

# Creative Commons Korea

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## Some Underlying Thoughts for the Draft

### § 1(1)

\* The definition of the derivative work is based upon that of Creative Commons' version of Attribution-NonCommercial-ShareAlike license, however, it is altered according to that of the Korean Copyright Act.

\* The Korean Copyright Act (KCA) does not know the concept of 'Collective Work', and instead protects 'compilation' as separate category of protectible work subject to the originality requirement.



Further, KCA has special provisions for *sui generis* protection for database modeled after EU Database Directive.

### **§ 1(5)**

\* KCA provides the protection umbrella for performers, producers of phonograms, and broadcasting organizations with the name of neighboring rights, but the protection is limited with less identified rights comparing with the copyright itself. This Korean version License is rendered to cover neighboring rights as well as copyright by defining 'subject matter of neighboring rights' in this License and by including 'subject matter of neighboring rights' in the scope of a Work.

### **§ 2**

\* Quite differently from the U.S. Copyright Act of 1976, KCA does not adopt the fair use doctrine, and instead, has several individual provisions on limitations to the exercise of copyright.

### **§ 3**

\* KCA provides new exclusive right, i.e., 'right to transmit electronically', to the copyright owner modeled after the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. Also, unlike the U.S. Copyright Act of 1976, KCA grants the copyright owner the right to broadcast. So, the public performance by means of a digital audio transmission is included in the right to transmit electronically.

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### **§ 4(4)**

\* §4(e)(i), (ii) & (iii) of the model legal code under Creative Commons are deleted, because the Korean copyright system has different provisions from or no provision on mechanical rights etc. under the U.S. Copyright Act of 1976. We think those provisions are just inserted to make sure that licensor still has the right to collect royalties in some instances illustrated in the model legal code with the attributes of Attribution-NonCommercial-ShareAlike.

## § 5

\* Korean contract law, heavily followed German code system, can not correspond to that of U.S., and not surprisingly has many different meaning even if it has the same terminology like 'warranty'. Thus, in this License articles pertaining to several kinds of warranties are deleted and/or simplified.

\*\* The Korean Standard Form of Contract clearly declares the exemption of liability clause even in 'intention or gross negligence' situation as void. So, even if this section tries to exempt the licensor from any form of liability under any legal theory, such an attempt is blocked by the law regulating this special type of contract. (The licensor can be free from liability out of normal negligence situation with contract.)