



Collecting Societies Language in the version 3.0 Creative Commons Licenses

[This document provides additional information regarding the implementation of the new harmonized collecting societies language as outlined in sections 5 & 6 of the CCI Affiliate Checklist for version 3.0. It should be read in combination with that document. The actual language provided in the checklist should be followed as closely as possible]

Specific language regarding collecting societies was introduced into the generic licenses as part of version 2.0 to clarify what was considered to be the obvious interaction between CC licenses and collecting society membership.

This initial approach stated that under those licenses that permitted commercial use (Attribution, Attribution-NoDerivatives and Attribution-ShareAlike) the licensor waived the right to collect both compulsory and voluntary royalties. Under those licenses that permitted noncommercial use only, the licensor reserved the right to collect royalties for any uses that were commercial in nature but otherwise authorized royalty-free noncommercial use of the work under the CC license.

This approach reflected the fact that by choosing to apply a CC license to their work, a CC licensor clearly intends to permit “free” (as in both price and freedom) uses under the terms of the applicable CC license.

The treatment of collecting society royalties in the post 2.0 jurisdiction specific CC licenses differed according to the jurisdiction — in many jurisdictions the collection of voluntary royalties was not mentioned so as not to give any misleading impression that membership of a collecting society was possible for a CC licensor. In addition, many CC licenses retained the right to collect compulsory royalties in all licenses, both those that permitted commercial use and those that permit noncommercial use only, because of the advice of local affiliates that local law would not permit the waiver of such a right.

For version 3.0 CC has decided to harmonize the treatment of collecting societies in the CC licenses. The harmonized approach still allows different jurisdictions to adopt an approach towards collective royalty collection that suits their jurisdiction but ensures that this is consistently applied across jurisdictions.

Specifically, as regards compulsory royalty collection, the licensor will reserve the right to collect these royalties in those jurisdictions in which this cannot be waived.

In those jurisdictions in which compulsory royalty collection can be waived, it will be waived completely for those licenses that permit commercial use and reserved only for commercial uses in those licenses that permit noncommercial use only.

[Note that it is possible that in a single jurisdiction there are both waivable and non-waivable compulsory licensing arrangements. In this case separate clauses for both types need to be implemented]

For voluntary royalties, the licensor will reserve the right to collect royalties for commercial uses in those licenses that permit noncommercial use only. The licensor will completely waive the right to collect such royalties for those licenses that also permit commercial use. This clause covers both individual royalty collection and “in the event that the licensor is a member of a collecting society” that collects such royalties, collection via such societies.

This approach also allows for flexibility for those artists who are members of collecting societies and use CC licenses anyway or if in future collecting society membership structures do allow some use of CC licenses, to also enjoy the benefits of their membership if their collecting society moves towards being able to collect for commercial uses of CC-licensed works.



Implementation Matrix.

To determine how to implement the new collective royalty collection clauses when drafting the 3.0 versions of jurisdiction specific CC licenses please refer to the matrix below. In a first step you will need to determine if there are compulsory licensing schemes in your jurisdiction and if these are waivable or non-waivable or if there is a mix of the two.

Depending on the outcome of this process you will either need to ignore sub-clauses (i) and (ii) [in case there are no compulsory licensing schemes] implement both (i) and (ii) [in case there are both waivable and non-waivable schemes] implement only clause (i) [in case there are only non-waivable schemes] or implement only (ii) [in case there are only waivable schemes].

In some cases it might make sense to list identified cases of either of the two cases of compulsory licensing schemes in the clause respective clauses. The decision to do this should be based on the legal assessment of the translation team.

Subparagraph (iii) should be included in all jurisdiction specific licenses.

The matrix shows which rights should be reserved and which rights should be waived for these three types of collective royalty collection: the left column for licenses that allow commercial uses of the licensed work and the right column for the licenses that do not allow commercial uses of the licensed work.

| <p align="center">BY, BY-SA, BY-ND (commercial use allowed)</p> | <p align="center">BY-NC, BY-NC-SA, BY-NC-ND (commercial uses reserved)</p> |
|---|--|
| <p align="center">Section 3 e/f (i): Non-waivable Compulsory License Schemes:</p> <p>Licensors reserves the exclusive right to collect such royalties for all uses</p> | <p align="center">Section 4 c/d (i): Non-waivable Compulsory License Schemes</p> <p>Licensors reserves the exclusive right to collect such royalties for all uses</p> |
| <p align="center">Section 3 e/f (ii): Waivable Compulsory License Schemes:</p> <p>Licensors waives the exclusive right to collect such royalties for all uses</p> | <p align="center">Section 4 c/d (ii): Waivable Compulsory License Schemes</p> <p>Licensors reserves the exclusive right to collect royalties for commercial uses,</p> <p>Licensors waives the exclusive right to collect royalties for noncommercial uses</p> |
| <p align="center">Section 3 e/f (iii): Voluntary License Schemes (membership in a Collecting society):</p> <p>Licensors waives the right to collect royalties for all uses</p> | <p align="center">Section 4 c/d (iii): Voluntary License Schemes (membership in a collecting society):</p> <p>Licensors reserves the exclusive right to collect royalties for commercial uses,</p> |

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