason of the selection and (or) arrangement of their contents, results of a creative work (hereinafter referred to as **Collection**).

[Due to the fact that both adaptations and collections are included in the definition of Derivative Work under the Armenian Law, they appear under the same heading, however to make formulation of the contract more flexible and comprehensible, Adaptations and Collections are utilized as a general but distinctive terms.]

- b. **"Distribute"** means to *put into circulation*, make available to the public the original ~~and~~ or copies of the Work or Adaptation, as appropriate, through sale or other *form of transfer of ownership as well as their importation*.
- c. **"License Elements"** means the following high-level license attributes as selected by *Licensor* and indicated in the title of this License: Attribution, Noncommercial Use, ShareAlike.
- d. **"Licensor (Rights Holder)"** means the natural or legal person(s) that is (are) holder of economic rights (the Author of the Work or a third person who has obtained these rights in the order established by Law) who offer(s) the Rights to Use the Work under the terms of this License. Particularly, the *Licensors* are:
 - (i) in the case of a literary or artistic work, the *natural or legal person(s)* or if no individual can be identified or the Work was distributed by pseudonym, the publisher shall, until otherwise proved, be deemed to be the representative of the Licensor and shall be entitled to protect the Author's rights and ensure their execution;
 - (ii) in the case of a performance, the actors, singers, musicians, dancers, *conductors, choirmasters* and other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform literary or artistic works, circus, puppet, variety and other similar shows including expressions of folklore;
 - (iii) in the case of a phonogram *or film*, the producer being the person or legal entity who first fixes the *film*, the sounds of a performance, or other sounds;
 - (iv) in the case of broadcasts, the organization that transmits the broadcast; and,
 - (v) *in the case of database, the producer of database;*
 - (vi) *in the case of typographical arrangements of publication, publisher of typographical arrangements of his/her publication.*

- e. ~~"Original~~ **The Author**" means, a natural person or persons (*co-authors, regardless the structure of the Work, unless otherwise provided by the contract between them*) who created the Work.

[Under Armenian copyright law, only a natural person may be the "Original" Author of a work of authorship. This means that only individual who is the actual creator of the work has initial entitlement to copyright. That is why, to refer authorship status to a legal entity would contradict to Armenian Law. Besides, as to Author, there is no term of Original Author but merely "Author" in Armenian legislation].

- f. **"Work"** means, *copyrighted work, rights of which offered under the terms of this License that are the unique outcome of a creative activity created individually or jointly, which is expressed in objectively perceivable manner, including without limitation any production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression including digital form, such as:*

[We propose to use "copyrighted" instead of "copyrightable", as every work subject to copyright is by force of law already "copyrighted".]

- (a) *literary, scientific works, dramatic and dramatico-musical works, scenarios, scenario sketches, librettos, and other works created for staging; a choreographic work or entertainment in dumb show; a musical composition with or without words; audiovisual works (cinematographic, television films, animation films and cartoon films, musical clips, advertisement, documentary and fact-documentary, and other films); works of painting, sculpture, graphics, design and other works of fine arts; works of urban planning, architecture, landscaping and their solutions both in whole and separate parts thereof; photographic works and works created by analogous modes, which comply with the provisions of paragraph (f) of this Clause; works of applied decorative art and stage graphics; maps, plans, sketches and plastic works related to geography, topography, geology, urban planning, architecture and other sciences; derivative works to the extent it is protected as a copyrighted work;*

For the purpose of this License, Work, insofar as such Work is protected under applicable law, shall also mean non-copyrightable objects of related rights, such as:

- (b) *performances, phonograms, first fixation of films and programs of broadcasting organization.*
- g. ~~"You"~~ **"Licensee"** means an individual or entity exercising rights under this License who has not previously violated the terms of this License with respect to the Work, or who has received express permission from the *Licensor* to exercise rights under this License despite a previous violation.
- h. ~~"Publicly Perform"~~ **"Communication to the Public"** means to perform public recitations of the Work and to communicate to the public those public recitations, by any means or process, 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 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.

[This part corresponds to Article 19. **Communication to the Public** of the Law which is something different in terms of title but the content is quite similar.]

- i. **"Reproduce"** means to make copies of the Work by any means including without limitation by sound or visual recordings and the right of fixation and reproducing fixations of the Work, including storage of a protected performance or phonogram in digital form or other electronic medium in any tangible medium directly or indirectly, permanently or temporarily by any means and in any form, in whole or in part.

