

# Creative Commons International

## The International License Porting Project

### – Origins, Experiences, and Challenges

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**Abstract:** When Creative Commons (CC) was founded in 2001, the core Creative Commons licenses were drafted according to United States Copyright Law. Since their first introduction in December 2002, Creative Commons licenses have been enthusiastically adopted by many creators, authors, and other content producers – not only in the United States, but in many other jurisdictions as well.

Global interest in the CC licenses prompted a discussion about the need for national versions of the CC licenses. To best address this need, the international license porting project (“Creative Commons International” – formerly known as “International Commons”) was launched in 2003. Creative Commons International works to port the core Creative Commons licenses to different copyright legislations around the world. The porting process includes both linguistically translating the licenses and legally adapting the licenses to a particular jurisdiction such that they are comprehensible in the local jurisdiction and legally enforceable but concurrently retain the same key elements.

Since its inception, Creative Commons International has found many supporters all over the world. With Finland, Brazil, and Japan as the first completed jurisdiction projects, experts around the globe have followed their lead and joined the international collaboration with Creative Commons to adapt the licenses to their local copyright. This article aims to present an overview of the international porting process, explain and clarify the international license architecture, its legal and promotional aspects, as well as its most recent challenges.

**Keywords:** Creative Commons, Creative Commons licenses, Creative Commons International, Moral Rights, Private International Law, Case Studies, Interoperability

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## A. Introduction: Creative Commons – a global project to foster culture and innovation

- 1 Over the past decade, we have seen an enormous change in the way we disseminate and exchange information. The advent of the widespread adoption of digital technologies has enabled a new generation of content creation and exchange. Technical advances have made it possible to distribute works in a variety of formats and of a high, often professional quality. It has become much easier and cheaper to work collaboratively across contexts and different media and to create new, derivative or collective works on a global level.
- 2 The downside of these new technical developments is that they can more easily facilitate a contradiction of law. Most of the digital content being accessed through the Internet is subject to copyright and owned by a particular person or company. But because of how digital technologies function, most of these uses necessarily make a “copy”<sup>2</sup> of the original work and/or require distribution, which can cause friction under the default terms of copyright: By enabling temporary and permanent copies, copyright’s right is exercised and, from these copies, interpretive reuse is possible, which in turn implicates another copyright rule, the derivative works right.<sup>3</sup>
- 3 Current copyright regulation maintains the absurdity that while on the one hand, digital technology can provide a much bigger scope of access and distribution, such access will be unlawful unless either the law allows that specific access or the respective copyright owner gives permission.<sup>4</sup> However, it is unquestioned that the flow and exchange of information is key for a well functioning society, be it on a cultural or economic level. This dilemma has prompted a discussion about making the law more suitable for the digital age in many different national jurisdictions around the world. Since debating and reforming law naturally takes time, many users realized that a much more valuable and immediate solution would be to work with new types of voluntary mechanisms that would operate within the currently existing copyright framework. Creative Commons aims to provide such voluntary mechanisms by offering creators and licensors a simple way to

say what freedoms they want their creative content to carry. Through its free copyright licenses,<sup>5</sup> Creative Commons offers creators and other authors a legal way to structure their rights. Content and information can be set free for certain uses, consistent with the author’s specific intent, opening the stage for a more flexible flow of content and information.<sup>6</sup>

- 4 While the origins of Creative Commons, including the project’s founder, lie in the United States,<sup>7</sup> many people around the world have entered the discussion and joined the initiative to make Creative Commons a truly global project, one that builds a distributed, international information “commons” by encouraging copyright owners to make their material available through open content licensing protocols and thereby promote better identification, negotiation, and reutilization of content for the purposes of creativity and innovation.<sup>8</sup>

## B. Creative Commons licensing infrastructure

- 5 The Creative Commons licensing suite consists of public standardized licenses that allow authors to decide whether others may make commercial use of their work, whether to make derivative works, and if derivative works are allowed, whether these derivative works must be made available under the same licensing terms.<sup>9</sup> All licenses require attribution.<sup>10</sup> Attribution is a key element - not only regarding some of the legal questions, but also in terms of cultural norms and acceptance.<sup>11</sup>
- 6 A license, once selected, is expressed in three different ways: 1) the “human readable” format (Deed), 2) the lawyer readable format (Legal Code), and 3) the machine readable format (Resource Description Format, metadata). The latter enables online content and information, licensed under a Creative Commons license, to be searched for and identified based on the work’s licensing terms.<sup>12</sup> The “Deed” is drafted to be understood by anyone without any legal background, and the “Legal Code” is the actual “license”, a legal document drafted to be read by lawyers, courts, and those with a particular interest or involvement in the legal details. These three different layers of the Creative Commons li-

censes are often described as one distinction between Creative Commons licenses and other Open Content licenses such as the GNU Free Documentation License<sup>13</sup> or the Free Art License.<sup>14</sup> Another important distinguishing feature of Creative Commons licenses is its internationalization.

### C. Creative Commons International – the global porting project

- 7 Global interest in Creative Commons soared as did license usage worldwide. Because of this and – most importantly – because of the international structure of the Internet per se, it became clear that Creative Commons could not remain a US project alone. Building on the work initiated in the United States, Creative Commons International was founded to coordinate and support the growth of an international network responsible for porting the original US licenses and other tools to local jurisdictions. The goal of this international porting project is to create a multilingual model of the licensing suite that is legally enforceable in jurisdictions around the world.
- 8 To achieve this aim, Creative Commons International works with local experts in the intellectual property and technology fields to evaluate national copyright legislations and how these national legislations would potentially interact with Creative Commons licenses. This evaluation is a prerequisite to producing high quality localized versions of the Creative Commons licenses. To guarantee such high quality, Creative Commons International has developed a set of guidelines for the porting process, a detailed ten-step program through which each participating jurisdiction project works firstly to identify local Project Leads and Affiliate Institutions, followed by the license drafting, public discussion, license revision, technical arrangements and translation, and launch event.<sup>15</sup> Once a local host institution and a national legal expert are identified and appointed to act as “Project Lead” for the respective national CC project, the actual work begins with a first draft of a localized Creative Commons license, literally translated into the national language and legally adapted to the national copyright law. An English retranslation and a detailed explanation of all substantial legal changes describe what revisions have been made to fit the Creative Commons licenses into the local legislation and allow for a fruitful and efficient discussion with the Creative Commons International team.<sup>16</sup> After that, a public discussion of the national license draft is called, in which the license draft and supporting documents are used to gather input from potential local stakeholders and user groups. After careful review and approval by the Creative Commons International team, the Creative Commons *jurisdiction licenses* are officially made available and can be accessed through the Creative Commons license chooser.<sup>17</sup>
- 9 To date, 52 different national Creative Commons projects have successfully launched national versions of the original Creative Commons licenses.<sup>18</sup> With Thailand and the Czech Republic being the most recent to join the global project and with Armenia, Azerbaijan, Georgia, Russia as well as Indonesia, Vietnam, and several other countries in progress, Creative Commons International has been able to expand its projects beyond the better known traditional copyright jurisdictions and into Asia Pacific, Eastern Europe, and the Post Soviet states. Whereas the legal framework forms an important component of the international porting project, there have also been significant educational and promotional efforts undertaken as part of the internationalization strategy. In the following, some of the legal aspects will be highlighted, followed by a short outline of the project’s “promotional” efforts.

