

Creative Commons 2011 CC Global Summit
Summary of 4.0 Discussions & Next Steps
(prepared for the CC Affiliate Network)

I. Overview

The [legal sessions](#) at the Summit focused on several important 4.0 topics. The discussions were intended to ensure affiliates have a voice in shaping key issues early in the process, prior to CC HQ producing a first draft of the licenses. This is an intentional departure from how CC has operated in the past when developing new license versions.

The central 4.0 topics discussed are summarized briefly below, together with CC's planned next steps for producing a first draft of the 4.0 licenses. Please note the plans are not set in stone. However, given the nature of the discussions at the Summit, we believe these plans align with the opinions of a sufficiently large number of affiliates and we will start drafting accordingly.

- Timing;
- Developing a global license suite;
- Licensing sui generis database rights; and
- Process.

As for other potential changes, many have been identified by CC and affiliates. We are working to populate a wiki with those of which we are aware, as well as with the topics discussed at the Summit. We will finalize and announce the discussion wiki the first week of November.

II. Timing

Several reasons were identified for starting the versioning process now, including important adoption-related opportunities that could be lost if we delay versioning. Briefly stated, the main reasons include the following:

- It is increasingly apparent that the current treatment of sui generis database rights in the CC licenses (v3.0) is sub-optimal for at least some important producers and users of data, databases and public sector information. Our current treatment of those rights in the EU ported licenses is a factor hindering adoption of CC by would-be adopters, including governments.
- Several IGOs would like to adopt CC licenses for their own works. Their unique legal situation, however, hinders their ability to use CC licenses at this time.

- Other reasons for versioning at this time were also discussed, including the desire to create a license that is more "international" than the current 3.0 suite. Improving the licenses on this point would assist with adoption efforts in countries that have not ported, or that have ported but not versioned up to 3.0.

Net: We plan to proceed with the 4.0 versioning process now.

III. Developing a global license suite

The proposition put forth by CC -- that we should work to create a 4.0 license suite that operates without porting in as many jurisdictions as possible -- is an idea that had been raised with several affiliate teams prior to the Summit, with a good amount of support. The Summit provided the first opportunity to surface the idea with the larger network and discuss its merits as a group before committing.

Benefits and complications for pursuing the idea were identified and discussed in several sessions. Reasons articulated in support of a global suite included avoiding the confusion caused by multiple ported licenses, avoiding (further) license proliferation, eliminating differences between those jurisdictions with resources to port and those that have not ported and will not port for the foreseeable future, the resource-intensive processes and opportunity costs, accounting for the reality that CC is unique among public license stewards (no other public licenses are ported), and academic questions about whether porting was/is required as a legal matter for enforceability purposes.

Similarly, a number of affiliates voiced concerns over the proposal. Those included questions as to whether it is possible to create a single license suite that operates as intended around the world, anticipated resistance to adoption by national governments who are accustomed to using a localized version, the wisdom of eliminating a process that plays a role in building community and understanding for the licenses, and more.

Emerging from the discussion was a consensus supported by a majority of the affiliates present, to pursue an international license suite (without porting) if possible.

Net: We agreed to delay a decision on whether to continue porting until we are farther along in the process. Notwithstanding, we also agreed to proceed in our drafting with the intention of creating licenses that can be used in, and are acceptable in, as many jurisdictions as possible.

Important side note: We need all affiliates to participate actively throughout the process, more so than perhaps some have during past versioning efforts. We need your expertise to understand and address any limits on how the licenses will operate around the world. This will help us make a fully

informed decision on the future of porting.

Second side note: Many subsidiary issues were also discussed. Those included license usability, drafting from an international (not a U.S.) perspective, and official translations. These will be summarized on the wiki with links to relevant presentation materials.

IV. Licensing sui generis database rights

An important argument made in support of versioning at this time is the treatment of sui generis database rights (SGDRs) in the v3.0 licenses. The 3.0 licenses (unported and ported) are silent with respect to licensing of SGDRs except in those licenses ported to the laws of EU jurisdictions (and a few others). In those licenses ported to EU jurisdictions (and a few others), SGDRs are licensed alongside copyright but the license conditions are waived (BY, NC, SA and ND, as appropriate) when SGDRs alone are implicated by use of the database. This policy, forged with affiliates in Dubrovnik in 2007, was intended to neutralize SGDRs, considered ill-advised and bad policy by many, particularly in the sciences.

At the Summit, we explored whether CC's approach ought change in 4.0 given both the license adoption opportunities noted above, and the complexities and usability issues associated with licensing these rights differently than copyright and differently among the CC 3.0 licenses. The affiliate network expressed their strong dislike for SGDRs. At the same time, it was recognized that such rights will continue to exist for the foreseeable future and continue to hinder their adoption work.

While opinions were expressed both in favor of and against changing the CC policy, most of the EU affiliates in particular (where the issue is most pressing) expressed support for changing the policy however much SGDRs are disliked. Several affiliates strongly cautioned that were a change in policy to be effected, care must be taken not to have CC's shift in policy misinterpreted as support for SGDRs or for their expansion to other jurisdictions. Relatedly, affiliates also strongly recommended that CC take active steps to educate users where such rights do not exist on the licenses' inapplicability.

Net: On balance, support for changing the policy exists among the affiliates found support, particular from those in jurisdictions where SGDRs (or similar) exist and challenges felt most acutely. CC intends to pursue this course in 4.0 absent some yet-to-be identified, unacceptable consequences.

Important note: The discussion also touched on other related rights that similarly complicate the re-use of CC-licensed works. We will continue to work with the affiliates and others to identify and consider treatment of those rights in 4.0 throughout the versioning process.

V. Process

With the Summit now behind us, the immediate next step is to launch and announce the 4.0 wiki (with related announcements to lists). The wiki will be an important forum for posting suggestions and comments for improvements to the licenses. It will also be populated with discussions that take place on the CC license discuss list.

Please expect an announcement to this list the first week of November with information and a link to the wiki, prior to the public announcement.

CC HQ is starting work on the first draft of the licenses consistent with the plans mentioned above. Note, however, that we will wait to publish the first a draft until early 2012 to allow further discussion on the issues above as well as discussions on other suggested improvements to the licenses.