

**RESPONSE TO LIST COMMENTS ON VERSION 3.0 DRAFTS**

<b>No.</b>	<b>Topic</b>	<b>Comment</b>	<b>Response</b>
1.	<i>Parallel Distribution Amendment</i>	<p>One question that's come from Debian members is whether the anti-TPM wording in the 3.0 draft would, as it stands, allow parallel distribution. The draft says:</p> <p><i>You may not impose any technological measures on the Work that restrict the ability of a recipient of the Work from You to exercise the rights granted to them under the License.</i></p> <p>It could be argued that TPM applied to a Work, distributed with a “cleartext” copy or with such a copy available from the licensee, does not restrict the ability of the recipient to exercise their rights.</p>	<p>This argument can certainly be made. CC does not feel that it, as license steward, should opine on the likelihood with which a court in any jurisdiction would uphold this argument if the issue were litigated.</p>
2.	<i>Parallel Distribution</i>	<p>The anti-TPM provision should only be included in ShareAlike licenses because all licenses other than ShareAlike allow a work to be put under a more restrictive license. You could conceivably roll the work into an All Rights Reserved license as long as you don't violate the original license yourself.</p>	<p>The difference between putting a derivative under an “all rights reserved” license and into a TPMed system is that, typically, an “all rights reserved” license lets you engage in fair use and fair dealing. To date, no TPM systems allow this.</p>
3.	<i>Parallel Distribution Amendment</i>	<p>Sony is not going to change their platform for us. Millions of users aren't going to throw out their PS2s because they can't play Free Content games on them. The question becomes whether we're going to hamstring Free Software developers who want to port to this kind of platform. What purpose does it serve, besides restricting the freedom of those developers?</p>	<p>While I personally agree with the principle of parallel distribution, one argument that was made against it which I found to be convincing, is that there is no demonstrably affected, substantial community here. The number of affected people is not measurable by the number of people who purchase PS2 to play PS2 licensed games. The relevant constituency is those developers who want to put CC licensed content in a PS2 game and haven't been able to do so because of the existing license</p>

			<p>language.</p> <p>Do any such developers exist? Or are we just talking hypotheticals here?</p>
4.	<i>New generic</i>	Section 1 subsections e. and f. are missing.	Got it; 'twill be fixed in the next version. Thanks.
5.	<i>Parallel Distribution Amendment</i>	Debian is just asking that <i>creators</i> have the right to port works to the platform and formats that they choose, while ensuring the rights of downstream users to copy, modify and distribute (emphasis added).	One needs to be extremely careful in the terminology used when discussing this issue. Creators (CC licensors) have the right to put their content on a DRM platform and a non-DRM platform, under a CC license or not. The relevant issue here is whether a licensee, who may or may not be a creator, can do similarly.
6.	<i>Parallel Distribution Amendment</i>	<p><i>Scenario:</i> Alejandra records a spoken-word piece and releases the work as BY-SA 2.5. Benito mixes Alejandra's recording with a beat and a guitar background and makes the resulting song available as an MP3 and an Ogg Vorbis file, also licensed under by-sa-2.5. Carlos has an iSuck music player that only plays iSuck DRM-mandatory files. Carlos asks Benito to make an iSuck version available, but Benito can't because of the anti-DRM provisions in the 2.5 licenses. So Carlos can't listen to the song.</p> <p><i>Comment:</i> Carlos doesn't need for Benito to be able to make an iSuck version. He only needs to be able to make it himself.</p>	<p>The discussion of this scenario highlighted an important issue that is perhaps not clear in the current amended "anti-TPM" provision but that was clear in the original wording.</p> <p>The original wording stated that the licensee may not "distribute, publicly display, publicly perform, or publicly digitally perform" — significant in its omission is the word "copy." Consequently, the comment is accurate that Carlos can make a copy of a CC licensed work into an iSuck version, he just can't share it with anyone.</p> <p>The current amended anti-TPM provision will be further amended to reflect this distinction.</p>
7.	<i>Parallel Distribution Amendment</i>	We live in a complicated world with complicated legal regimes. The current licenses are mostly unreadable except by lawyers and Free Culture geeks. Leaving out 40-50 words isn't going to	Of course being a lawyer, I never think adding more words is bad; however, I do think that it complicates the message/ explanation of the effect of the