[To avoid possible conflicts with Armenian legislation in future, it is recommended to adopt definition from the Law]

2. Fair Dealing Rights. Free Use of the Work/ Limitations on exclusive rights. Nothing in this License is intended to reduce, limit, or restrict any uses free from copyright/related rights or rights arising from limitations or exceptions that are provided for in connection with the copyright/related rights protection under copyright law or other applicable laws. However, such use is conditioned with the obligatory mention of the Author's name and the origin of the work provided that such use does not prejudice the normal exploitation of the Work and legitimate interests of the Author or Licensor to his work.

[Fair Dealing Rights - Free Use of the Work. Armenian Law does not literally stipulate the concept of "Fair Use" but provides analogous cases of Free Uses of a Work and **Limitations of the exclusive rights with obligation** to attribution as it is prescribed in Articles 22-26 (Copyright) and 53 (Limitations on Related Rights) of the Law.]

3. License Grant. Subject to the terms and conditions of this License, Licensor hereby grants Licensee a worldwide, **royalty-free**, non-exclusive, perpetual (for the period of the duration of the copyright or other applicable law Licensor's economic rights in the Work), license to exercise the rights in the Work as stated below:

[It shall be noted that according to the Law, Article 39 (2), license contract, which regulates the relations between the rights holder and the licensee, shall be compensative. Moreover, Article 13(3) states that the contract on waiving the authors' remuneration shall be null and void. Nonetheless, the imperative wording of the Law concerning the compensative nature of copyright and relative rights contract might be ignored because it contradicts not only to the notion of "Freedom of Contract" enshrined in Article 437 of the Civil Code but also to the Constitution of the Republic of Armenia that clearly states that everyone shall have the right to freely own, use, dispose of and bequeath the property belonging to him/her¹.]

- a. to Reproduce the Work, to incorporate the Work into one or more **Collections**, and to Reproduce the Work as incorporated in the **Collections**;

[According to Armenian Law, Collections and even databases are defined as one kind of derivative works and protected under copyright law to the extent it is copyrightable.]

- b. to create and Reproduce **Adaptations** provided that any such **Adaptation**, including any translation in any medium, takes reasonable steps to clearly label, demarcate or otherwise identify that changes were made to the original Work. For example, a translation could be marked "The original work was translated from English to Spanish," or a modification could indicate "The original work has been modified.";
- c. to Distribute and **Communicate to the Public** the Work including as incorporated in **Derivative Works**; and,
- d. ~~to Distribute and Publicly Perform Adaptations.~~ *[Point "d" is deleted because both collections and adaptations are Derivative Works that are mentioned in the point "c"].*

¹ Constitution of the Republic of Armenia, Article 31. The same wording is expressed in Article 163 (3) of the Civil Code of Armenia.

The above rights may be exercised in all media and formats whether now known or hereafter devised. The above rights include the right to make such modifications as are technically necessary to exercise the rights in other media and formats. ~~Subject to Section 8(f), All rights not expressly granted by Licensor are hereby reserved, including but not limited to the rights described in Section 4(e).~~

4. Restrictions. The license granted in Section 3 above is expressly made subject to and limited by the following restrictions:

- a. *Licensee* may Distribute or *Communicate to the Public* the Work only under the terms of this License. *Licensee* must include a copy of, or a copy or the corresponding internet address for ~~the Uniform Resource Identifier (URI) for,~~ this License with every copy of the Work *Licensee* Distributes or *Communicates to the Public*. *Licensee* may not offer or impose any terms on the Work that restrict the terms of this License or the ability of the recipient of the Work to exercise the rights granted to that recipient under the terms of the License. *Licensee* may not sublicense the Work. *Licensee* must keep intact all notices that refer to this License and to the ~~disclaimer of~~ *provided* warranties with every copy of the Work *Licensee* Distributes or *Communicates to the Public*. When *Licensee* Distributes or *Communicates to the Public* the Work, *Licensee* may not impose any effective technological measures on the Work that restrict the ability of a recipient of the Work from *Licensee* to exercise the rights granted to that recipient under the terms of the License. This Section 4(a) applies to the Work as incorporated in a *Collection*, but this does not require the *Collection*, apart from the Work itself to be made subject to the terms of this License. If *Licensee* creates a *Collection*, upon notice from ~~any~~ *the Author Licensee* must, to the extent practicable, remove from the *Collection*, any credit as required by Section 4(d), as requested. If *Licensee* creates an *Adaptation*, upon notice from ~~any Licensor~~ *the Author Licensee* must, to the extent practicable, remove from the *Adaptation* any credit as required by Section 4(d), as requested.

[The explicit reference only to the "original" Author as an exclusive owner of moral rights is necessary to comply with Armenian law.]