#### 1. Legal aspects

- 10 The most important reason for developing an international licensing model is to address the differences and particularities in understanding “copyright” according to national legislations around the globe. Differences in the legislation and licensing practices among jurisdictions reveal several legal issues that do not appear in the US context and vice versa. Some problems arising under local law, e.g. German law can only be addressed by a German version of the core Creative Commons licenses, namely a version that is translated into the German language and adapted to German law. Only such a localized version

of the CC licenses will assure enforceability in local courts.<sup>19</sup>

- 11 *Moral Rights*: One of the most significant legal issues addressed in porting the Creative Commons licenses is moral rights. Moral rights, to describe them briefly, are distinct from any economic rights tied to copyright. Even if an author has assigned his or her rights to a third party, he still maintains the moral rights to his work. Moral rights recognize an author's personal attachment to their work and seek to protect that connection. The concept of the author's moral rights goes back to the early days of copyright in the Continental European regimes.<sup>20</sup> The theory behind moral rights according to European Continental law is that authors of copyrightable works have inalienable rights<sup>21</sup> in their works that protect their moral or personal interest and that complement the author's economic rights. In this way, the moral rights serve to protect the inherent link between the author and his intellectual and mental creative work.<sup>22</sup> While there can be many different moral rights depending on the jurisdiction, all member states of the Berne Convention<sup>23</sup> are required to provide legal protection for at least two specific moral rights, which subsequently are the main rights currently present in most countries around the globe: the moral right of *attribution* and the moral right of *integrity*.<sup>24</sup> As stated in Art. 6bis of the Berne Convention, these two moral rights give the author of a copyright-protected work the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.<sup>25</sup>
- 12 Since all Creative Commons licenses require attribution,<sup>26</sup> there is less of an issue regarding the author's moral right of attribution. However, the author's right to object to any derogatory treatment of his work has the potential to impact the freedom to modify the work and exercise the right to make derivatives. A derivative work will likely always qualify as an alteration of the original work, and there may be some instances where it is arguable that it is prejudicial to the original author's reputation or honor.<sup>27</sup> While this has not been much of a problem in the US and when drafting the US Creative Commons licenses, the freedom to modify the work has provoked many legal issues in traditional "droit d'auteur" jurisdictions like France and Germany.
- 13 It might sound contradictory that the freedom to modify the work poses legal problems in European jurisdictions like Germany or France but not in the US even though all three of those jurisdictions are signatories of the Berne Convention. There is, however, a feasible explanation. The Berne Convention only assures that moral rights exist, but it does not address the question of a potential waiver of moral rights. Each individual member state has to determine in its own legislation to which extent – if any – an author is able to waive such rights.<sup>28</sup>
- 14 The possibility of waiving moral rights, plus its legal effectiveness and the potential scope of a waiver, is one of the most pressing questions for Creative Commons licenses. This is especially true with regard to the Continental European copyright regimes, such as France, which is considered to be the birthplace of the moral rights doctrine.<sup>29</sup> Traditionally, France and other "droit d'auteur" jurisdictions have provided a much stronger and broader protection of moral rights than most of the copyright regimes based on common law. French legislation currently states that moral rights are "inalienable", and although upon the author's death they may be transmitted to his or her legal successors, they may not be otherwise transferred or assigned. Consequently, French courts have determined that "1) authors cannot legally relinquish or abandon the rights of attribution or integrity altogether, 2) advance blanket waivers are unenforceable, and 3) narrowly tailored waivers that involve reasonably foreseeable encroachments on the author's moral rights are generally valid."<sup>30</sup>
- 15 Most other Continental European copyright jurisdictions follow the French tradition in their own regulation of moral rights. Despite the current debate in Germany about whether it might be possible to partially waive copyright including moral rights,<sup>31</sup> there has not yet been room for any different understanding of moral rights. German courts and most scholars still accept assignments only under the condition that the changes are specified, meaning that the author must have a realistic chance to foresee any changes that will be



- made.<sup>32</sup> This option is rather unlikely, if not impossible, within the context of standardized open content licenses such as the Creative Commons licenses.<sup>33</sup> France and Germany are only two examples of how moral rights are conceived as “inalienable” and thereby proscribe any assignment or waiver of such rights, many other jurisdictions can be found that follow the French approach.<sup>34</sup>
- 16 On the other hand, most common law countries have traditionally favored the protection of economic rights within the copyright regimes, although moral rights have found their way into the copyright laws by other means.<sup>35</sup> In the past decades, countries like the United Kingdom and Australia have developed a moral rights concept in their national legislation but simultaneously allowed a waiver of such rights.<sup>36</sup> Between these two different approaches to moral rights there are some jurisdictions such as the Netherlands, which traditionally follow the Continental European “droit d’auteur” approach but allow a partial waiver under certain circumstances.<sup>37</sup> Under Canadian copyright law, which is heavily influenced by the civil law tradition of Quebec, moral rights may not be assigned but may be waived in whole or in part.<sup>38</sup> However, the act of assigning a copyright in Canada does not in itself constitute a waiver of any moral rights. Therefore, any act or omission contrary to one of the author’s moral rights is, without the author’s consent, an infringement of his or her moral rights.<sup>39</sup>
- 17 Finally, Japan deserves a separate analysis. Under Japanese law, any modification “against the author’s will” could be a violation of the moral right of integrity.<sup>40</sup> If the modification is made in a way “where it is possible to directly perceive the essential characteristics of the original work” such a modification can be a violation of the moral right of integrity if the author’s consent is missing.<sup>41</sup> Even though it can be argued that allowing derivative works through a Creative Commons license implies that the author gave his consent and that at least part of the moral right of integrity is “licensed”, there remains a risk of violating the moral right of integrity if the resulting derivative work is outside the scope of what the author thought he was licensing.<sup>42</sup>
- 18 Different regulations and interpretations of moral rights make their adaptation in various jurisdictions one of the most important legal issues when working with Creative Commons licenses. One approach could be to not mention moral rights in Creative Commons licenses at all.<sup>43</sup> Not addressing moral rights in the legal code could be argued as leaving the legal code open for interpretation by the respective court in the case of an infringement. But what would be the consequence if Creative Commons licenses did not provide for any regulation regarding moral rights? Would the court simply recognize moral rights as they are implemented and executed in the respective national law? And what impact could this have for the existence of the license, especially for the section allowing derivative works?
- 19 Taking again the German situation as an illustrative example, the whole section of the Creative Commons license that allows for derivative works would most likely be considered invalid under the German law of standard terms.<sup>44</sup> Creating and distributing derivative works would be impossible. To avoid such a risk of invalidity, moral rights have to be dealt with in Creative Commons licenses if these licenses are to be used whenever German law is applicable. Similarly, most other Continental European jurisdiction’s licenses have to deal with the specific and mostly very restrictive moral rights regulation in their respective national legislation.
- 20 Because of this uncertainty and especially because of the fact that interpretation by local courts cannot be clearly foreseen, it was discussed and decided amongst the global Creative Commons International Network to address moral rights in the Creative Commons licenses. Instead of not mentioning moral rights at all, in the hope that local courts would implement it adequately, moral rights are now dealt with in the Creative Commons licenses. To provide clarity regarding the treatment of moral rights, it was agreed to explicitly retain the moral right of integrity in those jurisdiction licenses that have to deal with a strong level of protection for the moral right of integrity, considering the risk that local courts could take a dim view of a license that does not expressly include moral rights.<sup>45</sup>