		change that.	licenses. Trying to explain that no you can't apply DRM except that you can in this limited situation with these several caveats makes explaining CC licenses more difficult.
8.	<i>Parallel Distribution Amendment</i>	There are more than 5 million PSPs sold in North America and millions of people have game consoles, text reads and music players that require some sort of DRM. This scenario is not "an exception."	As noted above, the number of consumers of DRM-ed products is not the relevant measure; the relevant measure is the number of developers who wish to put CC-licensed content on proprietary systems but, to date, have not been able to do so.
9.	<i>Parallel Distribution Amendment</i>	Does the DRM clause protect against someone taking a copyleft game and porting to run on the PSP with hardware DRM and then only making the final executable available in non-DRM channels, holding the source code private.	Assuming the question goes to the proposed parallel distribution anti-TPM clause, then the answer is that the proposed clause does allow this. This is not the situation the proposed clause or CC licenses are designed to address.
10.	<i>Parallel Distribution Amendment</i>	Perhaps BY-SA should have the anti-DRM provisions and BY or BY-NC should not?	All of the CC licenses have an anti-DRM/TPM clause in them; not sure why this should now be absent from those licenses that permit derivatives without a ShareAlike condition.  It is only in the licenses that contain a ShareAlike license element that there is any prohibition on the maker of the derivative work using DRM.
11.	<i>Parallel Distribution Amendment</i>	Does parallel distribution force the unencumbered to be distributed with the encumbered (and in the case of a program this includes equal versions on a free platform)?	No, the proposed parallel distribution clause does not require the unencumbered (assuming you mean non-DRM format) to be distributed with the encumbered (assuming DRMed format).
12.	<i>Process</i>	Shock that iCommons would allow an in-person vote in a country that was very expensive to get to determine policy for the organization.	This statement makes a number of erroneous assumptions. iCommons did not allow an in-person vote determine policy. Creative Commons held discussions amongst

			<p>its international project leads as part of the CC policy day (<a href="http://www.icommons.org/issummit/docs/final-programme.pdf">http://www.icommons.org/issummit/docs/final-programme.pdf</a>). This discussions took place at the Summit as the culmination of discussions that had occurred and concluded via the affiliate email list.</p> <p>That the views of international project leads would be consulted prior to the release of the current drafts was signaled in the outline posted to the list back in May (<a href="http://lists.ibiblio.org/pipermail/cc-licenses/2006-May/003557.html">http://lists.ibiblio.org/pipermail/cc-licenses/2006-May/003557.html</a>).</p>
13.	<i>New generic</i>	<p>Clause 3.b. contains a term “Adaptations Works” - I think “Adaptations” is more appropriate here given that Adaptation is defined in 1.b. as “a work based upon the Work, or...” It seems the term “Adaptations Works” is used only here, “Adaptations” are used in other parts of the license.</p>	<p>Thanks for spotting. This should read “Adaptations” not “Adaptations Works.”</p>
14.	<i>New generic</i>	<p>The CC draft uses “Work” and “Adaptation” in parallel clauses that are typically nearly identical. The GPL v3's usage of a “covered work,” defined to be “either the unmodified Program or a work based on the Program,” is much more clear. The duplication in cc v3 often makes it hard to find the distinction between works and programs. Would it perhaps be possible to define “Covered Works” as “The Work, or any Adaptation thereof”?</p>	<p>If anything “Licensed Work” may be clearer but regardless of the clarity of the term, continually referring to the two different categories of works is, I believe, important from a drafting perspective to clearly highlight to the reader those instances where only one of the categories of materials is relevant.</p>
15.	<i>New generic</i>	<p>Why is the Work available “only under the terms of this license” (4.b) but Adaptations get additional permissions?</p>	<p>Not sure what the source of confusion here is — clause 4(b) deals with “Adaptations,” not “Works” so it’s not clear to me how clause 4(b) gives additional permissions to Adaptations that are</p>

