

N°	Topic	Section	Modification	Explanation
1	“iCommons” clause	Preliminary remarks, paragraph 2, line 3.	Added: “according to Section 8.f”	It should be noted that the consent concerns two legal codes: the Italian iCommons Creative Commons license and the current generic Creative Commons license equivalent to the first. This follows the introduction of the iCommons clause (see <i>infra</i> , no. 13).
2	Collective Works	Section 1.a	“Collective Work” translated as “Collection of works”	The definition of “Collective Works” adopted by the license differs from the legal definition of collective works under Italian copyright law. Indeed, under Section 3 Law no. 633/1941 a collective work may be made out of parts of existent works of authorship; to the contrary under the license a “Collective Work” may only be made out of existent works taken in their entirety in unmodified form.
3	Author	Section 1.d	Deleted “or entity”	Under Italian 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; therefore all his successors in title and assignees acquire rights that originally belonged to him. It follows that under Italian copyright law it is a conceptual mistake to refer authorship status to an entity.

4	Moral rights	Section 3	No modifications	<p>Right to withdraw the work from commercial use. Under Section 142 Law no. 633/1941 in case of serious moral objections the author has the right to obtain the withdrawal of his work from commercial use. In this case the author must compensate those who have the right to reproduce, distribute, display publicly, perform publicly the work. This right is moral in nature and therefore is unalienable, unwaivable and perpetual. The license has been adapted to Italian law according to a criterion of minimum impact: the generic license has been modified only where it was necessary to obtain a legal effect. In this case it is not necessary to modify the text of license because the right created by Section 20 Law no. 633/1941 is inserted by operation of law.</p> <p>Right to integrity. Under Section 20 Law no. 633/1941 the author has the right to prevent any modification of the work which would be prejudicial to his honour or reputation. On the choice to make no modifications see <i>supra</i> in this same item no. 4.</p> <p>Right to attribution. Under Section 20 Law no. 633/1941 the author has the right to claim authorship of the work without time limitations. This right is moral in nature and therefore is unalienable, unwaivable and perpetual. On the choice to make no modifications see <i>supra</i> in this same item no. 4.</p>
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5	Future rights	Section 3, last line	Deleted “hereafter devised”	Section 119 Law no. 633/1941 prohibits the transfer of future rights. Future rights are rights created either by succeeding laws (which extend scope and duration of copyright) or by new technologies (that make available new uses of existing works not anticipated at the time of the original transfer). It is deemed that Section 119 Law 633/1941 applies not only to publishing contracts but also to every copyright grant. Therefore Section 3 of the license has been modified and doesn’t refer any more to “all media and formats... hereafter devised”; this part of the original text of Section 3 would have had no binding effects under Italian law.
6	Musical compositions	Sections 4.e.i and 4.e.ii	Section rewritten	Sections 4.e.i and 4.e.ii have been rewritten in order to retain the same function that they have in connection with the generic Creative Commons license. These provisions only refer to musical compositions and make clear that: a) licensor waives the right to collect royalties if the work is not used for profit; b) licensor reserves the right to collect royalties if the work is used for profit.
7	Rights in sound recordings	Section 4.f	Section rewritten	Sections 4.f has been rewritten in order to retain the same function that it has in connection with the generic Creative Commons license. This provision refers to neighbouring rights of producer and performers and means that: a) licensor waives the right to collect royalties if the work is not used for profit; b) licensor reserves the right to collect royalties if the work is used for profit. Section 4.f refers also to public analogical performance of sound recordings because the rights granted to the producer and the performers by Italian copyright law (as opposed to US copyright law) include also this use.

8	Statutory royalties and fair remuneration rights	Section 4.g	New Section	<p>Italian copyright law grants fair remuneration rights to the author and to some other individuals expressly indicated by law.</p> <p>Section 4.g has a twofold function:</p> <p>a) to indicate that licensor reserves (or waives as the case may be) the right to collect fair remunerations or statutory royalties;</p> <p>b) to act as reminder that in some cases fair remunerations and statutory royalties are not waivable and therefore they should be paid even if the work is not used for profit.</p> <p>For instance, the author of a motion picture who has transferred his copyright retains the right to collect royalties:</p> <ul style="list-style-type: none"> - under Section 18-bis Law no. 633/1941 for the case of rental; - under Section 46-bis Law no. 633/1941 for the case of public performance by means of analogical, cable or satellite transmission and for every different use of the work.
9	Limitation of liability arising out of willful or grossly negligent behavior	Section 6	Added “No clause of this license excludes or limits liability arising out of willfull or grossly negligent behaviour”	A contractual limitation of liability arising out of willful or grossly negligent behaviour is void according to Section 1229 Civil Code.
10	Unfair clauses	Section 6	No modifications	<p>According to Section 1342 of the Italian Civil Code the law concerning unfair clauses (Section 1341 Civil Code) applies also to contracts concluded by means of a form. The clauses listed by Section 1341 Civil Code are binding only if they have been specifically approved in writings (so-called “double signature” rule). This rule is mandatory and therefore it seems necessary to develop a a double digital signature system to exclude its application.</p>

