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New Model Contract Between Public TV and Video Artists

A Leading Critic & Artist Explains Why it Could Lead to General Reform of Artists Rights

By Douglas Davis

The model contract below — arrived at after six months of dialogue and revision — appears at a moment unique in the life of the arts in this country, and in the life of the republic itself. The impetus for the contract occurred during a chance conversation between Stan Vanderbeek and myself. The subject was the inequities of the contracts we were being asked to sign in order to realize our major projects in videotape and in television. It was the kind of shop talk that artists always fall into — with a difference this time: Stan had already determined to do something about it, in concert with others. I agreed to help and the search immediately began both for the proper means and the proper end.

The means ultimately meant the forum and expertise provided by John Hightower, Harvey Horowitz, and Advocates for the Arts, together with the collective experience of five artists working predominately in video — Peter Campus, Ed Emshwiller, Nam June Paik, Stan and myself. The end is this contract, which is a model not only for the specific and complex arrangements that must be made between the artist and the television station (or experimental video center) but for all such arrangements in the field of video whether they involve art galleries, video distribution systems, foundations, governmental agencies, museums, or universities. It is in no sense perfect and in no sense offered as valid in every contact between artist and TV station, experimental center, museum, or whatever. Practically speaking, it will serve both the artist and his collaborators mainly as an informational manual — spelling out his rights and the reasons why he should insist on retaining them. At first, it will surely be employed basically as a defensive (not an offensive) weapon:, nearly all artists working in the video field accept commissions, grants, or opportunities to create tapes or broadcasts without a contract — and then find themselves asked to sign one later. Now he can refer to this contract, match it against what is offered, and negotiate not from strength but from a sure base in legal information and advice.

The moment of its birth is a moment when the hitherto private arts in this society are increasingly going public, on every level, from funding to programming. This moment holds peril as well as promise. It was not long ago that all of us took up arms in behalf of public support of the arts. Not only did the nation owe this support to its expanding and vigorous

(continued on page 2)

An Open Letter from R. Buckminster Fuller

If you've gone to a museum, attended a play, seen an opera, or bought a painting in the last year, you were responsible for keeping the arts alive.

Yet despite your support, the arts in this country are in serious trouble. The future looks even worse.

In fact, if performing arts programs alone keep losing money at the present rate — the Metropolitan Opera loses almost $50,000 every time its curtain goes up — many of them will be out of business by 1980.

Advocates for the Arts has had impressive success in a short time in improving the lot of both artists and the arts. It has won my support, and I think deserves yours.

Advocates recognizes that the problems facing the arts are the same problems facing you and me in our daily lives: inflation, unfair taxes, insensitive government bureaucracies, a disdain for our environment, and a lack of laws that prevent large institutions from exploiting smaller ones.

As individuals, we often lack the influence to do anything about these problems. And that's why a group like Advocates is important.

Advocates gives us the opportunity to do for the arts what we cannot do as patrons: exert collective leverage and energy in pressing for new laws, working against unfair taxes, and cutting through government red tape.

Through tough legal, economic, and political action, Advocates has been doing just this, with results.

In its first six months, it persuaded the U.S. Postal Service not to withdraw third-class mail privileges for cultural institutions, and successfully campaigned to have the admissions tax removed from arts events in Washington, D.C.

Its goal is to defend the arts against unfair practices, and to ensure that the excellence of art is felt at all levels of our life.

This means fighting against censorship and unfair taxes, as well as for health care and retirement plans for artists, and for progressive laws that make government a patron rather than a roadblock to the arts.

I urge you to do as I have — join Advocates. Without you, it is only a great idea. With you, it's an opportunity to improve the arts and the quality of life of our society.

The Great Copyright Free-For-All

This issue of **The Arts Advocate** devotes a great deal of attention to copyright, an issue politically hot and enormously consequential to the arts. Too few individuals understand just how consequential it really is — and how much the artist stands to lose or gain by Congressional action.

Advocates for the Arts will keep its members informed of the progress of the new copyright bill. We hope you will familiarize yourself with its provisions which are covered at some length on page 4. We will also ask you to take action at critical moments of its passage through the committees and onto the floor of the Senate and the House.

The dollar appropriations for the National Endowment for the Arts often occupy our attention with good reason. However, the dollars at stake for the arts in copyright protection are considerably greater. It is important for us to make sure that the voice of the arts is heard forcefully as the debate gains momentum in the 94th Congress, which will surely pass a copyright bill to revise the 1909 Act.

It would be ironically self-defeating if the debate, which the Supreme Court recently failed to enter, were decided in favor of the politically muscular merchants of creative work at the expense of the creators whom the Constitution was specifically trying to protect when it gave Congress, in 1789, the power ". . . to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries . . ."

Despite the Constitution, a staggering 20 billion copies of published, copyrighted material were run off last year by libraries throughout the United States free for the asking without paying royalties. There was, of course, a charge to use the machines. The exact number of sales this displaces is not calculable. A stack of 20 billion pages of xerox paper would be taller than Chicago's Sears Tower — almost 7,000 times taller. To be exact, 1,521 miles high.

In February the Supreme Court handed down the anxiously awaited "Dred Scott decision of copyright law." It was no decision at all. The case of Williams and Wilkins v. the U.S. Government, considered by experts of our rickety copyright laws to be the most important copyright case in forty years, now goes back to the 1973 decision by the U.S. Court of Claims which ignores the economic claims of the person who created whatever is worth copyrighting.

The Williams and Wilkins case was significant. It could have been an important guide for the legislation now before Congress. It tested the crucial copyright question of "fair use" by photocopying. It also could have determined whether creators of material — not only authors but composers, playwrights, poets, choreographers, photographers, painters, and sculptors as well — could copyright their work and have it stick. Publishers had the most at stake. Because the National Institutes of Health and the National Library of Medicine duplicated literally tens of thousands of pages from the medical journals published by Williams and Wilkins, the publisher justifiably — or so it would seem — cried foul. With that many copies being cranked out of the duplicating machines of these two government agencies, Williams and Wilkins argued that their income was being substantially threatened. The Court of Claims thought otherwise and ruled in favor of having the government provide copies of journal articles for anyone who wanted them for their own use and against every kind of creator of copyrighted work.