			not given to “Works.” Clause 4(b) is the ShareAlike clause, consequently, the additional conditions (not permissions) in this clause attach only to Adaptations.
16.	<i>Version 3.0 change</i>	<p>Clause 3(b), must the labeling/identifying of changes be in the work itself, or would it be sufficient to have them outside the work, for example, in the description of the link? I assume the latter, but it might be good to make this slightly more clear. (Tangentially, this seems like an odd clause to me- is there actually a demonstrated need for this? We seem to get along OK in Free Software without any equivalent.)</p>	<p>I think the use of the term “reasonable steps” provides sufficient flexibility to address the primary concern. In any event, this clause is no difference to the requirement that has always existed in clause 4(d) of the license with respect to the labeling of derivative works. This amendment simply makes the requirement more prominent and the permission to make derivatives conditional on clear labeling to promote compliance with this condition.</p>
17.	<i>New generic</i>	<p>Regarding the sentence with footnote 7 of the 4.b., which reads:          “You may not offer or impose any terms on the Adaptation that restrict the terms of this License or the ability of the recipient of the Work to exercise of the rights granted under the License.”</p> <p>The Work, as in other parts of the license, means the licensed Work, I think, as differentiated from the Adaptation.</p> <p>I wonder if a similar language is needed for Adaptation, then.</p> <p>“You may not offer or impose any terms on the Adaptation that restrict the terms of this License or the ability of the recipient of the Adaptation to exercise of the rights granted under the License.”</p> <p>Or is it the case that the “Work” here was meant to mean “Adaptation”?</p>	<p>Yes, this provision should read “the ability of the recipient of the Adaptation to exercise...” — apologies for the confusion.</p>

18.	<i>New generic</i>	<p>FSF believes there are practical problems with the use of “Distribute” in a generic/international license:</p> <p><a href="http://gplv3.fsf.org/denationalization-dd2.html">http://gplv3.fsf.org/denationalization-dd2.html</a></p> <p>Has CC looked at this discussion? Is there any intent to replace the Distribute/Publicly Perform language with something more jurisdiction-neutral in the generic license?</p>	<p>This raises a valid concern, namely that it is important to try as much as possible to use truly international language and shy away from terms that have jurisdiction- or industry-specific language. However, I think the concerns of the FSF are not applicable with respect to this term in the new generic license for the following reasons.</p> <p>Firstly, clause 8(f) of the new generic takes sufficient account of the different types of national implementation of treaty provisions (“These rights and subject matter take effect in the relevant jurisdiction in which the License terms are sought to be enforced according to the corresponding provisions of the implementation of those treaty provisions in the applicable national law”). Secondly, the FSF is seeking to “denationalize” the use of the term “distribute” which it has used to date because this is a right granted under US law. The use of the word distribute in the CC new generic license does not reflect its inclusion in US copyright law but instead its inclusion in the relevant international treaties in relation to which this license was drafted (<i>see eg.</i>, Article 14 of the Berne Convention  <a href="http://wipo.int/treaties/en/ip/berne/trtdocs_wo001.html#P174_33037">http://wipo.int/treaties/en/ip/berne/trtdocs_wo001.html#P174_33037</a>, Article 6 of the WIPO Copyright Treaty  <a href="http://wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#P62_6959">http://wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#P62_6959</a>, and Article 8 of the WIPO Performers and Phonograms Treaty  <a href="http://wipo.int/treaties/en/ip/wppt/trt">http://wipo.int/treaties/en/ip/wppt/trt</a></p>
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			<p><a href="#">docs_wo034.html#P101_10992</a>).  Consequently, it is sufficient jurisdiction-neutral. Finally, the FSF’s concerns in relation to the use of the term distribute also arise because the term has an industry, non-legal term. Because CC licenses are not drafted for software, this concern is not relevant to the new generic license.</p>
19.	<i>New generic</i>	The use of “effective technological measures” in 4.b seems very US-specific- that is straight out of DMCA, no?	No, <i>see</i> Article 11 of the WIPO Copyright Treaty ( <a href="http://wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#P87_12240">http://wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#P87_12240</a> ) and Article 18 of the WIPO Performers and Phonograms Treaty ( <a href="http://wipo.int/treaties/en/ip/wppt/trtdocs_wo034.html#P141_21174">http://wipo.int/treaties/en/ip/wppt/trtdocs_wo034.html#P141_21174</a> ).
20.	<i>Version 3.0 change</i>	Clause 4.d.i., there appears to be a missing ) after Attribution Parties.	Thanks for spotting — this will be remedied in the final.
21.	<i>New generic</i>	Clause 4.f. (“You must not distort...which would be prejudicial to the Original Author's honor...”) seems like it induces a strong chilling effect on derivative works, given the impossibility of understanding the cultural contexts of honor or reputation of the original author. Pragmatically, it seems to make this license practically like ND- is this the intent? or does the “except as permitted by applicable law” clause give non-author's rights countries an out here?	The issue of the interaction of the moral right of integrity and the right to make derivatives is an interesting one. However, I don’t think that it is correct to state that the recognition of the moral right of integrity necessarily renders the license similar to a NoDerivatives license. With the exception of Japan (discussed at #27 below), there is a realm within which a derivative work can be made without risk of infringing the right of integrity. The moral right of integrity has been retained (whether implicitly or explicitly) in all ported-CC licenses (with the exception of Canada and Japan), consequently, the new generic simply reflects this existing policy decision (I also note that Canada’s version 3.0 licenses will be amended to retain the right of