11	Termination clause or condition subsequent	Section 7	Section rewritten	<p>Under Italian law termination clauses causes two problems:</p> <ol style="list-style-type: none"> 1) they are void if they refer generically to every breach of the contract; 2) they don't operate automatically, requiring a specific statement by the party not in default. <p>Therefore it seems preferable to reshape Section 7.1 as a condition subsequent. This modification reduces the risk that the clause would be declared void.</p>
12	Private international law	Section 8.f	New Section	<p>iCommons licenses are meant to regulate relationships that are linked to a specific legal system; therefore they should be chosen if the licensor expects that his work will be mainly used in a specific territory, even if he can't exclude that it will be also used elsewhere. The Italian iCommons license should apply only when Italian copyright law applies. Where this is not the case it seems appropriate to refer to the generic license corresponding to the Italian iCommons license.</p> <p>Section 8.f expresses a mechanism that should work as follows:</p> <ol style="list-style-type: none"> 1) if the work is used in Italy, the relationship will be regulated by: a) the Italian iCommons license and; b) the Italian copyright law and; c) the Italian law of contracts; 2) if the work is used elsewhere, the relationship will be regulated by: a) the generic license and; b) the copyright law indicated by the relevant international treaty on copyright law (usually: the Berne Convention) and; c) the law of contracts indicated by private international law of the country where protection is sought. <p>In the first case (use of the work in Italy) the license should be fully effective by virtue of simultaneous application of the Italian license, of Italian copyright law and of Italian law of contracts. In the second case (use of the work elsewhere) the generic license should achieve licensor's aims even though some clauses may be ineffective in the jurisdiction where protection is sought.</p>

13	Formal requirements	General remarks	No modifications	<p>Under Section 110 Law no. 633/1941 the transfer of copyright ownership has to be proven in writing. This formal requirement concerns the proof of the existence of the contract and doesn't affect its validity. Moreover, the licensee cannot rely on Section 110 Law no. 633/1941 to challenge the effectiveness of the license: he can use the work lawfully only as long as he accepts the license and maintains its existence. In theory the licensor might rely on lack of written evidence to challenge the effectiveness of the license, even if part of Italian legal doctrine affirm that the electronic file can work as a written evidence. The formal requirement would be fully accomplished if the license came under a digital or electronic signature (as regulated by D.P.R. 445/2000). However, it should be noted that until now no author has ever repudiated an open license (as shown by case law on open source); therefore this problem might be mainly theoretical.</p>
14	Consumer contracts	General remarks	No modifications	<p>Some difficulties arise where the licensor is a professional trader. However, these problems pertain to the subjective qualities of licensor rather than to the content of the license.</p> <p>In this case the licensor should use contracts shaped as "packages" which contain the license but take also account of the specific laws governing consumer contracts. In particular this packages should take account of laws governing:</p> <ul style="list-style-type: none"> * distance contracts (D.L. 185/99) * use of Italian language * limitations on liability (Section 1469-bis Civil Code) * warranties (Sections 1519 ff. Civil Code).

15	SIAE	General remarks	No modifications	<p>In Italy SIAE – the Italian Society of Authors and Editors, a collecting society – has the exclusive right to act as an intermediary for the exercise of the rights of public performance - including public performance by means of a satellite transmission – and mechanical and cinematograph reproduction of protected works. The author who is a registered member of SIAE can't manage freely his rights to the work. Presently the <i>status</i> of registered member of SIAE prevents the author from licensing his works under Creative Commons licenses.</p>
16	Duration	General remarks	No modifications	<p>It has been submitted that under Italian law contracts cannot last more than 30 years (by analogy with Section 1573 Civil Code). Nevertheless, it would seem that this time limit does not apply to Creative Commons licenses. Indeed the time limit set by Section 1573 Civil Code applies to contracts involving an exchange and not to contracts involving a common purpose of the parties. It seems reasonable to think Creative Commons licenses as contracts where both licensor and licensee aim at free circulation of the work and of culture in general.</p>