

Attribution-NonCommercial-ShareAlike 3.0 - DRAFT

1. Definitions

a. "Collection" means a work, such as an encyclopedia or anthology, in which the Work is included in its entirety in unmodified form along with one or more other literary works, artistic works, performances, sound recordings or broadcasts, or other works or subject matter, each constituting separate and independent works in themselves, which together are assembled into a collective whole. A work that constitutes a Collection will not be considered a Derivative Work (as defined below) for the purposes of this Licence.

b. "Derivative Work" means a work based upon the Work, or upon the Work and other pre-existing works, such as an adaptation of a literary, dramatic or musical work, a modification of an artistic work, or sound recording or performance and includes cinematographic modifications or any other form in which the Work may be recast, transformed, or adapted including in any form recognizably derived from the original, except that a work that constitutes a Collection will not be considered a Derivative Work for the purpose of this Licence. For the avoidance of doubt, where the Work is a musical work, performance or sound recording, the synchronization of the Work in timed-relation with a moving image ("synching") will be considered an Derivative Work for the purpose of this Licence.

Note: "Derivative work" replaced "adaptation" which, under the Hong Kong Copyright Ordinance (HKCO) section 29 (1), is limited to "copyright in a literary, dramatic or musical work"

Deleted "distribution" because it is not clearly defined under HKCO.

c. "Licence Elements" means the following high-level license attributes as selected by Licensor and indicated in the title of this Licence: Attribution, Noncommercial, ShareAlike.

d. "Licensor" means the individual, individuals, entity or entities that offer(s) the Work under the terms of this Licence.

e. "Original Author" means the person who creates the Work, and especially, (i) in the case of a sound recording, the producer; (ii) in the case of a film, the producer and the principal director; (iii) in the case of a broadcast, the person making the broadcast; (iv) in the case of a cable program, the person providing the cable program service in which the program is included; (v) in the case of the typographical arrangement of a published edition, the publisher.

Note: the whole paragraph has been changed according to section 11 (1)(2) of HKCO.

Deleted "reproduce" as it is not well defined under HKCO.

f. "Work" means the work or subject matter protected by copyright which is offered under the terms of this Licence, including without limitation a literary, dramatic, musical or artistic work, sound recording, film, broadcast, cable program or typographical arrangement of a published edition.

Note: the whole paragraph has been changed according to section 2 (1) of HKCO.

g. "You" means an individual or entity exercising rights under this Licence 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 Licence despite a previous violation.

Deleted "publicly perform" as it is not well defined under HKCO.

2. Fair Dealing Rights. Nothing in this Licence is intended to reduce, limit, or restrict any lawful uses free from copyright or rights arising from limitations or exceptions that are provided for in connection with the copyright protection under the Copyright Ordinance or other applicable laws.

Note: "lawful" is added before "uses" to make the meaning clearer. Not incorporated the list of "fair dealings" under HKCO sections 37 to 88 and sections 240 to 261 because it is too expensive.

Not added "fair use" as HK has not adapted "fair use" regime; not added "first sale" as HK is still restricting parallel import of copyright works.

3. Licence Grant. Subject to the terms and conditions of this Licence, the Licensor hereby grants to You, for the duration of copyright in the Work, a worldwide, royalty-free, non-exclusive, licence to exercise the rights in the Work as stated below:

Note: "for the duration of copyright in the work" replaced "perpetual" as the former is more accurate and clearer under HKCO.

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

b. to create and Reproduce Derivative Works provided that any such Derivative Work, 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."; and

Note: "derivative works" replaced "adaptation" (see section 1(b) above)

c. to publish, distribute, archive, make available, publicly perform or otherwise disseminate the Work, the Work as incorporated in any Collection, or the Work as incorporated in any Derivative Work.

Note: added "publish, archive, make available,...or otherwise disseminate..." to fill the gaps in the license that used to be covered by the "terms "distribute" and "publicly perform" in the unported licence.

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. 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 the following restrictions:

Note: deleted “and limited by” as it seems redundant.

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b. You may publish, distribute, archive, make available, publicly perform or otherwise disseminate a Derivative Work only under: (i) the terms of this Licence; (ii) a later version of this Licence with the same Licence Elements as this License; (iii) either the “unported” Creative Commons licence or a Creative Commons licence of another jurisdiction (either this or a later licence version) that contains the same Licence Elements as this Licence (e.g., Attribution-NonCommercial-ShareAlike 3.0 US) (“Applicable Licence”). You must include a copy of, or the URI, for Applicable Licence or other licence specified in the previous sentence with every copy of each Derivative Work You publish, distribute, archive, make available, publicly perform or otherwise disseminate. You may not offer or impose any terms on the Derivative Work that restrict the terms of the Applicable Licence or the ability of the recipient of the Derivative Work to exercise the rights granted to that recipient under the terms of the Applicable Licence. You must keep intact all notices that refer to the Applicable License and to the disclaimer of warranties with every copy of the Work as included in the Derivative Work You publish, distribute, archive, make available, publicly perform or otherwise disseminate. When You publish, distribute, archive, make available, publicly perform or otherwise disseminate the Derivative Work, You may not impose any effective technological measures on the Derivative Work that restrict the ability of a recipient of the Derivative Work from You to exercise the rights granted to that recipient under the terms of the Applicable Licence. This Section 4(b) applies to the Derivative Work as incorporated in a Collection, but this does not require the Collection apart from the Derivative Work itself to be made subject to the terms of the Applicable Licence.

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d. If You publish, distribute, archive, make available, publicly perform or otherwise disseminate the Work or any Derivative Works or Collections, You must, unless a request has been made pursuant to

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Note: has chosen voluntary licence scheme because Hong Kong has no compulsory licence scheme.

f. Moral rights remain unaffected to the extent they are recognized by applicable law.

Note: used version 3.0 language but deleted the terms "and not waivable" because the moral rights are waivable under HKCO section 98.

5. Representations, Warranties and Disclaimer

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Note: changed wordings to make it succinct.

7. Termination

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8. Miscellaneous

a. Each time You publish, distribute, archive, make available, publicly perform or otherwise disseminate the Work or a Collection, the Licensor offers to the recipient a licence to the Work on the same terms and conditions as the license granted to You under this Licence.

b. Each time You publish, distribute, archive, make available, publicly perform or otherwise disseminate a Derivative Work, Licensor offers to the recipient a licence to the original Work on the same terms and conditions as the licence granted to You under this Licence.

c. If any provision of this Licence is invalid or unenforceable under applicable law, it shall not affect the validity or enforceability of the remainder of the terms of this Licence, and without further action by the parties to this agreement, such provision shall be reformed to the minimum extent necessary to make such provision valid and enforceable.

d. No term or provision of this Licence 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.

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