			<p>integrity; CC Japan’s licenses deal with the uniqueness of their moral right of integrity as specified below at point #27). The phrase “except as permitted by applicable law” recognizes that national laws may provide certain defenses to infringement of the moral right of integrity. The provision that allows for those jurisdictions that do not recognize the moral right of integrity (which to the best of my knowledge is only the US, which, will have its own ported license at the end of this process) is the language in clause 8(f) quoted above in comment #18.</p>
22.	<i>MIT concerns</i>	<p>The explanation for the new license stated:</p> <p>“to address some concerns of one of our first and very prominent license adopters — MIT, with their OpenCourseWare project (<a href="http://ocw.mit.edu/">http://ocw.mit.edu/</a>)”</p> <p>The “OpenCourseWare” project is licensed not CC-SA as I would have expected, but CC-NC-SA.</p>	<p>The concerns of MIT are reflected in the amendments to clause 3(b), the no endorsement language and the inclusion of “as defined in clause 1” when referring to “Works,” “Derivative Works” and “Collective Works.”</p>
23.	<i>Definition of Non-Commercial</i>	<p>First, why is “OpenCourseWare” licensed with the worst possible combination of CC licenses? NC SA? Has anyone told these people about the Open Source definition and the fact that they fail miserably to meet that definition of "Open"?</p>	<p>This is a question for MIT, not this list.</p>
24.	<i>Definition of Non-Commercial</i>	<p>Second, is the reason that it's been so painfully hard to define what “NonCommercial” really is, is because CC had to twist the license to let their “first and very prominent license adopters” define noncommercial to mean exactly what they wanted it to mean?</p>	<p>Obviously, I think it is possible to define what NonCommercial is; otherwise I wouldn’t be pressing to clarify what it means. CC could not (even if it wanted to, which it doesn’t and isn’t trying to do) define what NonCommercial means in <i>all</i> existing CC NC licenses based on</p>



			<p>what <i>one</i> licensor thought the term meant. A court will look to the relevant intention of the specific licensor. It is our responsibility to ensure that the Guidelines (if they are adopted) reflect the views of as many NC licensors as we can find (which is what we are planning to do to the greatest extent possible).</p>
25.	<i>Definition of Non-Commercial</i>	<p>Does CC-NonCommercial mean what people generally think of noncommercial to mean? Or does CC-NC mean what MIT wanted it to mean? Because the fact that the guidelines specifically lists “Nonprofit educational institution/library” as an allowable NC user (see A1b), and specifically allows money to change hands for a CC-NC work if the recipient of the money is an “educational institution” (see C2i)?</p>	<p>The NonCommercial Guidelines were drafted, as I explained when I posted them to this list back in January 2006 (<a href="http://creativecommons.org/weblog/entry/5752">http://creativecommons.org/weblog/entry/5752</a>) to take account of the apparently but actually not really that divergent views of what the phrase means on the cc-education list and the cc-licenses list. MIT have not yet given any input on the guidelines, and I am not even sure if it is aware of their existence. The specific provisions for educational institutions reflects the view of noncommercial held by the cc-education list and is, in my view, reconcilable with the view held on the cc-licenses list.</p> <p>Whether NonCommercial means what people generally think NonCommercial means is something that CC is continuing to work on and part of the reason we published the guidelines – to get relevant and necessary feedback. We will hopefully be moving forward with more ways to confirm whether the NonCommercial Guidelines reflect what CC NC licensors and CC NC licensees think NonCommercial means later this year.</p>
26.	<i>No termination</i>	<p>Creative Commons encompass really a wide range of works and usage</p>	<p>This suggestion raises an interesting issue but I think there are several</p>