- 21 Consequently, the next question when evaluating the Creative Commons licenses in terms of moral rights is whether those rights should be waived or not. Since most jurisdictions throughout the world grant moral rights to authors, but only some of them allow for a waiver, the issue of a potential waiver presents a challenge for Creative Commons licenses. Many users within the community are in favor of a license that permits creators to “completely” waive moral rights, because only such a license would ensure that the freedom to create derivatives and build upon another’s work can be exercised to the fullest extent possible. On the other hand, it has again been argued that the Creative Commons licenses would face the risk of being vulnerable to judicial validity should the respective national copyright legislation conceive moral rights as “inalienable” and therefore proscribe any assignment or waiver of such rights. Thus, the policy question to be evaluated is which uncertainty is more tolerable: the one brought about by the possibility of claims against (downstream) users for integrity rights violation or the uncertainty brought about by having the licenses per se vulnerable to attack for providing moral rights waiver.<sup>46</sup>
- 22 To make it even more complicated, not only does this question have to be discussed on a national level for each respective jurisdiction license; it also has an impact on an international level, since all Creative Commons licenses have to work globally as well. When drafting the moral rights wording for a national version of the Creative Commons licenses while at the same time looking at the different regulations for moral rights in different jurisdictions, the question of applicable law becomes relevant. Will the respective national copyright legislation necessarily always provide the basis for discussions and interpretation of the moral rights section of that particular associated Creative Commons license? Hence, the issue about moral rights proves perfectly how almost every legal question regarding Creative Commons licenses coincides with rules of Private International Law. In the case of moral rights, after careful consideration and consultation with the international legal network, it was agreed that most jurisdictions should implement a simple wording stating that moral rights remain untouched by the respective Creative Commons license so as to ensure validity of the license but allow for the exercise of the rights provided by the license to the fullest extent permitted by applicable law in order to respect the freedom to modify the work as broadly as possible. For most of the national jurisdiction licenses, the following simple wording served as a basis for discussion during the porting process: “*Moral Rights remain unaffected to the extent they are recognized and not waivable by applicable law.*”
- 23 This approach<sup>47</sup> allows the user to exercise the rights under the license to the fullest extent possible, while also protecting the license from any challenge and potential risk of invalidity based on an improper or void waiver. It also leaves enough room for interpretation at the respective national level and at the same time fits perfectly into the overall international harmonization efforts of the global porting project.
- 24 *Neighboring Rights and especially the European Database Directive:* In addition to the traditional protection of “copyrightable works”, most European copyright systems<sup>48</sup> also provide protection for “related rights” (“neighboring rights”) and through the European Database Directive<sup>49</sup> for databases (“sui generis database protection”).<sup>50</sup> Similar to the argumentation for the protection of neighboring rights, the Database Directive allows for the special protection of a database “which shows that there has been qualitatively and/or quantitatively a substantial *investment* in either obtaining, verification or presentation of the contents to prevent extraction and/reutilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.”<sup>51</sup> Obviously, the rationale behind protection is not the personal intellectual creation, as it is the prerequisite for copyright protection in most European jurisdictions,<sup>52</sup> but rather the *investment* shown by the maker of a database.<sup>53</sup>
- 25 In the past, some of the European localized and translated versions of Creative Commons licenses (see Belgium, France, Germany and the Netherlands) contained a reference to the respective national legislation passed pursuant to the Database Directive by defining a “work” to include databases protected

by these laws.<sup>54</sup> However, most other European licenses did not mention the database rights at all, even if the Database Directive had already been implemented in their national legislation. Neighboring rights and in particular the database right turned out to be one of the most controversial and the most inconsistently treated aspects in the European licenses.

- 26 The main argument for addressing these rights in the European licenses is that these rights are defined so broadly that, without addressing them, the national versions of the Creative Commons licenses are neither complete nor exercisable in practical applications, particularly in Internet collections.<sup>55</sup> The main argument follows that without the neighboring rights and database right included, the licensor would still hold some exclusive rights in the work that was intended to be licensed. To resolve this problem, it was suggested to explicitly incorporate the neighboring rights as well as the database right in the license text by extending the definition of “work” so that neighboring rights are listed concurrently with the definition of work, namely as being the “copyrightable work of authorship”.
- 27 On the other hand, there have been significant concerns regarding the inclusion of database rights in the Creative Commons licenses. It was argued that Creative Commons licenses, when including the sui generis database right via the definition of “work”, can become especially problematic as they pose the danger that, through the use of a Creative Commons license, protection of the sui generis database right can be “imported” to a jurisdiction without any sui generis database right protection. In other words, by using a national version of the Creative Commons licenses for a jurisdiction which both a) has implemented the European Database Directive and b) where the national Creative Commons licenses reflect the legislation through an amendment of the definition of work and an inclusion of the database right as an exclusive right, the use of such a license could actually lead to the assumption and confusion that these rights are intended to be respected even if they are not protected by national law.
- 28 As a result of the debate between the advantages and disadvantages of implementing neighboring rights and the very specific problem of the European database rights, it was agreed to include these rights in the Creative Commons licenses where they are recognized by the national legislation. But at the same time, a “geographic boundary” assures that those Creative Commons licenses that define the term “work” to include neighboring rights as well as databases protected by the national implementation of the Database Directive, should have territorial limitations regarding these rights by stating that these are only included in the definition of work “to the extent they are recognized and protected by applicable law.”<sup>56</sup> Additionally, for the database right, an unconditional waiver will ensure that these rights are disqualified in the scientific context. Concretely, this means that those national Creative Commons jurisdiction licenses that have included the database protected by the national implementation of the European Database Directive as a consequence of following a harmonized treatment of neighboring rights must waive these specific database rights obtained under the sui generis right. A simple sentence at the end of the license grant ensures the resolution for European licenses: “*Where the Licensor is the owner of the sui generis database rights under the national law implementing the European Database Directive, the Licensor will waive this right.*”