Thus the four judges of the Court of Claims, who held the majority opinion, drove a sizable hole through the protective wall of copyright that the Constitution specifically provided in a time when ideas and their expression were more valued than they are now judged to be. In concluding, they said, "The truth is that this is now pre-eminently a problem for Congress." Clearly, it was not a problem for the U.S. Supreme Court.

The problem is now up to Congress which will have to make hard decisions in an atmosphere of mounting pressures from special interest groups — libraries, publishers, record companies, movie producers, broadcasters, juke-box owners, television stations, background music firms of which Musak is the most ubiquitous, arts organizations, the photocopying industry, performers, unions, universities, and last and unfortunately least in political effectiveness, authors and artists who create the copyrightable work to begin with. The heavyweights in the legislative scrimmage are the broadcasters who do not want to pay any royalties to either the performers or the creators of material. They can also twist a legislative arm or two by insinuating that the next campaign for election may not be covered too well on local radio or TV.

After years of truncating amendments, Senate Bill 22 to revise the 1909 copyright law has been introduced before the 94th Congress by Senator McClellan. The bill covers 18 major features in its various sections. The most progressive feature extends copyright protection through the lifetime of the creator plus 50 years after death. Existing copyrights would automatically be extended to a total of 75 years. The doctrine of fair use is defined for the first time. Last year, the Senate passed a bill that prohibited wholesale copying but permitted libraries to make only one copy of an article requested by an individual. The measure died when the House failed to act. This year's bill revives the issue.

There has been all too little media coverage of copyright to arouse or inform the public, yet the consequences of a new copyright law for the artistic life of the country are profound. In view of the Court's having legged the issue of fair use, there is urgent need for Congress to encourage creative talent and to provide value for its expression through legal protection and economic incentive. In the debate ahead, Advocates for the Arts hopes others will join it in making the strongest possible case in Congress for artists — the source of the arts and the all but forgotten constitutional reason for copyright.

John B. Hightower
Chairman, Advocates for the Arts

community of artists; the nation stood to benefit from that support, in practical and philosophic ways. For a variety of reasons, we succeeded beyond our wildest dreams: the budgets of the two main agencies for aiding the arts — the New York State Council and the two National Endowments — jumped 15-fold and 9-fold respectively between 1969 and the present year. Formerly almost no one working in the arts received a penny of federal support, now thousands do. In New York City today there are very few artists of any serious commitment who are not involved in some way with either the State Council or the CAPS (Creative Artists Public Service) program.

The peril in all this is that it can be an esthetic and philosophical quicksand. Where once the artist had only his own bank account and an occasional private patron or collector to worry about, he now confronts a bewildering array of funding bureaucrats. While it is impossible to document the pressure that a funder can impose upon an artist, it would be naive for anyone to contend that such pressure does not exist. No one does. Often the funder is unaware that his procedures do create such pressures. The creation of the model video contract has been in fact aided and abetted by representatives from both the New York State Council and the National Endowment for the Arts, as well as several private foundations, all of whom are eager to make sure that monies granted to artists for work in television stations are used primarily for his benefit and that his working conditions therein leave him as free as possible to pursue his artistic goals.

But video as a medium for artistic expression is a brand new one. It is thus a field ripe for reform almost before it begins. If we cannot straighten out and equalize the relationship between the artist and the newly public source of support here, we can't do it anywhere — least of all in the traditional genres of painting, sculpture, theatre, literature and even, to some extent, film. Why is it important to put art and public power (for power is undoubtedly the function of funding or money) on a 50-50 footing? Why are a few malcontent artists and critics beginning to complain about all the largesse now being showered upon them by a grateful society, ostensibly in the pursuit and perfection of the true, just, and beautiful?

Because this largesse is being dispensed not by disinterested angels but by human beings. These are, furthermore, human beings whose opinions and political considerations are often in conflict with their pursuit of divine beauty, as were the old sources of patronage — kings, queens, nobles, and merchants. Worse, these thoroughly human dispensers of funds come armed now with paper, with application forms, contracts, statements of intent, expense accounts, and more.

Most artists are not equipped to deal with this cannonade of paper. They are less equipped to deal with contracts that are normally based like all contracts in historical precedent. It seemed to both Stan Vanderbeek and me that the contracts we had been handed by television stations had all been prepared by lawyers employed by the station, and therefore inevitably biased in favor of management. The model contract is biased in the other direction, but surely this is fair game at best and a novelty at least.

There is also the whole question of esthetic or philosophical meddling by the new superagencies in the American arts. It is certainly a basic dilemma with which reform activity of this kind must deal. There is no reason for granting the artist more control over the funds that are appropriated in his name to a television station, except the good one that he must have as much control over his work as a painter has over his canvas, or a draughtsman over his drawing. Why is this a desirable objective — for the whole society? A brief reference to recent history may be instructive.

Not long after the Russian revolution in 1917, the new government decided to turn the engine of patronage in the arts completely around, taking it out of private hands and putting it into the public domain. The new Commissar for Culture (though his ministry was officially named "Public Education") was an intelligent and sensitive man, himself a poet and

critic, named Lunacharsky. Funds flowed from Lunacharsky's discerning hand into the pockets of a brilliant generation of avant garde artists, all of whom, unlike their colleagues, had been sympathetic to the revolution. To mention a handful of names is to indicate the genius at work, for all have since become legends: in painting, Malevich, Chagall, Lissitsky, and Rodchenko; in sculpture, Tatlin and Lissitsky; in film, Eisenstein and Vertov; in architecture, Vesnin and Leonidov; in theatre design, Meyerhold; in poetry, Mayakovsky.