	<i>for honest mistake</i>	<p>environments compared to a software license such as GPL, I think. In a new environment, there might be some uncertainty regarding what constitutes license compliance and what constitutes license violation, even for those who understand complex copyright and other laws, and read license word to word. An honest mistake, some of them corrected quickly, under that kind of uncertainty should be able to keep licensee status in my opinion.</p>	<p>impediments to its implementation.</p> <p>Firstly, I think the CC licenses already anticipate the situation in which a person who has violated the licenses is then excused by the licensor. The definition of “You” states that the terms “means an individual or entity exercising rights under this License 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 License despite a previous violation.”</p> <p>Secondly, the GPL v 3.0 simply sets out a notice procedure rather than any leeway for an “honest mistake.”</p> <p>Thirdly, I think this suggestion is unwise because: (i) the automatic termination provision is a powerful tool to encourage and enable license compliance in the event of breach; (ii) it is incredibly difficult to define, know or understand what would be an “honest” mistake.</p>
27.	<i>Moral rights</i>	<p>Japanese copyright law defines right to integrity more broadly than Berne Convention does, and a wide range of transformation or modification of a work could constitute an infringement of the right. So perhaps it is somewhat socially necessary to have a workaround.</p>	<p>Yes, as noted above the interaction of the moral right of integrity and the right to make derivatives raises an interesting issue. Because of the specific nature of the laws in Japan, in the CC Japan licenses the moral right of integrity is not retained in those licenses that permit derivative works whereas it is retained in those that prohibit them. That said, you raise a good point and the possibility for this situation occurring in countries other than Japan and/or for the new generic to be enforced in Japan requires a slight tweaking of this clause.</p>

28.	<i>New generic</i>	Does “as authorised by copyright” mean “by relevant copyright exceptions,” or “by copyright and any relevant copyright exceptions,” or are exceptions part of copyright anyway?	If this has been unclear, then I am happy to clarify this now because this language is not new to the new generic. The phrase “as authorized by copyright law” means the exceptions and limitations to copyright law.
29.	<i>New generic</i>	Clause 1(a) provides that “literary and artistic works” is a Berne-ism, but the layperson is going to wonder whether audio works, video and so on are covered. It might be worthwhile just explaining that all kinds of creative works are covered.	Neither audio works or videos are covered by the phrase “literary and artistic works;” those works are covered by the terms “phonograms” and “cinematographic work” respectively.
30.	<i>New Generic</i>	In Clause 1(b) I assume that the concept of “adaptation” is a genericisation of “derivative.” But Berne uses the term “derivative,” and “adaptation” is listed as a kind of derivative. If this is a grey area how about something like GPL-3's “a work based on the program,” for example “a new work based on the licensed work” or “a new work containing some or all of the licensed work.”	<p>The Berne Convention only uses the term “derivative works” in the title of Article 2 (<i>see</i>: <a href="http://wipo.int/treaties/en/ip/berne/trdocs_wo001.html#P85_10661">http://wipo.int/treaties/en/ip/berne/trdocs_wo001.html#P85_10661</a>). It also refers in the title of Article 8 (<a href="http://wipo.int/treaties/en/ip/berne/trdocs_wo001.html#P138_25087">http://wipo.int/treaties/en/ip/berne/trdocs_wo001.html#P138_25087</a>) to the “right of translation” and in Article 12 to the “right of adaptation, arrangement and other alteration” (<a href="http://wipo.int/treaties/en/ip/berne/trdocs_wo001.html#P168_31376">http://wipo.int/treaties/en/ip/berne/trdocs_wo001.html#P168_31376</a>).</p> <p>Consequently, it is not accurate to say that “derivative” is the only term used in Berne or that “adaptation” is a type of “derivative.”</p> <p>Sub-article (3) of Article 2 (which contains the title reference “derivative works”) provides the following description “Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.” Because the term “adaptation” is used more frequently in the Berne</p>