## 2. Language: Spreading the word and promotional aspects

- 29 As indicated above, license internationalization also has tremendous impact on the worldwide usage of Creative Commons licenses and by extension, on the growth of the global “commons” as a pool of pre-cleared content that can be mixed and shared on an international level. Linguistically translating the licenses into a jurisdiction’s national language encourages license acceptance and usage beyond the English-speaking world. In addition, officially recognized license translations lead to increased global adoption by institutions and public organizations, including governments.<sup>57</sup> Not only can we find an enormous number of Creative Commons licensed content via popular search engines such as Google, Yahoo or others,<sup>58</sup> some concrete examples<sup>59</sup> of Creative Commons

license usage qualitatively demonstrates the global impact of Creative Commons over the past years. These examples provide evidence of how Creative Commons licensed content fits into other projects and helps build a system of networked informational exchange in the Internet.

- 30 In December 2008 the German Federal Archives<sup>60</sup> donated a significant amount of historical German images to the Wikimedia Commons project.<sup>61</sup> These images are now licensed under the German Creative Commons Attribution Share Alike 3.0 license. Their availability to the public through the Wikimedia Commons is part of a cooperation between Wikimedia Germany and the Federal Archives, whose collaboration also developed a tool to link the images to their respective German Wikipedia article and file in the German National Library. Another significant boost for Creative Commons emphasizes that Creative Commons licenses are not only important to private users and amateurs. Shortly after the publication of this news from Germany, the Australian (Queensland) government launched a new website for their Government Information Licensing Framework project (GILF) under the Australian Creative Commons Attribution 2.5 license.<sup>62</sup> Through this website, the GILF project is working to further promote the benefits of using and re-using of Public Sector Information. These benefits can be measured for the Australian community in terms of innovation, creativity, and economic growth: “*The GILF makes it easy for people who use public sector information to understand the rights of use associated with PSI material. GILF comprises a simple open content licensing framework, designed to assist in the management of government intellectual property, and encourage the use of public sector information through increased availability and accessibility...*”<sup>63</sup> Encouraged by the preceding national debate in which it was argued that “*owing to Creative Commons’ status as an international movement, and its recognition as a standard for flexible copyright licensing, the government can gain significant leverage from adopting Creative Commons. No point in needlessly re-inventing the wheel...*”<sup>64</sup> the Australian GILF can be seen as one of the most innovative governmental projects in the world.

- 31 The list of case studies can be extended and seen as the best proof that developing the international porting project and working with local Project Leads and Affiliate Institutions in different jurisdictions on national versions of the core CC licenses becomes, automatically, the best promotional tool for Creative Commons. It remains the key factor for the international adoption of Creative Commons licenses.
- 32 When porting the licenses to different national jurisdictions around the world, Creative Commons International has simultaneously established an international network of IP and IT experts. With the patronage and enormous support of this network, the idea of Creative Commons as a new type of voluntary mechanism for legal questions within the digital age has entered the local debate about copyright law on a national legislative level. The greatest success of Creative Commons is its unshakable presence in the discussion of a pragmatic legal system that deals with questions arising with the advent of the Internet.

#### D. Challenges for Creative Commons and its international licensing model

- 33 *Private International Law*: The previous examples as well as the legal evaluation of only two potential issues for Creative Commons licenses demonstrates that there is a need for the international porting project and that the licenses have to be adapted in many different ways to prevent misunderstandings and invalidity. We cannot ignore the fact that some provisions of a US license would be invalid insofar as European law is applicable. However, at the same time, this perception opens the discussion about the applicable law and a potential choice of law clause in the Creative Commons licenses. In other words, a “multi-jurisdictional” approach raises an array of private international law issues. The key question to be investigated arises when Licensor A, a resident of Germany, is licensing his picture on his German website under the German Creative Commons licenses Attribution (BY) and Licensee B, a resident of New Zealand is using the picture on his New Zealand website without giving attribution at all. In the case that Licensor A wants to sue



Licensee B alleging that B's activities infringe the terms of the German Creative Commons license, which court would be competent to hear the claim and – more importantly – which law would be applicable? And finally, how can the ruling be enforced elsewhere?

- 34 Not all of these questions can be covered in this article, whose purpose it is to raise these issues rather than solve them. In terms of the applicable law, and according to the rules of private international law, two different issues have to be considered. The first one is how to deal with questions regarding copyright, the second relates to other parts of the law, such as contract law.
- 35 For all questions regarding copyright, such as questions about the existence, duration of copyright, moral rights or even questions regarding fair dealing or limitations and exceptions of the exclusive copyright, the rule of territoriality will have to be applied. According to Art. 8 of the recently adopted Rome II regulation, at least for the European Union, it is stated that “*The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed.*”<sup>65</sup> On an international scale, many scholars consider Art. 5 II of the Berne Convention as mirroring this approach.<sup>66</sup> However, especially for copyright issues, the rule of territoriality is still controversial.<sup>67</sup>
- 36 Irrespective of how to interpret the wording of the Berne Convention, and without a detailed analysis of all arguments, the current tendency is to stick with the rule of territoriality on questions of copyright, especially regarding the existence and duration of copyright and neighboring rights, moral rights or even questions about fair dealing or limitations and exceptions of the exclusive copyright.<sup>68</sup> Consequently, all these copyright questions are governed by the respective national legal order. Instead of “*one global copyright*”, the copyright holder has a “*bundle of different national copyrights*”, which can be seen as some kind of “*mosaic-like*” approach.<sup>69</sup>
- 37 For contractual issues, the answer is even more complicated. According to Article 4 of the Rome I Convention of 2008 on the law applicable to contractual obligations,<sup>70</sup> the

applicable law is considered to be the national law of the jurisdiction “where the party required to effect the characteristic performance of the contract has his habitual residence” – unless the parties have agreed on a different choice of law in the contract. To the extent Creative Commons licenses are deemed to be a contract, a choice of law clause could be helpful to complete the picture of a nationally adapted license. By making sure that the German version of the Creative Commons licenses will be governed by German law, some level of legal certainty can be reached. However, as mentioned above, the potential choice of law clause can only help for contractual issues of the Creative Commons licenses and only if the Creative Commons licenses themselves are considered to be a contract. For questions regarding copyright, the rule of territoriality is internationally mandatory and cannot be eluded by any additional choice of law clause in the license.<sup>71</sup>

