

DML-BY-NC

Dresden Media License -Attribution- Noncommercial

Preamble

The present license is designed to facilitate the licensing and use of text, images and video material. The license is based on the Creative Commons licenses but allows the granting of further rights of use. This applies in particular to differentiating between different types of commercial use and the use of media in social networks.

Art. 1 Definitions

Legal objects

(1) Protected object

The “**protected object**“ as defined by the present license is the legal object

- for which a legal protective right exists and to which the owner of the protective right is granted an absolute right to the protected object subject to legal stipulations, regardless of the conditions under which the right was granted or the manner in which the respective right has been exercised
- and which is provided under the terms of the present license.

Regardless of the type of tangibly fixed protection or whether the object is in analogue or digital form, the above definition in particular includes but is not limited to

- copyrighted works of any type, including works of lesser levels of originality, posthumous works as well as photographs and photographic works; i.e.
- protected registered designs,
- databases or compiled data or works as individually protected intangible property rights.

Derived legal objects

(2) Variation

A “**variation**“ as defined by the present license is the result of any type of change made to the protected object, particularly but not limited to any adaptation, redesign, alteration, customisation or transformation which does not reduce the individual characteristics of the protected object and does not result in an independent protective right. Variation does not include assimilation of the

protected object into a compilation nor the free use of the protected object (Art. 24 of the German Copyright Act).

(3) Compilation

A “**compilation**” as defined by the present license is a cumulating of protected and unprotected intangible legal objects, wherein based on the selection and arrangement of the independent elements contained therein, such a compilation constitutes an individual intellectual creation and is as such subject to protection, regardless of whether the elements are systematically or methodically compiled and thus individually accessible or not.

Legal entities

(4) Right holder

The “**right holder**” as defined by the present license is any natural or legal person or group of persons holding an exclusive right (intangible property right, e.g. copyright) to the protected object incorporating the acts and rights specified in Art. 3 and for which rights of use can be granted or rights can be transferred to third parties.

(5) Licensor

“**Licensor**” as defined by the present license is any natural or legal person or group offering the protected object under the terms of the present license and insofar acting directly or indirectly as the right holder.

(6) Licensee

“**Licensee**” as defined by the present license is any natural or legal person or group of persons using the protected object under the present license without having previously violated the terms of the present license or having otherwise obtained the express permission of Licensor or the right holder to exercise the rights to use granted by the present license despite a prior violation.

Rights

(7) Reproduction

“**Reproduction**” as defined by the present license means the production of digital or analogue duplications (copies) of the protected object by any given means. This in particular also includes

- the first tangible fixing of a previously unfixed protected object (e.g. the first printing of a photograph previously existing solely in digital form) as well as the production of copies of said tangibly fixed object,
- the transfer of the protected object to visual media, audio media and/or visual/audio media or other electronic media, regardless of whether in digital and/or analogue form.

(8) Dissemination

“**Dissemination**” as defined by the present license means making the original or copies of a protected object or variations thereof, i.e. tangibly fixed forms, available or marketed to the public.

(9) Making publicly available

“**Making publicly available**” as defined by the present license means that the protected object

- is made accessible to a majority of the general public in intangible form by means of public presentations, performances, demonstrations, renditions, broadcasts or retransmissions irrespective of the time and place of the technologies and methods used, including wired and wireless means and online postings, or
- is made accessible to a majority of the general public in tangible form by means of exhibitions, irrespective of specific event.

(10) Sublicensing

“**Sublicensing**” as defined by the present license means granting third parties rights to the protected object under the terms of the present license such that said third parties independently enjoy the rights granted by Licensee by virtue of the present license without

- a separate agreement being required between them and the right holder and/or Licensor,
- Licensee thereby losing its rights of use to the licensed object.

Additional definitions

(11) Commercial

“**Commercial**” as defined by the present license refers to any use within the scope of commercial or professional activity which indirectly or directly generates income for Licensee and/or realises said generated income. This not only includes use of the protected object in the providing of one’s own services (e.g. website or brochure illustration for clients) but also use of the protected object for any and all promotional purposes.

This in particular includes but is not limited to:

- The use of content in the designing of Dresden tourism offers by domestic and foreign travel organisers, travel agencies, airlines, rail and coach operators, maritime companies, hotels, trade fair, congress and convention organisers and other such similar enterprises engaging in travel organisation as their core business.
- The composing of journalistic articles about Dresden in newspapers, periodicals, magazines, brochures and travel guides (subject to the basic principle of the image-accompanying text being informative with respect to tourism and broadly defined as being of a promotional nature)
- Promotional support of conventions, congresses, trade fairs and exhibitions held in Dresden.
- Promotional support of offers extended by non-tourism business enterprises and associations as well as educational and scientific institutions in the scope of organisational and product advertising in support of marketing and image promotion.

