

Significant relevant differences between Creative Commons Attribution-ShareAlike 3.0 Unported and 4.0 International as licenses for massively-collaborative documentation for open source software projects

by Adam Saunders

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Word length

About 3100 words long

Moral Rights clause text (Section 4(d))

“Except as otherwise agreed in writing by the Licensor or as may be otherwise permitted by applicable law, if You Reproduce, Distribute or Publicly Perform the Work either by itself or as part of any Adaptations or Collections, You must not distort, mutilate, modify or take other derogatory action in relation to the Work which would be prejudicial to the Original Author’s honor or reputation. Licensor agrees that in those jurisdictions (e.g. Japan), in which any exercise of the right granted in Section 3(b) of this License (the right to make Adaptations) would be deemed to be a distortion, mutilation, modification or other derogatory action prejudicial to the Original Author’s honor and reputation, the Licensor will waive or not assert, as appropriate, this Section, to the fullest extent permitted by the applicable national law, to enable You to reasonably exercise Your right under Section 3(b) of this License (right to make Adaptations) but not otherwise.”

This clause is rather unfortunate. It imports “moral rights” restrictions into user rights relating to the licensed work, including in jurisdictions that do not have such restrictions. It also creates uncertainty as to the flexibility of downstream users to make modifications.

Some projects have dealt with the issue by waiving the right to enforce the clause and agreeing not to assert it. For example, Red Hat uses this language in the license text for Fedora release notes: “Red Hat, as the licensor of this document, waives the right to enforce, and agrees not to assert, Section 4d of CC-BY-SA to the fullest extent permitted by applicable law. ”

Are Database Rights licensed?

“Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases” is a directive from the European Parliament establishing a unique style of exclusive rights in compilations of data that would not attach to those databases through copyright. Member countries to the European Union are required to implement, and have implemented, laws establishing these rights in their jurisdiction. Other countries may also have a similar regime for database rights.

CC BY-SA 3.0 explicitly does not license these rights. In the definition of “Work” CC BY-SA 3.0 refers to “a compilation of data to the extent it is protected as a copyrightable work”. The string “data” does not appear elsewhere in the license text.

CC BY-SA 4.0

Word length

About 2100 words long. This works strongly in favor of choosing this license over 3.0, particularly for projects with large numbers of contributors without

a formal legal profession background. The license is much simpler and reads better and faster.

Moral Rights clause text (Section 2.b.1)

“Moral rights, such as the right of integrity, are not licensed under this Public License, nor are publicity, privacy, and/or other similar personality rights; however, to the extent possible, the Licensor waives and/or agrees not to assert any such rights held by the Licensor to the limited extent necessary to allow You to exercise the Licensed Rights, but not otherwise.”

This appears to eliminate most of the issues of 3.0’s Section 4(d). It does not appear to import the concept of moral rights into jurisdictions that don’t have them. There is also an explicit waiver of rights and agreement not to assert these rights for users to exercise the rights under the license.

While it may have been desirable for the license to have, instead, irrevocably waived or licensed moral rights, this clause is much friendlier for massively-collaborative documentation for open source software.

Are Database Rights licensed?

Yes. They are explicitly licensed under Section 4. This also works strongly in favor of choosing this license for massively-collaborative documentation for open source software, as such documentation can be conceived as a compilation of technical information.

Are 3.0 and 4.0 compatible?

<https://creativecommons.org/compatiblelicenses> appears to indicate that they are. See the notes about “Version 3.0” under the “BY-SA” section. This may be relevant for projects interested in migrating to the newer version of the license.