But it was not long before certain bureaucrats and politicians decided that these men were not really "popular" artists. Mayakovsky, the spokesman for the entire movement, began to be attacked regularly in public meetings by his fellow poets and certain politicians. On one occasion, a colleague in the audience shouted that Mayakovsky's poems could not possibly be understood by the "workers". Mayakovsky countered that he had just returned from a long reading trip which attracted large audiences of workers, but to no avail. Lunarcharsky himself lost power, in time. With the onset of Stalin, public support for artists who did not paint in a "popular" and realistic style ended. I need not tell you what that did to Soviet art: now 40 years after the triumph of a debased "public" ethic in the USSR, Russian art is in a sad and exhausted state — as even the government itself now recognizes. It will not be long before that situation is remedied by increasing contact with the culture of other countries, particularly our own, but think of the intervening waste of time and talent. Mayakovsky committed suicide in 1930. Now there is a small museum in Moscow devoted solely to his work. It is very popular.

All of this may sound melodramatic, but the truth often is. So is confrontation with the hard esthetic and moral issues that attend the expansion of public arts funding in the United States. That confrontation is often avoided for the safe, bland discussion of process and mechanics — but at great cost. The video contract, though it attempts fairly modest adjustments in the prevailing relationship between art and power, is inevitably a step toward the modification of that relationship all along the line, and is thus a contribution to the health of the whole culture.

It is only since 1968 — roughly speaking — that artists have gained access to television stations, and to broadcast. There is no more difficult accommodation than between art (essentially private and independent in spirit) and television (essentially the most public of mediums). But there is no precedent, either, and therefore no backlog of past contracts and understandings to oppose. If the "video artists" currently at work will therefore try to understand and use this contract — insisting particularly that they are the basic owners of their own work (the contract's key point) — they will create in this newest of the arts a sane precedent, for once, with application (in time) to the older arts. Needless to say, this responsibility is shared by the funders, their middle-umbrella organizations, and by the television stations. The artists must, however, begin the change by speaking out for their own rights. This essentially is what we are doing through the contract.

Douglas Davis is art critic of Newsweek and a noted video artist.

The Commissioning Contract for Video Artists

By Harvey Horowitz

The commissioning contract is standard practice in publishing, film, and commercial television, but it is relatively new for the creative video artist. It is therefore important for the video artist engaged in this field to be aware of the legal ramifications of a video commissioning contract.

In the legal sense a video artist is distinct from an employee for hire who is the finished product belongs to the employer. Video artists are those who conceive and produce their work and view the finished product as their own. They usually function simultaneously as producer, director, cameraman, technician, sound synchronizer, and editor. There is often confusion over the rights to the product of video artists — who owns it and for how long?

The guiding principle the artist should understand is that the artist originally owns the work and all rights connected to it. From that premise on, what any contract does is to exchange part of those rights for certain benefits to both sides. What this contract tries to do is to keep the give and take on an even basis so that the quid is balanced with the quo equally for both parties. It is up to the artist to make sure he is not being short-weighted. Some commissioning stations, for example, begin negotiations with a pretty heavy finger on the scale, claiming that the large costs of production, advertising, etc., entitle them to most of the rights over the work. The argument may hold for the station's employees over whose work the station may have blanket rights, but not for the independent artist who already owns his package, and barters rights in exchange for guarantees of how it is to be used, compensation, and so on.

In television, including public broadcasting, contracts are commonplace. The following contract is not earthshaking, innovative, or novel in the law. It may, however, be innovative for the video artist, It is drafted in the traditional legal format and deals with the issues that matter. The artist should become familiar with the import of its language.

If we could win acceptance for a form contract tilted somewhat in favor of the artist who takes most of the risks, makes the most creative effort, and who, by rights, ought to be the one to propose "terms of agreement", we will have taken another small step forward for the economic rights of artists — a primary and continuing concern of Advocates for the Arts.

Harvey Horowitz, who prepared the video contract and accompanying textual notes, is a member of Squadron, Gartenberg, Ellenoff & Plesent, legal counsel to Advocates for the Arts. The contract is now under discussion by representatives of public TV, state and federal funding agencies, foundations, and by video artists.

Contract Draft

~~Dear~~ _____

This letter will confirm the agreement reached between A. Artist (herein "the Artist") and ~~Broadcasting In Education~~ CORPORATION FOR PUBLIC BROADCAST (herein "~~BIE~~ CPB").

Par 1 ~~BIE~~ CPB hereby commissions the Artist to create a video work having as a working title, "~~The High Tower~~" (herein "the Work"). In connection with the production of the work Artist shall have the right to use the production facilities of ~~BIE~~ CPB in accordance with Schedule A attached hereto. The Work shall be approximately fifty minutes in length and deal with the subject of high towers. Artist agrees to consult with members of the staff of ~~BIE~~ CPB at reasonable times although it is recognized that all artistic decisions with respect to the Work ~~shall be made by Artist~~.

Comment: *The main thrust of the commissioning clause is to provide for the Work to be commissioned. Usually it will be unnecessary to describe the Work beyond the title and possibly the subject matter. The Artist should be able to use the facilities of the station and while he may be required to consult with station staff, it should be clear that artistic decisions will be made by the Artist. Schedule A to the agreement is intended to include the details of Artist's permitted use of the station's production facilities including such items as, hours and days per week a facility will be available, equipment and supplies available to artist and personnel available to Artist.*

Sometimes the commissioning program involves the Artist serving as an artist-in-residence, or performing services in addition to producing the Work. Under such circumstances, the contract should be specific concerning the nature of the additional work to be performed by Artist, the amount of time Artist will be required to devote and additional compensation, if any. If the rendition of these additional services will possibly cause a time conflict for the Artist, the times and dates for the performance of these additional services should be subject to mutual agreement.

Par. 2 In consideration for the rights to the Work granted to ~~BIE~~ CPB hereunder, Artist shall be paid the sum of ~~Five~~ thousand dollars as a fee for Artist's' services payable as follows:

~~One thousand five hundred dollars~~ One thousand five hundred dollars within 30 days of the completion of the Work or upon broadcast of the Work whichever is earlier.*

The Work shall be deemed completed upon delivery of a finished master tape to ~~BIE~~ CPB. In connection with the creation of the Work, BIE will reimburse Artist for the expenses itemized on the expense schedule annexed hereto.