(12) Non-commercial

“**Non-commercial**” as defined by the present license refers to the use of the protected object within the scope of activities which are not attributable to the commercial or professional activity of Licensee and through which Licensee generates no or only minimal income. This particularly includes, but is not limited to

- the use in blogs which generate advertising revenue for Licensee only to the extent of covering the costs of operating the blog, provided the blog does not constitute Licensee’s commercial or professional activity,

- the use in academic and scientific works, in particular student research papers, theses, doctorate works, postdoctorate works, provided the respective academic/graduate/postgraduate structure allows for the publication of the work,
- the use by non-profit organisations, particularly foundations and associations,
- the use by educational and scientific institutions, provided and insofar as the use is solely for educational and research purposes, regardless of whether the educational/research endeavours indirectly or directly generate income,
- the use by start-ups for promotional purposes in the first three years subsequent formation (business and other registrations, etc.),
- the use by private persons for private purposes.

Art. 2 Copyright limitations

The protected work is subject to the protection as well as the limitations of the respective protective right (e.g. copyright). Same notwithstanding, the limitations of the respective protective right (e.g. citation right) apply to the terms of the present license. The present license and its terms do not constitute any restriction of the generally applicable limitations of the respective protective right.

Art. 3 Granting rights of use

- (1) The scope of the present license grants Licensee a simple, non-exclusive right without prejudice relative the inalienable rights of the right holder / Licensor to the licensed object under the terms of the license for unrestricted use
 - a. free of charge (royalty-free) subject to paragraph (3),
 - b. in perpetuity and without territorial restrictions,
 - c. subject to the restrictions of Art. 4.
- (2) Under the terms specified in Art. 4, the license encompasses the right
 - a. to reproduce the licensed object in any form and quantity,
 - b. to disseminate, make publicly available and sublicense the licensed object in its original or in the form of digital and/or analogue reproductions,
 - c. to incorporate the licensed object in compilations and to reproduce, disseminate, make publicly available and sublicense the licensed object as part of a compilation,
 - d. to modify the licensed object, in particular render or convert into another file format, provided said process does not result in a misrepresentation of the original work and it is clearly recognisable that the result is a variation, and to disseminate, make publicly available and sublicense license-compliant variations of the protected object.

- (3) The right holder reserves the exclusive right to inalienable lawful claims for compensation, e.g. statutory licenses, compulsory licensing (e.g. for blank media) also with respect to any exercising of Licensee's rights from the present license. Subject to lawful claims for compensation, Licensor waives Licensee remuneration in all cases of use as permitted by the license wherever possible, regardless of whether collection is realised by Licensor itself or by one or more collection agencies.

Art. 4 Terms

- (1) Licensee shall only be entitled to the rights set forth in Art. 3 under the following terms:
- a. Licensee is not to remove or alter the included copyright notice or reference to the present license when using the protected object.
 - b. Licensee may only sublicense the protected object under the terms of the present license; i.e. Licensee may only transfer the rights Licensee itself has been granted from the present license without establishing its own licensing terms. Sublicensing is subject solely to the terms of the present license.
 - c. Licensee may not extend or impose any contractual terms or conditions of use which limit the terms or the granted rights of the present license.
 - d. Licensee is not to alter the reference to the present license / disclaimer in any unaltered copy.
 - e. Licensee is not to establish any technical barriers preventing the user of his offer from exercising the rights granted by the license.
 - f. Art. 4 (1) shall also apply should the work be incorporated into a compilation without the compilation as a whole being subject to the present license or present terms.
 - g. The Licensor reference stipulated by paragraphs (2) (3) shall be removed from compilations.
 - h. The Licensor reference stipulated by paragraph (2) must be removed from variations.
 - i. **Free use by publishing houses and photo agencies is expressly excluded when said use consists predominantly of commercially exploiting the protected object or images or variations thereof, e.g. through the sale of postcards, illustrated works.**
 - j. Commercial use as defined by Art. 1 (11) (12) of the present license is prohibited.
 - k. In derogation of Art. 1 (12) of the present license, use of the protected object by start-ups in the first three years subsequent formation is deemed to be commercial when said use occurs in the scope of sales of the protected object and/or illustrations or variations of same, e.g. postcards, cups, T-shirts, illustrated works, collected works.
- (2) The dissemination or making publicly available of the protected object or any compilations or variations is only permitted under the condition that, subject to Art. 1 (g) (h), all associated copyright notices remain unchanged. The acknowledgment of legal ownership is to indicate the following data – to the extent known – in a form appropriately commensurate with the use:
- a. Name or pseudonym of the right holder and any third-party attribution (e.g. foundation, newspaper, publisher)
 - b. Title of the content