- b. *Licensee* may Distribute or *Communicate to the Public* an *Adaptation* only under: (i) the terms of this License; *(ii) a later version of this License with the same License Elements as this License; (iii) the Unported Creative Commons license or a Creative Commons jurisdiction license with the same License Elements (e.g. an Attribution-Noncommercial-ShareAlike License 3.0) ("Applicable License").* *Licensee* must include a copy of, or the ~~URI~~ a copy or the corresponding internet address for *Applicable License* with every copy of each *Adaptation-Licensee* Distributes or *Communicates to the Public*. *Licensee* may not offer or impose any terms on the *Adaptation* that restrict the terms of the *Applicable License* or the ability of the recipient of the *Adaptation* to exercise the rights granted to that recipient under the terms of the *Applicable License*. *Licensee* must keep intact all notices that refer to the *Applicable License* and to the ~~disclaimer of~~ provision warranties with every copy of the Work as included in the *Adaptation Licensee* Distributes or *Communicates to the Public*. When *Licensee* Distributes or *Communicates to the Public* the *Adaptation*, *Licensee* may not impose any effective technological measures on the *Adaptation* that restrict the ability of a recipient of the *Adaptation* from *Licensee* to exercise the rights granted to that recipient under the terms of *Applicable License*. This Section 4(b) applies to the *Adaptation* as incorporated in a *Collection*, but this does not require the *Collection* apart from the *Adaptation* itself to be made subject to the terms of the *Applicable License*.
- c. *Licensee* may not exercise any of the rights granted to *Licensee* 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 *and related*

rights 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 *and related rights* works.

- d. If *Licensee* Distributes, or *Communicates to the Public* the Work or any Adaptations or Collections, *Licensee* must, unless a request has been made pursuant to Section 4(a), keep intact all copyright *and related rights* notices for the Work *and acknowledge right of* authorship to the Author, reasonable to the medium or means the *Licensee* is utilizing by providing: (i) the name of the Author (or pseudonym, if applicable) if supplied, *and/or the name of the Licensor or Publisher if supplied* for attribution ("Attribution Parties") ~~in Licensor's copyright notice, terms of service or by other reasonable means, the name of such party or parties;~~ (ii) the title of the Work if supplied; (iii) to the extent reasonably practicable, the ~~URI~~ *corresponding internet address*, if any, that *Licensor* specifies to be associated with the Work, unless such ~~URI~~ *corresponding internet address* does not refer to the copyright or related rights notice or licensing information for the Work; and, (iv) consistent with Section 3(b), in the case of an Adaptation, a credit identifying the use of the Work in the Adaptation (e.g., "French translation of the Work by the Author," or "Screenplay based on original Work by the Author"). The credit required by this Section 4(d) may be implemented in any reasonable manner; provided, however, that in the case of a Adaptation or *Collection*, at a minimum such credit will appear, if a credit for all contributing authors of the Adaptation or *Collection* appears, then as part of these credits and in a manner at least as prominent as the credits for the other contributing authors. For the avoidance of doubt, *Licensee* may only use the credit required by this Section for the purpose of attribution in the manner set out above and, by exercising *Licensee rights* under this License, *Licensee* may not implicitly or explicitly assert or imply any connection with, sponsorship or endorsement by the Author, *Licensor* and/or Attribution Parties, as appropriate, of *Licensee* or *Licensee* use of the Work, without the separate, express prior written permission of the Author, *Licensor* and/or Attribution Parties.

[The addition (*acknowledge right of authorship to the Author*) is obligatory norm in Armenian law (Article 12) and it is relevant to the context of this license. Moreover, if there is no information on "original" Author or the work was published under a pseudonym, the publisher whose name or denomination appears on the work shall, until otherwise proved, be deemed to be the representative of the author and shall be entitled to protect the author's rights and ensure their execution. (e.g. a sponsor institute, publishing entity, journal) – (publisher)]

[The modification is made in order to avoid the potential problems of legal interpretation.]

e. For the avoidance of doubt:

- **Voluntary License Scheme.** The *Licensor* reserves the right to collect royalties, whether individually or, in the event that the *Licensor* is a member of a collecting society that administers voluntary licensing schemes, via that society, from any exercise by *Licensee* of the rights granted under this License that is for a purpose or use which is otherwise than noncommercial as permitted under Section 4(c).

[Although Armenian Law provides for voluntary membership in Collecting Societies, reality shows that it is almost impossible to exercise Licensors' rights in certain areas such as public performance, broadcast and rebroadcast.]

