

## News

# Copyright Experts Discuss CC License Version 4.0 at the Global Summit

**Diane Peters, October 25th, 2011**

The Creative Commons [2011 Global Summit](#) was a remarkable success, bringing together CC affiliates, board, staff, alumni, friends and stakeholders from around the world. Among the ~300 attendees was an impressive array of legal experts. Collectively, these experts brought diversity and depth of legal expertise and experience to every facet of the Summit, including knowledge of copyright policy across the government, education, science, culture, and foundation sectors. The contributions made by presenters and participants alike added value to the discussions and resulting outcomes.

We designed the Summit's [legal sessions](#) (pdf) to leverage this expertise at the beginning of the 4.0 license versioning process. We deliberately chose not to present a draft of the 4.0 licenses before soliciting early input from our [affiliate network](#) and others on several of the most important policy decisions we'll be making. The sessions were designed to consider these key issues in an interactive forum. Next steps in the versioning process will be announced shortly to this blog and the CC [license discuss](#) list. Subscribe to stay apprised of future announcements about the 4.0 process and how you can contribute.

## Launching the 4.0 Versioning Process

Professor Mike Carroll, CC board member and founder, kicked off the legal track by announcing CC's plans for beginning the versioning of its licenses from the current [3.0 version](#) to 4.0. His remarks provided context for why CC intends to version now given the many opportunities at hand and the current environment of accelerating adoption by governments and others.

CC's goals and those of our affiliate community for 4.0 are ambitious, and include:

- *Internationalization* – position our licenses to ensure they are well received, readily understood, and easily adopted worldwide;
- *Interoperability* – maximize interoperability between CC licenses and

- other licenses to reduce friction within the commons, promote standards and stem license proliferation;
- *Long-lasting* — anticipate new and changing adoption opportunities and legal challenges in the legal code, allowing the licenses to endure for the foreseeable future; and
  - *Data/PSI/Science/Education* — recognize and address impediments to adoption of CC by governments as well as other important, publicly-minded institutions in these and other critical arenas.

## **Further Internationalization of the CC Licenses**

Until version 3.0, the CC licenses had been [drafted against U.S. copyright law](#) and referred to as the “generic” licenses. At version 3.0, that changed as we made our first attempt to draft a license suite utilizing the language of major international copyright treaties and conventions. While a vast improvement over pre-3.0 versions, we recognize there is still room to improve and ensure our licenses are well-received, understood, and usable on an international scale.

Thus, one of our major goals for 4.0 is to engage with CC’s affiliates around the globe to craft a license suite that is another step further removed from its U.S. origins, and more reflective of CC’s status as an international organization with a global community and following. This focal point will impact the versioning process in several respects, and will require the engagement and focus of our affiliate network, other legal experts and the broader community. As part of this discussion, Paul Keller of [CC Netherlands](#) and Kennisland led a robust conversation on the wisdom of continuing the CC license porting process, and Massimo Travostino of [CC Italy](#) and the NEXA Center gave a presentation on the [legal and drafting issues](#) involved with creating global licenses that would not require porting.

## **Addressing Restrictions Beyond Copyright – sui generis database rights and more**

By design, CC licenses are intended to operate as [copyright licenses](#), granting conditional permission to reuse licensed content in ways that would otherwise violate copyright. Once applied, wherever copyright exists to restrict reuse, the CC license conditions are triggered, but no otherwise. Yet what about that category of rights that exist close to, or perhaps even overlap with, copyright, making it difficult to exercise rights

granted under CC licenses without additional permissions? This question drew the focus of Summit attendees across several of the legal sessions, particularly in the context of [sui generis database rights](#) that exist in the European Union and a few other places as a result of free trade and other agreements. Participants evaluated the practical problems associated with continuing [CC's existing policy of waiving CC license conditions](#) (BY, NC, SA and ND, as applicable) in the 3.0 EU ported licenses where only sui generis database rights are implicated. Among others, Judge Jay Yoon of CC Korea provided a practical perspective on the challenges associated with CC's current policy.

Sui generis database rights are widely criticized as [bad policy](#), and are [unproven](#) in practice to deliver the [economic benefits originally promised](#). While these views were shared by the vast majority of affiliates attending the Summit, many also agreed that a reconsideration of CC's current policy is appropriate, and that we should shift to licensing those rights in 4.0 on the same terms and conditions as copyright. This change in policy would be pursued in the greater interest of facilitating reuse, meeting the expectations of licensors and users, and growing the commons.

[As foreshadowed earlier this year](#), and now with the support of CC's affiliate network, CC intends to pursue this course in 4.0, absent as-of-yet-unidentified, unacceptable consequences. Importantly, we will take great care to ensure that by licensing these rights where they exist we do not create new or additional obligations where such rights do not exist.

As the steward of our licenses and one of several stewards of the greater commons (including the [Free Software Foundation](#) and the [Open Knowledge Foundation](#)), we remain mindful and take with utmost seriousness the risks associated with shifting course. We fully intend to (and expect to be held accountable for) strengthening our messaging to policymakers about the dangers of maintaining and expanding these rights within the EU and beyond, and of [creating new related rights](#). We also plan to develop ample education for users to help avoid over-compliance with license conditions in cases where they do not apply.

## **Defining Noncommercial; License Enforceability**

The legal program also included a presentation by Mike Linksvayer on [the definition and future of noncommercial](#), and an update from Andres Guadamuz on [CC license enforceability](#). While a decision about retaining or modifying the definition of NC in 4.0 remains open, a strong case was made for leaving the definition intact given its increased understanding

and acceptance. And CC's licenses in court continue [their strong enforceability record](#), most recently with a favorable decision in [September 2011 that enforced BY-SA in Germany](#). We plan to take caution when drafting 4.0 to avoid making changes that could compromise this record.

**Thanks to everyone who contributed to the 4.0 discussions and helped make the Summit a success!**