- 38 To summarize, these questions regarding private international law are probably the most crucial and most difficult to be investigated when working with Creative Commons licenses in the digital age, since any use on the Internet tends to cross borders. One potential starting point for further research and discussion could be the relationship between different national versions of the Creative Commons licenses. Because of how Creative Commons licenses are functioning and especially because they are *non-exclusive*, the licensor is free to choose more than one license and also combine different license versions, which can be used in parallel. Once different licenses are used in parallel, the only missing point will be a mechanism to ensure that each license is used in the correct and adequate context, e.g., the German license should be binding if German law is applicable. For contractual issues, this result can be reached by implementing a choice of law clause (see above), and for copyright issues this can be assured by adding some kind of restriction to the respective jurisdiction.<sup>72</sup> Whether and how the same effect can be reached or at least be supported by technical advancement needs to be investigated and further discussed.
- 39 *Interoperability*: The idea of open content licenses is not new, and Creative Commons

did not invent the first free public licenses for digital content. Following the Free Software Foundation's initiative to build a public license for software, there were many others to follow and to release free licenses designed for creative content instead of software. The Art Libre License<sup>73</sup> and the Free Software Foundation's GNU Free Documentation License (GNU FDL)<sup>74</sup> are probably the most famous, but others can be found for different types of works and content.<sup>75</sup>

- 40 All these open content licenses share a common goal, which is to give authors, creators, and other rights holders the ability to offer important freedoms and share with others. However, there remains an issue when remixing content that has been licensed under different open content licenses.<sup>76</sup> Generally speaking, the copyleft or ShareAlike element of any open content license requires derivatives to be licensed under the same license only. Consequently, content available under an open content license that includes a ShareAlike element cannot be used together and remixed with content that has been licensed under another open content license, even if this license also includes a ShareAlike or copyleft element.
- 41 In the past, this was a major issue for the Wikipedia project. Before the most recent change in license adoption for Wikipedia articles,<sup>77</sup> if someone wanted to put together a movie based on a Wikipedia entry, supplemented with images licensed under a Creative Commons license on Flickr, this was not legally permitted even if it was technically possible.<sup>78</sup> The same was true for pictures, music or other content licensed under Creative Commons license BY-SA. If licensed under CC BY-SA, these materials could not legally be remixed with other creative content that was licensed under another open content license, even another copyleft license.<sup>79</sup> Obviously, the idea of building a common pool of easily accessible and pre-cleared, freely available content would fail if this problem were not addressed in the near future. One of the most important features of digital technologies, namely the possibility to take images, music and other content, remix it, and produce something new at relatively low cost yet often of high quality, would be diminished if the content were restricted to the respective license terms. Instead, with-

out interoperability, many different but not overlapping pools of creative content would be established.

- 42 In terms of the Wikipedia project, this issue has just recently been addressed by a new version of the CC BY-SA as well as a new version of the GNU FDL. Creative Commons licenses at version 3.0 allow for a new Share Alike structure in their CC BY-SA, which enables Creative Commons to certify particular licenses as being compatible with the CC BY-SA.<sup>80</sup> Once certified as being compatible, licensees of both the CC BY-SA version 3.0 and the certified "CC compatible license" will be able to relicense derivatives under either license.<sup>81</sup> Similarly, the Free Software Foundation released an update of the GNU FDL.<sup>82</sup> This new version was drafted specifically to allow Wikipedia and other projects in a similar position to make licensing changes.<sup>83</sup> Interoperability between GNU FDL and CC BY-SA, and especially the move from GNU FDL to the CC BY-SA as the primary content license for all Wikimedia Foundation projects, will foster a broader usage of Wikimedia project content including Wikipedia articles as they will be more interoperable with existing CC BY-SA content and easier to re-use.<sup>84</sup> Assuring this interoperability certainly means "*a critical step towards making this freedom work*," as Lessig commented on the announcement of the licensing decision.<sup>85</sup> There is no doubt of the significance and meaningfulness of this huge step within the free culture movement, which will hopefully serve as a template for others. But the general dilemma remains: copyleft licenses automatically restrict the respective content. This sounds particularly absurd since the motivation behind copyleft licenses is to keep the content "open" and within the pool of freely licensed material, while at the same time these licenses restrict the ability to reuse and remix.

## E. Conclusion and perspectives

- 43 Creative Commons' licenses and other tools provide an additional option for copyright creators and right holders to structure their rights in a more flexible way. In this way, the "best-of both-worlds" is offered: a way to protect creative works while encouraging certain uses of them, tailored to each creators individual preference. Creative Commons' global porting project ensures that

this new way of balancing copyright can be exercised on an international level and at the same time helps to increase the global commons of easily accessible content. Concurrently, a network of international legal and technical experts has been built to collaborate on the internationalization of the core Creative Commons licensing suite, license maintenance and legal commentary on new license versions.

- 44 Although with the support of the international network the Creative Commons licensing suite has been successfully ported to more than 50 jurisdictions, there are still

some interesting legal questions to be discussed and researched. In particular, questions of Private International Law and how Creative Commons licensing can best interact with and become compatible with other open content licensing models are two topics that need to be addressed in order to complete the international project and achieve an internationally functioning structure. There is no doubt that there are still many problems to be solved, but there is also no doubt that many of these issues can be resolved by the international network and the global Creative Commons community itself.

<sup>1</sup> <http://creativecommons.org/international/>.

<sup>2</sup> The World Intellectual Property Organization has described the Internet as the world's biggest copying machine. For details, see World Intellectual Property Organization, *Intellectual Property on the Internet: A survey of issues* (2002), available at <http://www.wipo.int/export/sites/www/copyright/en/ecommerce/pdf/survey.pdf>.

<sup>3</sup> See also *Garlick*, *Creative Commons Licensing – Another Option to enable online Business Models*, available at [http://www.hm-treasury.gov.uk/d/creative\\_commons\\_418\\_p2\\_218kb.pdf](http://www.hm-treasury.gov.uk/d/creative_commons_418_p2_218kb.pdf).

<sup>4</sup> In short, every information flow in the digital environment has the potential for copyright infringement – a reproduction or a communication to the public (see the general overview *Fitzgerald/Olwan*, *Copyright and Innovation in the Digital Age: The United Arab Emirates (UAE)* available at <http://slconf.uaeu.ac.ae/papers/PDF%201%20English/e9.pdf>. For a detailed analysis about the balancing of interests in the European context, see *Peukert*, *Der Schutzbereich des Urheberrechts und das Werk als öffentliches Gut - Insbesondere: Die urheberrechtliche Relevanz des privaten Werkgenusses in Reto M. Hilty/Alexander Peukert (eds.) Interessenausgleich im Urheberrecht*, 2004, pp. 11 – 46 (pp. 25 et seq.).