- f. ~~"Non-economic rights of the Author (Moral Rights) remain unaffected to the extent they are recognized and not waivable by applicable law."~~

5. Representations and Warranties

The *Licensor* represents and warrants that:

Deleted: ~~Except as otherwise agreed in writing by the Rights Holder or as may be otherwise permitted by applicable law, if Licensee Reproduces, Distributes or Communicates to the Public the Work either by itself or as part of any Adaptations or~~

Deleted: ~~<#> [Moral rights of both Authors and Performers are subject to protection under Armenian Law] ¶ <#> For the avoidance of doubt: The restrictions mentioned above (4(a) and 4(b)) do not apply to the sui generis database.¶~~

- (a) The execution and performance of this License are within the *Licensor's* powers, and do not contravene any applicable law,
- (b) *Licensor* has full ownership title in the Work being licensed, and that there is no legal impediment to the *Licensor* proceeding with the licensing,

[In fact, exclusion of implied warranties is discordant to the principle of bona fide attitude of parties to the contract. However, it makes reservation on application of this clause therefore it has been omitted in the text.]

6. Limitation on Liability. *Beyond the breach of warranties contained in Section 5 and required by the law or other applicable law, Licensor is liable for damages only in cases of intentional damage caused by action or inaction by negligence.*

[Civil Code of Armenia, Article 417 - An agreement concluded in advance for eliminating or limiting liability for the intentional violation of an obligation is void.]

7. Termination

- a. This License and the rights *and obligations* granted hereunder will terminate automatically upon any breach by the *Licensee* of the terms of this License. *Natural and legal persons* who have received Adaptations or *Collections* from the *Licensee* under this License, however, will not have their licenses terminated provided such *persons* remain in full compliance with those licenses. Sections 1, 2, 5, 6, 7, and 8 will survive any termination of this License.
- b. Subject to the above terms and conditions, the license granted here *is valid for the duration the Licensor's economic rights in the Work*. Notwithstanding the above and without notifying the **Licensee**, *Licensor* reserves the right to release the Work under different license terms or to stop distributing the Work at any time; provided, however that any such election will not serve to withdraw this License (or any other license that has been, or is required to be, granted under the terms of this License), and this License will continue in full force and effect unless terminated as stated above.

8. Miscellaneous

- a. Each time the *Licensee* Distributes or *Communicates to the Public* the Work or a *Collection*, the *Licensor* offers to the recipient a license to the Work on the same terms and conditions as the license granted to the *Licensee* under this License.
- b. Each time the *Licensee* Distributes or *Communicates to the Public* an Adaptation, the *Licensor* offers to the recipient a license to the original Work on the same terms and conditions as the license granted to the *Licensee* under this License.
- c. If any provision of this License is invalid or unenforceable under applicable law, it shall not affect the validity or enforceability of the remainder of the terms of this License, and without further action by the parties to this License, such provision shall be reformed to the minimum extent necessary to make such provision valid and enforceable.
- d. 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 and signed by the party to be charged with such waiver or consent.
- e. This License constitutes the entire agreement between the parties with respect to the Work licensed here. There are no understandings, agreements or representations with respect to the Work not specified here. *Licensor* shall not be bound by any additional provisions that may appear in any communication from *Licensee*. This License may not be modified without the mutual written agreement of the *Licensor* and *Licensee*.

9. Applicable Law

This License shall be governed by the legislation of the ~~State where the party was founded, has its residence or its basic place of activity who conducts the performance having decisive significance for the content of the license (e.g. Licensor).~~

If it is impossible to determine the performance having decisive significance for the content of the license, the law of the State shall be applied with which the license is most closely connected.

Deleted: Republic of Armenia. ¶
Any disputes arising from this License or relating thereto shall fall within the jurisdiction of Armenian Courts.

Creative Commons Notice

Creative Commons is not a party to this License, and makes no warranty whatsoever in connection with the Work. Creative Commons will not be liable to *Licensee* or any party on any legal theory for any damages whatsoever, including without limitation any general, special, incidental or consequential damages arising in connection to this license. Notwithstanding the foregoing two (2) sentences, if Creative Commons has expressly identified itself as the *Licensor* hereunder, it shall have all rights and obligations of *Licensor*.

Except for the limited purpose of indicating to the public that the Work is licensed under the CCPL, Creative Commons does not authorize the use by either party of the trademark "Creative Commons" or any related trademark or logo of Creative Commons without the prior written consent of Creative Commons. Any permitted use will be in compliance with Creative Commons' then-current trademark usage guidelines, as may be published on its website or otherwise made available upon request from time to time. For the avoidance of doubt, this trademark restriction does not form part of this License.

Creative Commons may be contacted at <http://creativecommons.org/>.