Comment: *Aside from the obvious fact that the amount to be paid Artist should be explicitly stated, some attention should be given to the language used to describe the method of payment. Care should be taken so that payments are related to objective events, such as selected date or delivery of a finished segment, rather than subjective criteria such as approval or acceptance of the Work. Additionally, if a payment is to be made upon the happening of an event under the control of the station, an outside date should be included in the schedule. Thus, if the last payment is to be made when the program is broadcast, the clause should read: "The final installment shall be paid Artist when the Work is broadcast, but if the Work is not broadcast by November 30, 1976, then the final installment shall be paid Artist on or before said date." If the station agrees to reimburse Artist's expenses, the Artist should be prepared to conform to a station policy on expense vouchers. Some care should be taken in the preparation of the expense schedule so as to avoid disagreements over expenses after they have been incurred.*

Par 3 All right, title and interest in and to the Work and all constituent creative and literary elements shall belong solely and exclusively to the Artist. It is understood that the Artist may copyright the Work in Artist's name. Artist grants ~~BIE~~ CPB the right to have ~~four~~ releases of the Work on station W~~BIE~~ WNED-TV for a period of two years commencing with the completion of the Work. A release is defined as unlimited broadcasts of the Work in a consecutive seven-day period; such consecutive seven-day period beginning with the first day the Work is broadcast. At the end of said two year period the master tape and all copies of the Work in ~~BIE~~ CPB's possession shall be delivered to Artist by ~~BIE~~ CPB. All rights not specifically granted to ~~BIE~~ CPB are expressly reserved to Artist.

Comment: *The language suggested confirms the principle that the Artist owns all rights to the resulting Work including the copyright. The station can be expected to argue that the Artist is an employee for hire under the copyright law and the copyright should belong to the station. When the contract provides for the Artist to retain the copyright, the Artist should as a matter of practice register the copyright to the Work. The sentence describing the grant of release rights to the station is intended as an example rather than a suggestion. One major area of discussion will be the "rights" issue. In general, the commissioning station will seek to acquire rights to distribute or broadcast the Work in the non-commercial, educational, nonsponsored or public television markets. While most persons involved in the field have some general understanding of the meaning of the foregoing terms, working out wording for appropriate definitions would be useful.*

When dealing with the "rights" question, two issues should be separated. First is the issue of who controls the rights; i.e. who can arrange for broadcasting, and the second is whether there will be a sharing of receipts from the exploitation of rights:

Rights can be granted to the station by the Artist on an exclusive or non-exclusive basis. As a starting point for discussion purposes, I will suggest the following guidelines:

(a) The Artist should not grant a license to the station to exploit or distribute the Work in a market in which the station does not actively participate. Thus, if a station has had no experience dealing with cable television, the station should not request a license in such a market. Certainly, if such a license is granted in a previously unexploited area, it should only be on a non-exclusive basis. Even though the grant of a non-exclusive license has some appeal as a compromise, the Artist would be aware that if the work has commercial value, a distributor may wish to have all the exclusive rights. Accordingly, the fact that there are non-exclusive licenses outstanding might affect the marketability of the Work. On the other hand, if the station is very active in a market, for example distribution to school systems, it might be in the interest of the Artist to have the station serve as a licensee for that market. Under such circumstances the second issue, sharing of revenues or royalties, becomes relevant.

(b) All licenses granted by the Artist should be limited as to geographic area and as to time. There should be no reason to grant world wide rights in perpetuity to a station unless the artist views himself basically as creating the Work for the station rather than for him or herself.

(c) If the Artist expects to realize a financial return from a grant of a license, the Artist should have the right to terminate the license if certain minimum levels of income are not reached. Thus, purely by the way of example, if the Artist grants the station a seven year license to exploit the Work in the educational market, and the Artist has not received at least $3,000 by the end of the third year of the license, he should have the right to terminate the license.

(d) If the contract gives the Artist a percent of royalties received from the station's exploitation of the Work, at least three principles should be observed. First, percentages should be based on gross receipts rather than profits. From experience whenever the concept of net receipts or net profits is introduced, there is created an area of potential dispute as to what

**Note: All money amounts and time periods given are, of course, arbitrary, included for the sake of continuity, and are not intended to suggest actual rates and*

can be deducted. Second, the station Artist's share of such royalties sho statement. Third, inspect the boo purpose of verifyi are involved, the A ing an advance aga

(e) Theatrical, and subsidiary rigl Artist. Some or all granted to the stat or royalty partic

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Par 7 Artist authorized to that materia original with permission to Work or such that the Wor upon the righ limited to co and that Artist agrees any damages arising out foregoing repr

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Comment: *Aside from the obvious fact that the amount to be paid Artist should be explicitly stated, some attention should be given to the language used to describe the method of payment. Care should be taken so that payments are related to objective events, such as selected date or delivery of a finished segment, rather than subjective criteria such as approval or acceptance of the Work. Additionally, if a payment is to be made upon the happening of an event under the control of the station, an outside date should be included in the schedule. Thus, if the last payment is to be made when the program is broadcast, the clause should read: "The final installment shall be paid Artist when the Work is broadcast, but if the Work is not broadcast by November 30, 1976, then the final installment shall be paid Artist on or before said date." If the station agrees to reimburse Artist's expenses, the Artist should be prepared to conform to a station policy on expense vouchers. Some care should be taken in the preparation of the expense schedule so as to avoid disagreements over expenses after they have been incurred.*

Par 3 All right, title and interest in and to the Work and all constituent creative and literary elements shall belong solely and exclusively to the Artist. It is understood that the Artist may copyright the Work in Artist's name. Artist grants BIE the right to have four releases of the Work on station WBIE for a period of two years commencing with the completion of the Work. A release is defined as unlimited broadcasts of the Work in a consecutive seven-day period; such consecutive seven-day period beginning with the first day the Work is broadcast. At the end of said two year period the master tape and all copies of the Work in BIE's possession shall be delivered to Artist by BIE. All rights not specifically granted to BIE are expressly reserved to Artist.