			<p>Convention, this is the term that has been used in this license. The GPL language does not reflect this treaty language and reflecting the treaty language is the point of this license. In any event, the term that is used for a definition is not as important as the actual content of the definition and the actual content of this definition makes clear the subject matter to which it refers.</p>
31.	<i>New generic</i>	<p>In Clause 1(d) surely for the purposes of this copyright license the “author” is in fact just “the copyright holder”?</p> <p>Would it be useful to identify the author as such rather than enumerating possible kinds of author?</p> <p>The performer will presumably hold the copyright on the recording. If they do not, they presumably don't have the right to license the work. So is the “performer” just “the recording copyright holder”?</p> <p>I cannot find any reference to “a phonogram” in Berne. Would “a recording” not be more generic?</p>	<p>To address each of these comments:</p> <p>Firstly, the author can often differ from the copyright holder and, in many instances, such as with respect to moral rights, it is important to maintain a distinction. This is nothing new in this draft; this distinction occurs in all CC licenses.</p> <p>Secondly, performers may be the author of and/or copyright owner of a performance, which may or may not be captured in a recording. Consequently, it is important to maintain this as a separately identified category of author.</p> <p>Thirdly, the reason the term “phonogram” is not found in the Berne Convention is because it is dealt with in the Rome Convention (<i>see</i>: <a href="http://wipo.int/treaties/en/ip/rome/trtdocs_wo024.html">http://wipo.int/treaties/en/ip/rome/trtdocs_wo024.html</a>). As is evident from clause 8(f), this license is drafted based on more than just the Berne Convention.</p>
32.	<i>New generic</i>	<p>In Clause 1(h) does the “by them” mean the performer or the public? If the performer, can they make the performance available under (eg) DRM or payment (for NC...)? If not this</p>	<p>Used here “by them” means the members of the public. This phraseology reflects Article 8 of the WIPO Copyright Treaty (<i>see</i>: <a href="http://wipo.int/treaties/en/ip/wct/trtdo">http://wipo.int/treaties/en/ip/wct/trtdo</a></p>

		limitation should be noted. If the public, the public should not be able to demand a particular kind of performance from the performer.	<a href="#">cs_wo033.html#P78_9739</a> ). In my view, with the reference to the treaty and the context within which this phrase appears, the meaning of the term is clear.
33.	<i>New generic</i>	In Clause 1(j) is the circus performer language designed to capture “work not captured in a fixed form”? If so would this not be a better definition to use, despite the fact that it is optional for signatory countries. I admit that a malicious party is unlikely to employ an army of clowns to try to circumvent CC licensing.  I'm not sure this section gains more in completeness than it loses in complexity but I don't know what the alternative is.	No, this language is designed to capture Article 9 of the Rome Convention ( <i>see</i> : <a href="http://wipo.int/treaties/en/ip/rome/trt_docs_wo024.html#P111_9421">http://wipo.int/treaties/en/ip/rome/trt_docs_wo024.html#P111_9421</a> ).  Clause 1(j) is long because it encompasses the different definitions of different types of protected subject matter across five different treaties.
34.	<i>New generic</i>	In Clause 1(l) where is the idea of “high level license elements” defined?	The idea and meaning of “high level license elements” is defined in this definition by the examples provided in the definition that follow this term.
35.	<i>New generic</i>	In Clause 2 *please* explicitly mention Fair Dealing rights as well, ie. “Fair Use Rights / Fair Dealing Rights.”	Again, the title of the clause should not be read to limit the meaning to just the fair use doctrine in the US, particularly given the broad, expansive and jurisdictionally non-specific wording of the actual clause; however, in the interests of satisfying the aversions of the rest of the world to US phraseology, it would be an easy change to call this clause “Fair dealing.”
36.	<i>New generic</i>	In Clause 3 it might be better just to say “...for the duration of copyright on the work” rather than say perpetual (which may be legally problematic) then mention the term in parentheses.	The ordering of the terms should not impact the intended meaning nor a court’s interpretation. CC’s legal analysis is that the statement of perpetuity will be read to be tempered by the phrase that appears in brackets.

