NOTE ON 2.5. CC-BY-NC-SA
Created by Marinos Papadopoulos
for the Creative Commons in Greece team

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HOWEVER, WHEREVER THERE ARE CHANGES, SAID CHANGES WHICH ARE RECOMMENDED FOR THE GREEK VERSION OF SAID CC LICENSE ARE APPROPRIATELY MARKED AND EXPLAINED IN THE CONTENT AND THE FOOTNOTES OF THIS EXPLANATORY NOTE.

FINALLY, WHILE THIS EXPLANATORY NOTE WAS COMPOSED BY ONE PERSON, IT CONSIDERS ALL THE VIEWS OF ALL THE MEMBERS OF THE GREEK TEAM, WHICH HAS UNDERTAKEN THE TASK TO IMPORT CC LICENSES IN GREECE.
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PAPADOPOULOS, KAPONI & ASSOCIATES
E: marinos@marinos.com.gr | URL: www.marinos.com.gr | Skype: marinos_papadopoulos

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1 The Greek Law recognises the meanings of the terms 'derivative work' and 'collective work' in the following wording of article 2 par. 2 of L.2121/1993 as amended: “The term "work" shall, in addition, designate translations, adaptations, arrangements and other alterations of works or of expressions of folklore, as well as collections of works or collections of expressions of folklore or of simple facts and data, such as encyclopedias and anthologies, provided the selection or the arrangement of their contents is original. Protection afforded to the works listed in this paragraph shall in no way prejudice rights in the preexisting works, which were used as the object of the alterations or the collections.” Also the term ‘collective work’ is used in the wording of article 7 par. 2 of L.2121/1993 as amended: “The term «collective work» shall designate any work created through the independent contribution of several authors acting under the intellectual direction and coordination of one natural person. That natural person shall be the initial rightholder of the economic right and the moral right attaching to the collective work.” THEREFORE, said definitions as well as all others which have been used in the draft of 2.5.CC-BY+NC+SA are cross-checked and correct and in sync with the phrasing and their meanings in the Greek Intellectual Property Law.
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² The Greek team hasn’t come across this clause in all other five of the six CC 2.5 licenses in their original US version. THEREFORE, the Greek team prefers not to include said clause in CC-BY-NC-SA. Omitting of said clause does not differentiate the content of said license. On the other hand, said clause could be included in the content of said license only if similar clause is necessary to be included in the content of all six CC licenses.

³ The Greek Law does not include the term 'Fair Use'. It makes provisions for the term 'Fair Practice' instead in article 19 par. 1 of L.2121/1993 as amended and regarding quotations of extracts: "Quotation of short extracts of a lawfully published work by an author for the purpose of providing support for a case advanced by the person making the quotation or a critique of the position of the author shall be permissible without the consent of the author and without payment, provided that the quotation is compatible with fair practice and that the extent of the extracts does not exceed that justified by the purpose. The quotation of the extract must be accompanied by an indication of the source of the extract and of the names of the author and of the publisher, provided that the said names appear in the source." It also makes provisions for the term 'Fair Practice' instead in article 21 of L.2121/1993 as amended and regarding reproduction for teaching purposes: "It shall be permissible, without the consent of the author and without payment, to reproduce articles lawfully published in a newspaper or periodical, short extracts of a work or parts of a short work or a lawfully published work of fine art work exclusively for teaching or examination purposes at an educational establishment, in such measure as is compatible with the aforementioned purpose, provided that the reproduction is effected in accordance with fair practice and does not conflict with the normal exploitation. The reproduction must be accompanied by an indication of the source and of the names of the author and the publisher, provided that the said names appear on the source." THEREFORE, the term 'Fair Practice', which is mentioned in the draft of 2.5.CC-BY+NC+SA, is used in consideration of
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the above mentioned legal framework of the Greek Law. The term "Fair Use (Rights)" is not used in the Greek version of said CC license because its meaning in L.2121/1993 is not identical to its meaning in the USA/UK (Anglo-Saxon) Law.

4 The Greek team working on CC licenses contemplated upon the content of CC licenses in relation to the meaning of the term "Moral Right" which is an exclusive right of the author that can be transferred only as part of an inheritance but cannot be transferred between living persons (see article 12 par. 2 of L.2121/1993), and as is described in the Greek Law. More specifically, the Greek team discussed the possibility in which the content of the drafted CC licenses could include a specific reference to articles 14 and 16 of L.2121/1993 which pertain to the form of any legal acts dealing with the transfer of powers of authors to third parties (article 14) as well as the act of granting the consent of the author for an action or omission that may infringe his moral right (article 16). The Greek Law in article 14 of L.2121/1993 as amended and regarding the form of legal acts in relation to the term 'Moral Right' makes the following provision: "Acts dealing with the transfer of powers stemming from the economic right, with the assignation or licensing of the right of exploitation and with the exercise of the moral right shall be null and void unless they are concluded in writing. Nullity may be invoked only by the intellectual author." Also, the Greek Law in article 16 of L.2121/1993 as amended and regarding the form of legal acts in relation to the term 'Moral Right' makes the following provision: "The granting of consent by an author for an action or an omission which would otherwise constitute an infringement of his moral right shall be deemed to be a form of exercise of his moral right and shall be binding upon him." Given the abovementioned provisions of the Greek Law in relation to the Moral Right, as well as in consideration of the use of said term in the drafted Greek version of CC licenses, the Greek team understood that the current wording of the Greek version of drafted CC licenses corresponds to the meaning of said term in the Greek Law and recognises that said suggested wording in the drafted Greek CC licenses could suffice for the localization of said licenses in Greece. In addition, the Greek team believes that the drafted Greek CC licenses had better been used in ways that do not restrain the power of the Moral Right of the author in the digital era. Respect of the Moral Right of the author is a sine-qua-non prerequisite for the application of WIPO Treaties as well as EC Directives on Intellectual Property in the digital era.
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6 The Greek team working on CC licenses contemplated upon the content of CC licenses in relation to the meaning of the term “Commercial Purposes” (i.e. commercial advantage or private monetary compensation) as is described in the license hereto. While there is an obvious effort from the part of the Greek team to make the term “Commercial Purposes” as clear as possible, the description of said term in the content of the drafted CC licenses remains a disputed issue among prospective users of these licenses as well as among those questioning the legality of CC licenses. However, the Greek team opted not to alternate from the description used in the recommended drafts of CC licenses simply because it is confident that no matter what alternative wording were used to describe what is use for commercial purpose and what is not, the issue would still remain a subject of interpretation between bounded by said CC licenses parties. In addition, existing Court precedent in Greece (there has also been Court precedent in other European countries wherein CC licenses have been deployed such as France and Belgium) could add to the interpretation of said meaning justifying the use of the wording which is recommended in the drafted Greek CC licenses.
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\(^{7}\) There is no need to mention the U.S. Performance Rights Societies. One option is that the Greek Version of CC 2.5. BY-NC-SA could mention Greek Performance Rights Societies such as A.E.P.I. [URL: http://www.aepi.gr] (which is a member of CISAC [URL: http://www.cisac.org] and BIEM [URL: http://www.biem.org/]). Another option finds that there is no serious reason not to mention International Performance Rights Societies in addition to the Greek ones. In consideration of all options the Greek team opted for the best option, which is to make use of a wording such as the suggested one in the Greek version of CC license draft hereto that does not favour one Performance Right Society in Greece over another.

\(^{8}\) The Greek Law 2121/1993 on Intellectual Property as amended henceforth is applicable. Wherever in the context of said license as well as all six CC licenses in their Greek version there is a reference to Intellectual Property Law, said reference is made to L.2121/1993 as amended.
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