Comment: *The language suggested confirms the principle that the Artist owns all rights to the resulting Work including the copyright. The station can be expected to argue that the Artist is an employee for hire under the copyright law and the copyright should belong to the station. When the contract provides for the Artist to retain the copyright, the Artist should as a matter of practice register the copyright to the Work. The sentence describing the grant of release rights to the station is intended as an example rather than a suggestion. One major area of discussion will be the "rights" issue. In general, the commissioning station will seek to acquire rights to distribute or broadcast the Work in the non-commercial, educational, nonsponsored or public television markets. While most persons involved in the field have some general understanding of the meaning of the foregoing terms, working out wording for appropriate definitions would be useful.*

When dealing with the "rights" question, two issues should be separated. First is the issue of who controls the rights; i.e. who can arrange for broadcasting, and the second is whether there will be a sharing of receipts from the exploitation of rights:

Rights can be granted to the station by the Artist on an exclusive or non-exclusive basis. As a starting point for discussion purposes, I will suggest the following guidelines:

(a) The Artist should not grant a license to the station to exploit or distribute the Work in a market in which the station does not actively participate. Thus, if a station has had no experience dealing with cable television, the station should not request a license in such a market. Certainly, if such a license is granted in a previously unexploited area, it should only be on a non-exclusive basis. Even though the grant of a non-exclusive license has some appeal as a compromise, the Artist would be aware that if the work has commercial value, a distributor may wish to have all the exclusive rights. Accordingly, the fact that there are non-exclusive licenses outstanding might affect the marketability of the Work. On the other hand, if the station is very active in a market, for example distribution to school systems, it might be in the interest of the Artist to have the station serve as a licensee for that market. Under such circumstances the second issue, sharing of revenues or royalties, becomes relevant.

(b) All licenses granted by the Artist should be limited as to geographic area and as to time. There should be no reason to grant world wide rights in perpetuity to a station unless the artist views himself basically as creating the Work for the station rather than for him or herself.

(c) If the Artist expects to realize a financial return from a grant of a license, the Artist should have the right to terminate the license if certain minimum levels of income are not reached. Thus, purely by the way of example, if the Artist grants the station a seven year license to exploit the Work in the educational market, and the Artist has not received at least $3,000 by the end of the third year of the license, he should have the right to terminate the license.

(d) If the contract gives the Artist a percent of royalties received from the station's exploitation of the Work, at least three principles should be observed. First, percentages should be based on gross receipts rather than profits. From experience whenever the concept of net receipts or net profits is introduced, there is created an area of potential dispute as to what can be deducted from receipts to arrive at net profits. Second, the station should be obligated to remit the Artist's share of royalties at least semi-annually and such royalties should be accompanied by a royalty statement. Third, the Artist should have the right to inspect the books of the station at least annually for the purpose of verifying royalty statements. When royalties are involved, the Artist should at least consider requesting an advance against royalties.

(e) Theatrical, sponsored television, commercial and subsidiary rights should be held exclusively by the Artist. Some or all of these rights, of course, can be granted to the station in return for a lump-sum payment or royalty participation.

(f) All grant of rights of license clauses should end with this sentence: "all rights not specifically granted to the station are expressly reserved to the Artist."

The Artist should recognize that the fee payable under paragraph 2 and the rights granted to the station under paragraph 3 are very much negotiable matters. No general rule covering all artists can be formulated. For example, one artist might be willing to grant greater commercial rights to the station in return for a larger fee. To another artist, however, the amount of the fee could be less important compared with the rights desired to be retained.

Par 4 BIE shall not have the right to edit or excerpt from the Work except with the written consent of Artist. Notwithstanding the foregoing, BIE shall have the right to excerpt up to sixty (60) seconds of running time from the Work solely for the purpose of advertising the telecast of the Work or publicizing the activities of BIE. On all broadcasts or showings of the Work (except the up to sixty (60) seconds publicity uses referred to above) the credit and copyright notice supplied by the Artist shall be included.

Comment: *This clause limits the station's right to edit or change the Artist's work and limits rights to excerpt except under stated circumstances. The language assumes that the Artist has included a credit and copyright notice in the Work. The station may request the Artist to include an acknowledgment among the credits recognizing the station's contributions to the creation of the Work.*

Par 5 BIE will be provided with the Master Tape of the Work which it shall hold until termination of the license granted to it in paragraph 3 above (or if more than one license has been granted, the clause should refer to the lapse of the last license). BIE agrees to take due and proper care of the Master Tape in its possession and insure its loss or damage against all causes. All insurance proceeds received on account of loss or of damage to the Master Tape shall be the property of Artist and shall be promptly transmitted to Artist when received by BIE. Artist shall receive one copy of the tape of the Work in any tape format selected by Artist. BIE agrees to use its best efforts to give Artist reasonable notice of scheduled broadcast dates of the Work.

Comment: *Custody of master tapes and duplicate tapes will largely depend on the nature and extent of rights to exploit the Work granted or reserved by the Artist. The Artist should understand that usually a station will attempt to disclaim responsibility for caring for the Master Tapes. In general, the law does not impose absolute responsibility on the station to take care of the tape. In the absence of language in the contract, the station will be held to what is described as a negligence standard; that it will be liable for a loss of the Master Tape or damage to it if the station has been negligent. While the Artist through bargaining may not be able to improve upon this measure of responsibility, the Artist should not contractually relieve the station of this responsibility to adhere to the negligence standard.*

Par 6 Artist authorizes BIE to use Artist's name, likeness and biographical material solely in connection with publicizing the broadcast of the Work or the activities of BIE. Artist shall have the right to reasonably approve all written promotional material about Artist or the Work.

