

## Comments

The Indian Copyright Act, does not have a definition equivalent to collective works (for example anthologies etc.) as “work” entitled to copyright protection under the Act. While specific definitions including that of literary work Sec.2(0) includes compilations, there is no overall category of collective work.

We may therefore have to consider either adapting the definition of Collective Work as it exists in the CC license, or create a definition for the Indian license

2. “Adaptations” is not a category defined under the Indian Copyright Act but there exists a similar category of 'adaptations' (defined under section 2(a) of the Act). Sec. 14 of the Act also provides for rights that are granted to particular classes of works, and adaptation rights are included for literary, artistic, dramatic work and musical works. The definitions of 'Adaptations' and 'adaptations' under 'The Creative Commons License' and Indian Copyright Act respectively are pretty similar, but the Indian Copyright Act is slightly narrower in scope since it defines what adaptation means in reference to each class of works. For example 'adaptations' is defined separately for each class of creative works such as literary, artistic, dramatic and musical work. But Sec. 14 for instance in relation to industrial works, do not provide any right beyond the right of reproduction, exhibition and communication. Whereas the definition of 'Adaptations' under 'The Creative Commons License' is defined in as:

“...translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which the Work may be recast, transformed, or adapted...”

We would need to discuss the implication of this absence of a specified right of adaptation being granted to cinematograph films.

New changes introduced under 'The Creative Commons License' in terms of 'License grant' which now specifically waives the exclusive right of the author of the work or the 'performing rights society' on behalf of the author, to collect such royalties for the public performance or public digital performance (webcast). Provisions dealing with the powers and functions of Copyright society (analogous to performing rights society) in India are Section 33 to 36A of the Copyright Act, which are quite standard across jurisdictions. The waiver of the right to collect royalty by author or via the Performance Rights Society can be easily adapted into the Indian Creative Commons License. Section 34(b) of the Copyright Act gives to the author unconditional right to withdraw any such authorization to collect royalty on his behalf by the copyright society. Hence with regard to the Copyright Society, they don't have any right under the act which is affected by the 'waiver terms' under the Creative Commons License. Under Section 34(a) of the Act, Copyright Societies can merely have the exclusive authorization to administer any rights

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under the work and nothing provides the same with any power to an exercise of such rights. Under no provision of the Act the rights vested in the author of the work are ever transferred to the Copyright Society and the 'waiver provision' under the License merely change the nature of the authorization exercised by the Copyright Societies as in they can not collect any royalty on behalf of the author any more since the author has waived the right to collect the same by adopting the license for the work.