<sup>5</sup> Creative Commons has made available free legal and technical tools to enable authors and other creators to publish their content more easily, to have their creative works found by others more rapidly, and most importantly, to have their creative works used on more flexible terms than the traditional „all rights reserved“ approach of default copyright protection (for a general overview see *Garlick*, *A Review of Creative Commons and Science Commons*, *Educause Review*, vol.40, no.5 (September/October 2005), available at <http://www.educause.edu/EDUCAUSE+Review/EDUCAUSEReviewMagazineVolume40/AReviewofCreativeCommonsandSci/158002>).

<sup>6</sup> For details about Creative Commons' mission see <http://creativecommons.org/about/what-is-cc> as well as *Garlick*, *Creative Commons Licensing – Another Option to enable online Business Models*, available at [http://www.hm-treasury.gov.uk/d/creative\\_commons\\_418\\_p2\\_218kb.pdf](http://www.hm-treasury.gov.uk/d/creative_commons_418_p2_218kb.pdf).

<sup>7</sup> Creative Commons was founded in 2001 by Stanford Law Professor Lawrence Lessig and other Cyberlaw and Intellectual Property experts. For details, see <http://creativecommons.org/about/history/>.

<sup>8</sup> As an example for the widespread impact around the globe, see also *Fitzgerald/Olwan*, *Copyright and Innovation in the Digital Age: The United Arab Emirates (UAE)*, available at <http://slconf.uaeu.ac.ae/papers/PDF%201%20English/e9.pdf>.

<sup>9</sup> In this way, the licenses are designed to provide creators with the ability to clearly signal their approval of certain uses of their work whilst reserving some rights – in other words „some rights reserved“ as opposed to the default „all rights reserved“ level of copyright protection. For further reading, see <http://creativecommons.org/about/what-is-cc>.

<sup>10</sup> The „Attribution“ element can then be mixed and matched with the other terms of the core Creative Commons licensing suite into the following 6 licenses: Attribution (BY), Attribution ShareAlike (BY-SA), Attribution Non-Commercial (BY-NC), Attribution NoDerivatives (BY-ND), Attribution NonCommercial ShareAlike (BY-NC-SA), Attribution NonCommercial NoDerivatives (BY-NC-ND). For details see <http://creativecommons.org/licenses/>.

- <sup>11</sup> The first version of the original Creative Commons licenses allowed for a license without the attribution element (for details see the original legal code of the CC SA license version 1.0, available at <http://creativecommons.org/licenses/sa/1.0/legalcode>). However, most of the users opted for a license requiring attribution, which resulted in a new version of the Creative Commons licensing suite. Since then, Attribution became standard and the number of licenses was reduced from a possible eleven to six, making the license selection user interface much simpler. For details see <http://creativecommons.org/weblog/entry/4216>.
- <sup>12</sup> See advanced search options at Google, Yahoo, etc. (e.g. [http://www.google.com/advanced\\_search?hl=en](http://www.google.com/advanced_search?hl=en)).
- <sup>13</sup> <http://www.gnu.org/copyleft/fdl.html>. ([http://en.wikipedia.org/wiki/GNU\\_Free\\_Documentation\\_License](http://en.wikipedia.org/wiki/GNU_Free_Documentation_License)).
- <sup>14</sup> <http://artlibre.org/licence/lal/en/> ([http://en.wikipedia.org/wiki/Free\\_Art\\_license](http://en.wikipedia.org/wiki/Free_Art_license)).
- <sup>15</sup> [http://wiki.creativecommons.org/International\\_Overview](http://wiki.creativecommons.org/International_Overview).
- <sup>16</sup> See archives for each national Creative Commons project, available at <http://creativecommons.org/international>, e.g. details for the Serbian project at <http://creativecommons.org/international/rs/>.
- <sup>17</sup> <http://creativecommons.org/license/>.
- <sup>18</sup> <http://creativecommons.org/international/>.
- <sup>19</sup> For details especially regarding the German Creative Commons licenses see Metzger, Free Content licenses under German Law. Talk at the Wissenschaftskolleg, Berlin, 17 June 2004 available at <http://lists.ibiblio.org/pipermail/cc-de/2004-July/000015.html>.
- <sup>20</sup> For details regarding the theory and history of the droit d'auteur approach and copyright in Continental European droit d'auteur jurisdictions, see Wandtke in Wandtke/Bullinger (Eds), Urheberrecht, 3<sup>rd</sup> edition 2008, Einleitung/Introduction marginal number 25 as well as Pessach, The Author's Moral Right of Integrity in Cyberspace – A Preliminary Normative Framework, IIC 2003, pp. 250 – 270 (p. 255).
- <sup>21</sup> In most European jurisdictions, this is often referred to as an „unbreakable bond“ between author and work.
- <sup>22</sup> See Pessach, The Author's Moral Right of Integrity in Cyberspace, IIC 2003, pp. 250 – 270 (p. 255).
- <sup>23</sup> Berne Convention for the Protection of Literary and Artistic Works, as amended on September 28, 1979: [http://www.wipo.int/treaties/en/ip/berne/trtdocs\\_wo001.html](http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html).
- <sup>24</sup> See Garlick, Creative Commons Version 3.0 licenses – A brief explanation, available at [http://wiki.creativecommons.org/Version\\_3#Further\\_Internationalization](http://wiki.creativecommons.org/Version_3#Further_Internationalization).
- <sup>25</sup> Article 6bis of the Berne Convention: “Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.”
- <sup>26</sup> See footnote 11: Attribution became standard in version 2.0 of the Creative Commons licenses (<http://creativecommons.org/weblog/entry/4216>).
- <sup>27</sup> See Garlick, Creative Commons Version 3.0 licenses – A brief explanation, available at [http://wiki.creativecommons.org/Version\\_3#Further\\_Internationalization](http://wiki.creativecommons.org/Version_3#Further_Internationalization)
- <sup>28</sup> For further reading about how a potential waiver has been handled in different jurisdictions, see the detailed report „Moral Rights in Puerto Rico and the Creative Commons 3.0 licenses“ –available at <http://mirrors.creativecommons.org/international/pr/moral-rights.pdf>.
- <sup>29</sup> For details regarding the theory and origin of moral rights in France see Schmidt-Szalewski, Die theoretischen Grundlagen des französischen Urheberrecht im 19. Und 20. Jahrhundert, GRUR Int. 1992, pp. 187 – 194 (pp. 187 et seq.) as well as Pessach, The Author's Moral Right of Integrity in Cyberspace, IIC 2003, pp. 250 – 270 (pp. 250 et seq.).
- <sup>30</sup> See Rigamonti, Deconstructing Moral Rights, 47 Harv. Int'l L. J. 353 (2006).