Comment: *Because of right of privacy laws, the station must acquire the consent of Artist to use Artist's name, picture or likeness in connection with advertising or trade purposes. The Artist should limit this consent to use in connection with the Work or in connection with promotions for the station. It is of course desirable for the Artist to be able to approve all promotional material relating to the Artist or the Work. However, the station may not readily agree to this proposal. Under such circumstances if the Artist wants specific material included in promotional pieces, Artist should prepare this material beforehand and obtain the station's agreement to include this material in its promotional pieces.*

Par 7 Artist represents that he is authorized to enter into this agreement; that material included in the Work is original with Artist or Artist has obtained permission to include the material in the Work or such permission is not required; that the Work does not violate or infringe upon the rights of others, including but not limited to copyright and right of privacy; and that the Work is not defamatory. Artist agrees to indemnify BIE against any damages, liabilities and expenses arising out of Artist's breach of the foregoing representations.

Comment: *Artist should expect to prepresent to the station that the Work and material contained in the Work are not defamatory, do not infringe upon any*

**Note: All money amounts and time periods given are, of course, arbitrary, included for the sake of continuity, and are not intended to suggest actual rates and*

(continued from page 3)

copyrights and will in general not violate rights of others. The language of the indemnity or hold harmless clause should be examined closely. The Artist should not be liable to the station unless there has been an actual *breach of the representations as distinguished from merely a "claimed" breach of the representations. Some hold harmless clauses are worded so that if someone claims the Work is, for example, defamatory the station is permitted to settle the claim and charge the settlement to the Artist. It is this latter circumstance that is to be avoided. Consideration should also be given to obtaining insurance coverage for the Work against defamation, copyright and right to privacy claims. Stations usually have a form of this so-called "errors and omissions" insurance. Also at least one artist has suggested that stations should be required as a preliminary matter to have its attorney view the Work to determine the probability of defamation or right or privacy claims. Based upon the advice of its attorney, the station would determine whether or not to broadcast the Work. If it elects to broadcast the Work it would then assume the risks of such lawsuits. The rationale for such argument is that a station usually has an existing relationship with a lawyer and, as between the station and the Artist, is in a better position to evaluate the possibility of such litigation and be guided accordingly. This point is being raised for discussion purposes.*

Par 8 In the event ~~BIE~~ files for bankruptcy or relief under any state or federal insolvency laws or laws providing for the relief of debtors, or if a petition under such laws is filed against ~~BIE~~, or if ~~BIE~~ ceases to actively engage in business, then this agreement shall automatically terminate and all rights theretofore granted to ~~BIE~~ shall revert to Artist. Similarly, in the event the Work has not been broadcast within one year from the date the Work is completed (as the term completed is defined in paragraph 1), then this agreement shall terminate and all rights granted to ~~BIE~~ shall revert to Artist. Upon termination of this agreement or expiration of the license granted to ~~BIE~~ under this agreement, all copies of the Work shall be delivered to Artist.

Comment: *This clause is intended to terminate the contract if the station should go bankrupt or cease business. Also, while a station usually will not agree to actually broadcast a Work, if it does not broadcast the Work by a given date, the agreement will terminate. Both of these clauses are intended to allow the Artist to find other means of exploiting the Work if the station goes out of business or, in essence, refuses or fails to broadcast the Work.*

Par 9 This agreement contains the entire understanding of the parties and may not be modified, amended or changed except by a writing signed by the parties. Except as is expressly permitted under this agreement, neither party may assign this agreement or rights accruing under this agreement without the prior written consent of the other except either party may assign rights to receive money or compensation without the other party's consent. This agreement shall be interpreted under the laws of the State of New York.

Comment: *This is the "boilerplate" or standard jargon usually included in written agreements, and should be self-explanatory. Also, as a miscellaneous matter, the Artist should be prepared to adhere to policy or "taste" standards or rules adopted by the station. Most stations have some form of policy guidelines and the Artist should obtain a copy of these guidelines before signing the contract.*

(continued from page 11)

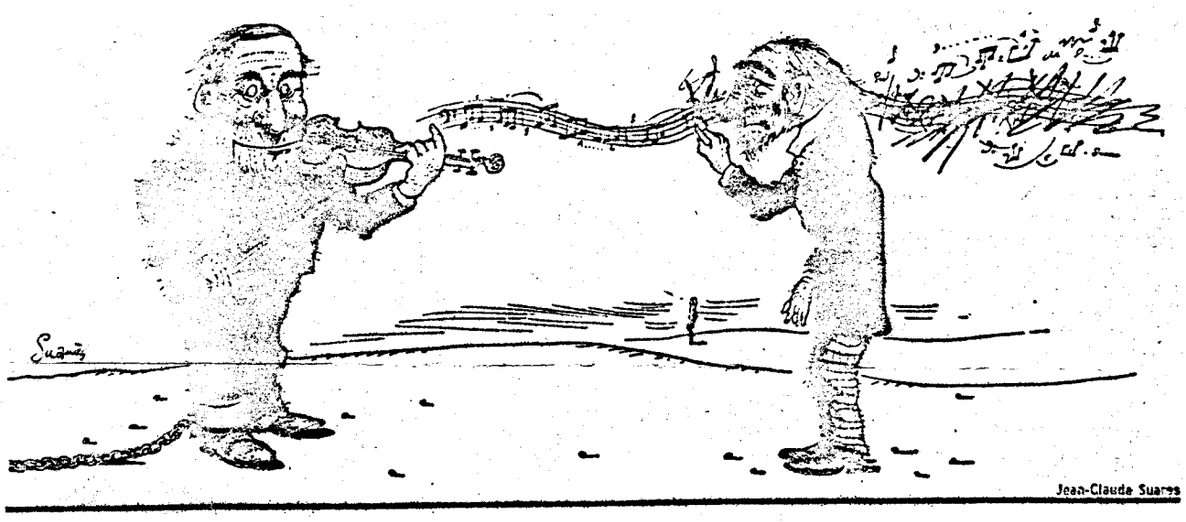
lated. Maybe that should be a 100 acre park, maybe a national park.