37.	<i>New generic</i>	In Clause 3(d) is this right implicit by virtue of sharealike?	No. The right to share adaptations with others is separate from the requirement that those adaptations be licensed under the same or similar license terms.
38.	<i>New generic</i>	In Clause 4 the title “Restrictions” is bad. Responsibilities? Requirements?	This title is not new to CC licenses and aptly describes the restrictions on the rights granted in clause 3.
39.	<i>New generic</i>	In Clause 4(a) which precise URI? Perhaps “The official URI” or “The creativecommons.org URI.”	This terminology is not new to this new generic license. The existing wording means the URI for the license.
40.	<i>New generic</i>	In Clause 4(b) “impose terms,” or “impose conditions whether legally, technologically or by other means”? The latter form covers DRM as well and makes the problems with DRM clear.	This terminology is not new to this new generic license. In any event, the provision is clear as to what it means and it is necessary to keep the legal terms and technological measures separate so that the latter can reflect the language of the relevant treaties.
41.	<i>New generic</i>	In Clause 4(d) can this lead to copyright notices being removed? I appreciate that copyright notices are not required by law and could break the right of (dis-)attribution. But this still seems wrong as it may make the provenance of licensed work harder to identify.	This provision is not new to the new generic license. While it may make it difficult, it does not make it impossible.
42.	<i>Parallel Distribution</i>	I'm surprised nobody AFAICT has suggested just that -- rather than disallow DRM, explicitly give authority to circumvent. The DMCA seems to allow this -- <a href="http://thomas.loc.gov/cgi-bin/query/D?c105:6:./temp/~c1059gv3KK:">http://thomas.loc.gov/cgi-bin/query/D?c105:6:./temp/~c1059gv3KK:</a>  ` (A) to `circumvent a technological measure' means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a	While the use of the term “copyright owner” as used in Section 1201 is arguably imprecise, the conclusion that it authorizes CC licensor to consent to the circumvention of a third-party’s TPM applied by a CC licensee is seriously flawed.  To date, to the extent the courts have considered this term, it has been in the context of movie studios authorizing DVD manufacturers to make DVD players that read CSS; in

		<p>technological measure, without the authority of the copyright owner; and</p> <p>GPLv3 draft 2 maybe does this —  <a href="http://gplv3.fsf.org/gpl-draft-2006-07-27.html">http://gplv3.fsf.org/gpl-draft-2006-07-27.html</a></p> <p>No covered work constitutes part of an effective technological “protection” measure under section 1201 of Title 17 of the United States Code. When you convey a covered work, you waive any legal power to forbid circumvention of technical measures that include use of the covered work, and you disclaim any intention to limit operation or modification of the work as a means of enforcing the legal rights of third parties against the work's users.</p>	<p>the context of Real Networks suing for the cracking of their DRM, or in the context of a garage door opener’s consent to a consumer unscrambling a code they applied to their own garage door open. In other words, the relevant copyright owner who can authorize circumvention of a TPM is the copyright owner of the work who applied the TPM to the work in the first place or the technology company that developed the TPM and applied it to the work with the consent of the copyright owner of that work.</p> <p>It would defeat the purpose of Section 1201 (which is to protect the technological locks voluntarily applied by copyright owners to their works) if Alejandra could, for example, apply a CC license, with a circumvention consent provision in it, to her work and Benito could then place it on iTunes and, by virtue of the CC license, Carlos could then lawfully decrypt iTunes. Given the technological measure referred to in Section 1201 has to have been applied with the authority of the copyright owner, this consent provision does not seem to give copyright owners the power to authorize the circumvention of technological measures applied by someone else such as a licensee. If this were the case, competitors could release their works on terms that would authorize the circumvention of another’s TPM.</p> <p>Finally, GPL v3 draft 2 does not seem to be invoking this provision. The quoted text seems to be saying that GPL-licensed code cannot form part of a technological measure that</p>
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			is protected under Section 1201. It is not saying that a copyright owner has the power to authorize the circumvention of a technological lock applied by someone else to their work.
43.	<i>Parallel Distribution</i>	I suggest replacing “restrict” in each TPM-ban clause with “have the intent or effect of restricting” similar to the CC Scotland licenses.	I’m not totally clear why this change is necessary — I assume the inclusion of “have the intent of” in the Scottish license reflects the wording of the applicable law in Scotland.
44.	<i>Process</i>	Finally, please can someone tell us where to find the record of the rejections by international affiliates and how the CC decision-making works? I've had a bit of a search of creativecommons.org but haven't found details. I thank the cc-nl lead for explaining his motives here, but I'm only guessing about the others.	There is no record of the reasons other than the reasons stated in my blog post of August 9, 2006 ( <a href="http://creativecommons.org/weblog/entry/6017">http://creativecommons.org/weblog/entry/6017</a> ).