- <sup>31</sup> For further reading about the discussion in Germany and France, see *Metzger*, *Rechtsgeschäfte über das Urheberpersönlichkeitsrecht nach dem neuen Urhebertragsrecht unter besonderer Berücksichtigung der französischen Rechtslage*, GRUR Int. 2003, page 9 – 23.
- <sup>32</sup> *Metzger*, *Rechtsgeschäfte über das Urheberpersönlichkeitsrecht nach dem neuen Urhebertragsrecht unter besonderer Berücksichtigung der französischen Rechtslage*, in GRUR Int. 2003, pp. 9 – 23 (pp. 9 et seq.).
- <sup>33</sup> *Metzger* *Rechtsgeschäfte über das Urheberpersönlichkeitsrecht nach dem neuen Urhebertragsrecht unter besonderer Berücksichtigung der französischen Rechtslage*, GRUR Int. 2003, pp. 9 – 23 (pp. 9 et seq.).
- <sup>34</sup> See the detailed examination about the situation in Spain, Mexico, and other jurisdictions in the report „Moral Rights in Puerto Rico and the Creative Commons 3.0 licenses“ –available at <http://mirrors.creativecommons.org/international/pr/moral-rights.pdf>.
- <sup>35</sup> *Dietz* in Schricker (Ed), *Urheberrecht*, 3<sup>rd</sup> edition 2006, Vor §§ 12 ff., marginal number. 21. See also report „Moral Rights in Puerto Rico and the Creative Commons 3.0 licenses“ –available at <http://mirrors.creativecommons.org/international/pr/moral-rights.pdf>.
- <sup>36</sup> The possibility of a waiver has lead some scholars to question the level of compliance to their international obligations – for details, see *Dworkin*, *The Moral Right of the Author: Moral Rights and the Commons Law Countries*, 19 Columbia VLA J.L. & Arts 229 (1995).
- <sup>37</sup> „Section 25(3) of the Dutch Copyright Act allows authors to waive some of their moral rights (the right to attribution and to oppose slight changes made to the work). However, the moral right (Section 25(1) under d. to oppose ‚any distortion, mutilation or other impairment of the work that could be prejudicial to the name or reputation of the author or to his/her dignity as such‘ cannot be waived.“ For details, see *Hendriks*, *Developing CC Licenses fur Dutch Creatives*, available at <http://fr.creativecommons.org/articles/netherlands.htm> as well as the detailed report „Moral Rights in Puerto Rico and the Creative Commons 3.0 licenses“ –available at <http://mirrors.creativecommons.org/international/pr/moral-rights.pdf>.
- <sup>38</sup> <http://creativecommons.ca/index.php?p=moralrights> and <http://mirrors.creativecommons.org/international/ca/english-changes.pdf>.
- <sup>39</sup> See the report „Moral Rights in Puerto Rico and the Creative Commons 3.0 licenses“ –available at <http://mirrors.creativecommons.org/international/pr/moral-rights.pdf>.
- <sup>40</sup> Article 20 Japanese Copyright Act available at [http://www.cric.or.jp/cric\\_e/clj/clj.html](http://www.cric.or.jp/cric_e/clj/clj.html).
- <sup>41</sup> Supreme Court of Japan, 28 March 1980: <http://www.courts.go.jp/english/judgments/text/1980.03.28-1976.-0-.No.923.html>.
- <sup>42</sup> Tokyo High Court, 21 September 1999, 平成一一年(ネ)第一一五四号 (Heisei 11 (ne) 1154).
- <sup>43</sup> Creative Commons licenses version 1.0 did not address moral rights at all. For details see the overview of different license versions available at [http://wiki.creativecommons.org/License\\_versions](http://wiki.creativecommons.org/License_versions).
- <sup>44</sup> See Article 306 of the German Civil Code which states that „To the extent that the terms have not become part of the contract or are ineffective, the contents of the contract are determined by the statutory provisions (Verbot der geltungserhaltenden Reduktion)“.
- <sup>45</sup> *Garlick*, *Creative Commons Version 3.0 licenses – A brief explanation*, available at [http://wiki.creativecommons.org/Version\\_3#Further\\_Internationalization](http://wiki.creativecommons.org/Version_3#Further_Internationalization).
- <sup>46</sup> This question had to be evaluated and answered for many different jurisdiction licenses. As an example, please see the detailed report for the porting process in Puerto Rico „Moral Rights in Puerto Rico and the Creative Commons 3.0 licenses“ –available at <http://mirrors.creativecommons.org/international/pr/moral-rights.pdf>.
- <sup>47</sup> It has to be emphasized that this approach is only used as a starting point for discussion for each national CC project. Based on this approach, a specific wording for the respective national jurisdiction license needs to be elaborated and implemented to best match the situation given by the national legislation, which can end up to be the same wording or end up in something more specific, such as the Dutch solution available at <http://mirrors.creativecommons.org/international/nl/english-retranslation.pdf>, or the wording in the CC licenses for New Zealand, available at <http://creativecommons.org/licenses/by/3.0/nz/legalcode>.