ADV: *You mean a site that large also becomes a legitimate land-use issue?*

GILL: Sure. But getting back to the private – public question, this is how great fortunes have been made in the past. We've always dodged this, this has been our hanky-panky by which every so-called socialist enterprise, anything that has to be nationalized is concealed. The pretext is made that we're still private enterprise for as long as the people in charge of private enterprise can exploit their advantage. Building subways was one of the ways of making great fortunes in New York. After the owners had squeezed the last drop of profit out of them they threw them into bankruptcy and then made the city take them over. Water companies do this all over America all the time. It's a great racket. Penn for years ran the Long Island Railroad as a pretend loss just for its own benefit. It was kind of a sewer into which they could dump what funds they wanted to or show as big a loss as they needed. In the past railroads were so powerful we couldn't do much about it. Now it is public service we're going to have to put the pressure on and not private executives.

ADV: *If you can't save Grand Central, really is it worth saving anything else?*

GILL: We wouldn't stop trying to save everything else but it really would be a terrible body blow.



Jean-Claude Suares

. . . furthermore, the party of the first part, hereinafter known (for want of an all-encompassing pejorative) as the artist or creator or originator, or most appropriately sucker, agrees without reservation that (he, she, it, other) shall, will and does give up, yield, relinquish, abandon, surrender and, in all ways not otherwise imagined or specified, turn over control of all work(s) now and forever and eternally—yea, to the last syllable of recorded time—and all manners and forms of ownership legal (and moral) over it (them), and all claims, rights, privileges and immunities appertaining thereto, on this planet and elsewhere in the solar system, to the PARTY OF THE SECOND PART, hereinafter known without prejudice as promoter, bankroller, big shot, top banana, profiteer, angel, agent, publisher, producer—or middleman who just drifts by—and to such maws, hangers-on, flacks, chrome-plated fleets of yes-men, sidekicks and cousins as said inheritor may designate as heirs, beneficiaries, assignees, successors and executives. Moreover, said originator hereby covenants not to covet carbohydrates, starches and sweets, not to whimper, and, additionally, waives any need to breathe . . .

By Erica Jong

Three recent controversies have drawn attention to the need in this country for a new body of law guaranteeing the artist's right to protect the quality of his creation and to profit fairly from its success: Ken Kesey's battle against the producers of the film version of "One Flew Over the Cuckoo's Nest," the Monty Python troupe's unsuccessful struggle to keep their work off network television rather than have it censored and cut, and the attempts of two sculptors to withdraw their works from the Whitney Museum rather than have them displayed in ways that they consider destructive.

As an artist who is currently engaged in a costly and debilitating court battle about the film treatment of my first novel, I wish my fellow creators good luck, but I am hardly sanguine about their chances for success.

Until this country adopts legislation, preferably on the Federal level, that irrevocably entitles an artist to a minimum percentage of the profits of his work and certain reasonable artistic controls (no matter how many times it changes hands), books, paintings and dramatic works will continue to be sold like sacks of sugar for whatever price the artist's clout (or lack of clout) can demand at the time of negotiation.

It is a fact little known by the public that an artist normally relinquishes *all* creative control at the time of sale of a work, that oral promises of excellence are completely unenforceable, and that cash percentages are only received by those with enough business clout to enforce them—which rarely includes the artist.

It is possible for an author like Kesey to create a literary work that generates millions of dollars for others, and have virtually no share in the financial success of its adaptations.

Furthermore, most courts in this country will uphold the producer's or collector's contractual rights, rather than the artist's moral rights—the famous French *droit morale*, which American artists speak of so wistfully.

If works of art were really valueless in business terms, the law would be fair. But they are not. The truth is that many works of art create great accumulations of wealth. The fact that they so rarely do so for the artist—and so often do so for the promoter—is a national disgrace.

Ken Kesey is being penalized because he negotiated the business exploitation of his book at a time when he knew nothing about business, and because the law in no way recognizes his moral right to a say in its production, or a percentage of its success.

He should not have to resort to a ruinously expensive and creatively depleting lawsuit in order to receive 5 percent of the profits generated by his work; that minimum percentage should be every artist's irrevocable legal right.

The sad fact is that many artists work for a smaller percentage of their creations than the agents and lawyers who service those same creations—and frequently they have even less to say about their fates.

Artists, however, are not supposed to worry about money. Money is crass, dirty, an unworthy subject of contemplation for those bent on spiritual growth. All this may be true. But, much as we hate to admit it publicly, money is the equivalent of power and freedom in our culture—and, as the artist turns his head to the sky to squint at spiritual growth, the promoter picks his pocket. The money that might translate into a studio to work in, the time to create another work, a reasonable amount of peace of mind, goes instead to battalions of Hollywood attorneys, flacks, assistants to assistants, who all live far better off creative work than the creator himself.

But, aside from money, another theme was evident in the Kesey case, and certainly in my own: the pathetic desire of the artist for a little respect.

As I watched Academy Award after Academy Award go to "Cuckoo's Nest," I was struck by the fact that nobody except Milos Forman even thought to mention Kesey. It was as if, having kidnapped his book, the kidnappers now had the delusion that they had created it. Not only did they not want to give the artist his financial due, but they did not even want to acknowledge his contribution.

So often, in the battles that develop between artists and their self-styled patrons, the crux of the problem is that the promoter envies and despises the artist and wishes that he were somehow not necessary at all. Often the promoter suffers from the delusion that *he* is really the creator, and the very presence of the artist is an embarrassment because it gives the lie to his self-delusion.

Artists understandably get bitter about this sort of thing, but their bitterness turns out to be even worse for them than not protesting at all. Not only do they get the reputation for being "litigious," difficult to deal with, prima donnas (merely for wanting what should be theirs by right), but their work itself may be poisoned by protest. The anger at their own oppression has no place to go, so it may go into self-destruction, self-loathing, depression, or, still worse, into their future works—if they are lucky enough to have future works.

Somehow, we must find better ways of nurturing the people who nurture us.

Erica Jong is the author of "Fear of Flying" and three books of poetry, the most recent of which is "Loveroot."

TALENTED STUDENTS
TAKE HEED

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artists

ISSUE:

SURVIVAL OF THE VISUAL ARTIST IN THE 70'S. OUR CHALLENGES, OUR CONTRIBUTIONS; OUR 'PROPER ROLES' IN SOCIETY, OUR EFFORTS TO FUNCTION AND SUCCEED.