- c. A practical version of the “Uniform Resource Identifier (URI)” which Licensor has indicated for the protected object, unless the URI does not refer to copyright or license information
 - d. Variations as defined by Art. 3 (2) (d) are to reference said circumstance
- (3) The data pursuant paragraph (2) may be in any form appropriate to the respective use and respectively used medium. In the case of variations or compilations, said data must constitute the minimum of the indicated data. Should multiple right holders be indicated in variations or compilations, the statement / details of data pursuant paragraph (2) is to be equal among all right holders.
 - (4) Licensee is to clarify that the data solely serves the indication of legal ownership. Licensee is to clarify that the exercising of the license does not constitute any relationship between Licensor and Licensee beyond that of a licensing agreement and to refrain from any intimation of an – explicit or implicit – association or relationship without the prior written confirmation of Licensor or attributed parties.
 - (5) The restrictions specified in accordance with the above paragraphs do not apply to elements of the protected object having only intangible property right protection as components of a database.
 - (6) Personal rights remain unaffected by the aforementioned terms.

Art. 5 Warranty

- (1) Licensor warrants that it is entitled to extend the protected object to Licensee under the terms of the present license and holds the respective rights of use.
- (2) The present warranty only covers the copyright to the protected object itself.
- (3) Licensor assumes no warranty for the protected object or its content infringing the rights of third parties, e.g. individual image copyright.

Art. 6 Limitation of liability

Any and all damage claims are excluded in cases of simple negligence on the part of Licensor and/or its legal representatives and/or vicarious agents. This does not apply in cases of personal injury or damage to health or to breach of cardinal contractual obligations, albeit liability for breach of cardinal contractual obligations is limited to an amount foreseeable and typical of such contracts.

Art. 7 Expiration

- (1) Licensee rights to the licensed object ensuing from the present license expire at that point in time at which Licensee violates the terms of the present license, regardless of the point in time at which the

right holder / Licensor became aware of said violation. Derived third-party rights, e.g. licenses to variations / compilations, thereby remain unaffected, provided said third party is in compliance with the licensing terms. In a case of Licensor having granted sublicenses, the right holder / Licensor shall grant an individual license to the sublicensing entity provided and to the extent that the sub-Licensee is in compliance with the terms of the present license.

- (2) Subject to the terms as specified, the license remains valid until expiration of the protective right on the protected object. However, the right holder / Licensor reserves the right to also make the protected object available under other licensing terms and/or discontinue its sharing, with said action not having any effect whatsoever on the present license. The right holder / Licensor will in particular grant no licenses which would result in a cancellation or revocation of the present license or in any way limit the rights granted by the present license.

Art. 8 Miscellaneous provisions

- (1) Each instance of use of the protected object under the present license also constitutes a right holder / Licensor offer of use to the recipient of the protected object under the terms of the present license.
- (2) Dissemination of variations or in the context of compilations constitutes a right holder / Licensor offer of use to the recipient of the original protected object under the terms of the present license.
- (3) In the event of any one provision of the present license being invalid, the validity of all the other provisions shall thereby remain unaffected.
- (4) No provision of the present license shall be deemed waived and no breach of same shall be deemed permissible in the absence of the express and at least written consent of the parties to the waiver or breach.
- (5) The present license constitutes the full agreement between the parties (Licensor and Licensee) with respect to the protected object. There are no agreements on the protected object which are not cited in the present license. Changes and/or modifications to the present license are possible, albeit must at least be made in writing. Changes and/or modifications are only effective between Licensor and Licensee as well as any sub-Licensees but not, however, for or with respect to third parties as defined by paragraphs (1) and (2).
- (6) Where contractually stipulated, the law of the Federal Republic of Germany shall apply to any and all disputes regarding or ensuing from the present license.

Art. 9 Note

The creator of the present license text is not a contracting party to the present license and assumes no liability for the content of same. The parties are to decide at their own risk whether the offer and/or use of media under the present license corresponds to their interests and/or intended use. If in doubt, the parties should seek the advice of an attorney prior to deciding to offer media under the present license and/or use media offered under the present license.