- <sup>48</sup> See Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, which harmonizes the situation regarding rental right, lending right and certain related rights as to provide a greater level of protection for literary and artistic property in Europe. Similarly to the European situation, most Latin American jurisdictions recognize “neighboring rights” or “related rights” as well. As an example, see the situation in Guatemala explained in the summary of substantial legal changes for the Guatemalan Creative Commons licenses available at <http://mirrors.creativecommons.org/international/gt/english-changes.pdf>.
- <sup>49</sup> Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.
- <sup>50</sup> Whereas the US concept of copyright may protect all creative expressions, including the performing rights, such rights are separately qualified as „related rights“ in EU jurisdictions. For details see *Hendriks*, Developing CC licenses for Dutch Creatives, available at <http://fr.creativecommons.org/articles/netherlands.htm>.
- <sup>51</sup> Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.
- <sup>52</sup> See definition of copyrightable work in Section 2 of the German Copyright Act.
- <sup>53</sup> For details regarding the US and Dutch use of the term “copyright” and the addition of related rights and database rights see *Hendriks*, Developing CC licenses for Dutch Creatives, available at <http://fr.creativecommons.org/articles/netherlands.htm>.
- <sup>54</sup> See the Dutch Creative Commons licenses version 1.0 and the explanation of the substantial legal changes available at <http://mirrors.creativecommons.org/international/nl/english-changes.pdf> as well as the German Creative Commons licenses version 2.0 (<http://creativecommons.org/licenses/by/2.0/de/legalcode>).
- <sup>55</sup> See also *Hendriks*, Developing CC licenses for Dutch Creatives, available at <http://fr.creativecommons.org/articles/netherlands.htm>.
- <sup>56</sup> See e.g. the solution in the Dutch Creative Commons licenses version 3.0: <http://mirrors.creativecommons.org/international/nl/english-retranslation.pdf>.
- <sup>57</sup> [http://wiki.creativecommons.org/Government\\_use\\_of\\_CC\\_licenses](http://wiki.creativecommons.org/Government_use_of_CC_licenses).
- <sup>58</sup> <http://search.yahoo.com/web/advanced?ei=UTF-8&fr=yfp-t-501> and [http://www.google.com/advanced\\_search?hl=en&output=unclesam&restrict=unclesam](http://www.google.com/advanced_search?hl=en&output=unclesam&restrict=unclesam).
- <sup>59</sup> For a detailed report about how Creative Commons licenses have been used by creators and institutions along with an explanation of their motivations please see “Building and Australasian Commons” available at [http://creativecommons.org.au/materials/Building\\_an\\_Australasian\\_Commons\\_book.pdf](http://creativecommons.org.au/materials/Building_an_Australasian_Commons_book.pdf).
- <sup>60</sup> <http://www.bundesarchiv.de/>.
- <sup>61</sup> <http://commons.wikimedia.org/wiki/Commons:Bundesarchiv>.
- <sup>62</sup> <http://www.creativecommons.org.au/node/229> and <http://www.gilf.gov.au/>.
- <sup>63</sup> For details see <http://www.gilf.gov.au/>.
- <sup>64</sup> [http://wiki.creativecommons.org/Government\\_Information\\_Licensing\\_Framework](http://wiki.creativecommons.org/Government_Information_Licensing_Framework) and <http://www.creativecommons.org.au/node/229>.
- <sup>65</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0040:0049:EN:PDF>.
- <sup>66</sup> Art. 5 II of the Berne Convention: “*The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.*” For an interpretation as conflicts rule see *Goldstein*, International Copyright: Principles, Law and Practice, 2001, page 103-104; *Katzenberger* in *Schricker* (Ed), *Urheberrecht* 3<sup>rd</sup> edition Vor §§ 120ff, marginal number 120; *Ulmer*, *Die Immaterialgüterrechte im IPR*, 1975, marginal number 1, 16.

- <sup>67</sup> See, e.g., *Schack*, Urheber- und Urhebervertragsrecht, 4th edition 2007, pp. 458 et seq.; *Boschiero*, Infringement of Intellectual Property Rights, A Commentary on Article 8 of the Rome II Regulation, IX Yearbook of Private International Law 87, 94 et sequ. (2007).
- <sup>68</sup> See § 301 of American Law Institute, Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes, 2007 and Articles 3:102, 3:201, 3:301, 3:601 of European Max Planck Group on Conflict of Laws in Intellectual Property (CLIP), Principles for Conflict of Laws in Intellectual Property, Second Preliminary Draft (6 June 2009), available at <http://www.cl-ip.eu>.
- <sup>69</sup> *Jaeger/Metzger*, Open Source Software, 2<sup>nd</sup> edition 2006, marginal number 356
- <sup>70</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:177:0006:0016:EN:PDF>.
- <sup>71</sup> *Jaeger/Metzger*, Open Source Software, 2<sup>nd</sup> edition 2006, marginal number 356.
- <sup>72</sup> One possible wording for such a clause could be: „This licenses shall apply only if German copyright law is applicable. German copyright law is to be applied if you copy or distribute the work or make it available on German territory. In this case, the license shall also be governed by German law.“ For details, see *Metzger*, Free Content licenses under German Law. Talk at the Wissenschaftskolleg, Berlin, June 17, 2004 available at <http://lists.ibiblio.org/pipermail/cc-de/2004-July/000015.html>.
- <sup>73</sup> <http://artlibre.org/licence/lal/en/>.
- <sup>74</sup> For details please see <http://www.fsf.org/licensing/licenses/fdl.html>.
- <sup>75</sup> See *Liang*, Guide to Open Content Licenses - available at <http://pzwart.wdka.hro.nl/mdr/pubsfolder/opencontent/>.
- <sup>76</sup> For details, see *Lessig*, CC in Review: Lawrence Lessig on Compatibility, available at: <http://creativecommons.org/weblog/entry/5709>.
- <sup>77</sup> Just recently, the Wikipedia community and the Wikimedia Foundation board approved the adoption of the Creative Commons Attribution ShareAlike license as the main content license for Wikipedia and other Wikimedia sites. For details and background see <http://creativecommons.org/weblog/entry/15411>.
- <sup>78</sup> See Lessig’s example at <http://creativecommons.org/weblog/entry/5709>.
- <sup>79</sup> The old version 2.5 of the CC BY-SA similarly required derivatives to be licensed under “*the terms of this license, a later version of this license with the same license elements as this license, or a Creative Commons jurisdiction license that contains the same elements as this license.*”
- <sup>80</sup> *Garlick*, Creative Commons Version 3.0 licenses – A brief explanation, available at [http://wiki.creativecommons.org/Version\\_3#Further\\_Internationalization](http://wiki.creativecommons.org/Version_3#Further_Internationalization).
- <sup>81</sup> E.g., under either the CC BY-SA license or the certified CC compatible license. See *Garlick*, Creative Commons Version 3.0 licenses – A brief explanation, available at [http://wiki.creativecommons.org/Version\\_3#Further\\_Internationalization](http://wiki.creativecommons.org/Version_3#Further_Internationalization).
- <sup>82</sup> <http://creativecommons.org/weblog/entry/10443> - details available at <http://www.gnu.org/licenses/fdl-1-3.html> [http://meta.wikimedia.org/wiki/Licensing\\_update/Questions\\_and\\_Answers](http://meta.wikimedia.org/wiki/Licensing_update/Questions_and_Answers).
- <sup>83</sup> <http://arstechnica.com/open-source/news/2009/04/wikipedians-to-vote-on-creative-commons-license-adoption.ars>.
- <sup>84</sup> See press release on dual licensing (21 May 2009) available at [http://wikimediafoundation.org/wiki/Press\\_releases/Dual\\_license\\_vote\\_May\\_2009](http://wikimediafoundation.org/wiki/Press_releases/Dual_license_vote_May_2009).
- <sup>85</sup> [http://wikimediafoundation.org/wiki/Press\\_releases/Dual\\_license\\_vote\\_May\\_2009](http://wikimediafoundation.org/wiki/Press_releases/Dual_license_vote_May_2009).