Today artists are experiencing problems comparable to those of the 30's - the decade of the First American Artists Congress. Issues unresolved then are unresolved now - augmented by contemporary complexities and chaos. To air, discuss and help deal with these issues the BOSTON VISUAL ARTISTS UNION, the largest individual artists organization in America, is hosting

SURVIVAL!

2nd american artists congress

28-29-30 november

boston, massachusetts

TOPICS:

Legal Rights
Legislation
The Job Market
Communication
Art and Education
Social Benefits - Health Insurance, Credit, etc.
Housing and Studio Space
Public Art
Regional and National Endeavors

PARTICIPATING GROUPS:

Boston Visual Artists Union, Host

Artists Equity
Chicago Artists Coalition
Jamaica Arts Mobilization (JAM) (Queens)
Kansas City Visual Artists Union
Massachusetts Foundation for the Arts and Humanities
National Art Workers Coalition
New Art Examiner Foundation
New Organization for the Visual Arts (Cleveland)
Union of Maine Visual Artists, Inc.

SCHEDULE: 28, 29, 30 November 1975

Friday PM	Registration (BVAU)
Friday Eve	Registration and Reception (BVAU)
Saturday AM	Panels on Topical Issues Speakers: Carl Andre, Gerd Stern, June Wayne. (Others to be announced)
Saturday PM	Workshops on Issues
Saturday Eve	Keynote Speaker Film Event
Sunday AM	Brunch Work and Planning Session on Issues, Objectives and the Future

PLACE:

BOSTON VISUAL ARTISTS UNION GALLERY
THREE CENTER PLAZA, BOSTON, MASS.

Additional locations for all events will be announced at registration.

The Boston Visual Artists Union is grateful to the Massachusetts Council on the Arts and Humanities and the National Endowment for the Arts for their continuing support.

For additional information, inquire at the BVAU Gallery.
Hours: Tuesday - Saturday, 10 - 5; Wednesday, 10 - 8

Telephone: (617) 227-3076

HOUSING:

BVAU members and friends are extending weekend hospitality (sleeping accommodations) to out-of-town Congress attendees. Spaces are limited and on a 'First Received, First Served' basis. If preferred, suitable accommodations are available at local hotels. For guest spaces please complete both Form A and From B (reverse side) and return with Fee, preferably by 23 November 1975.

REGISTRATION:

We are requesting a nominal Registration Fee of $5.00 per person to help defray partial expenses of conducting the Congress.

To insure reservations at all events please complete Advance Registration Form A and return with Fee, preferably by 23 November 1975. Please indicate anticipated attendance. Final registration will occur at the Congress. (BVAU Gallery)

If you plan to attend the Congress, please complete the forms on the reverse side and return with registration fee as soon as possible.

GERD STERN
711 Mass. Avenue
Cambridge, Mass. 02139

2ND
AMERICAN ARTISTS CONGRESS
28, 29, 30 NOVEMBER 1975

BOSTON VISUAL ARTISTS UNION
THREE CENTER PLAZA
BOSTON, MASSACHUSETTS 02108

INTERNATIONAL WOMEN'S YEAR

SURVIVAL!
2nd american artists congress

HOST:

BOSTON VISUAL ARTISTS UNION
THREE CENTER PLAZA
BOSTON, MASSACHUSETTS 02108

For additional information
Telephone: (617) 227-3078

BACKGROUND

In February 1936 the FIRST AMERICAN ARTISTS CONGRESS was formed (by artists) to deal with the plight and survival of visual artists - conditions singular and universal, all worsened during the Depression. The artists believed that through collective effort and organizational strength, they could protect themselves, gain social respect and resolve in kind problems not feasible on an individual basis. Enthusiasm, cooperation and activity ensued. A national headquarters was established in New York City. Branch offices sprang up across the country. Programs benefiting all visual artists were begun. World War II with its political and social dilemmas, however, overshadowed the usefulness of the Congress. Inevitably the Congress dissolved, but during its 3½ years' existence it was a major focus for visual artists throughout the nation.

28·29·30 november 1975

BVAU/2nd AAC PLANNING COMMITTEE

Director: Mark L. Faverman, Secretary-General

Program: William Barron
Richard Pacheco
Jo Ann Rothschild, Alt. Sec.-General
Helen Shlien

Registration and Housing:
Dorothy Moeller, Clerk
Barbara Apel

Business: Virginia Magboo, Treasurer

Publication and
Design: Virginia Mason

ACCOMMODATION INFORMATION:

Please complete forms in entirety to expedite application handling.

If more than one person in party, fill out a separate form for each attendee and indicate preference in sharing spaces. Specify names of individual(s).

For additional information concerning registration and housing, inquire c/o:

Dorothy Moeller or Barbara Apel, 2nd AAC
BVAU Gallery
Three Center Plaza, Boston, Mass. 02108

Gallery Hours are: Tues. - Sat., 10-5; Wed., 10-8
Telephone: (617) 227-3078

The average November-December Boston temperature ranges from 45 - 35 degrees Fahrenheit.
Please dress for comfort.

detach below

Return to: BVAU/2nd AAC, 3 Center Plaza, Boston, Mass. 02108

2nd AMERICAN ARTISTS CONGRESS REGISTRATION FORM A
Please Print or Type

Name .....

Address .....

..... **Tel:** .....

Art Affiliation .....

Art Medium .....

Expected Attendance: **Nov. 28** ☐ **Nov. 29** ☐ **Nov. 30** ☐

Enclosed is a check (or money order) for .....
please do not send cash.

Registration Fee: $5.00 per person
Make checks payable to: BVAU/2nd AAC

Return to: BVAU/2nd AAC, 3 Center Plaza, Boston, Mass. 02108

2nd AMERICAN ARTISTS CONGRESS ACCOMMODATION FORM B
Please Print or Type

Name .....

Address .....

..... **Tel:** .....

Art Affiliation .....

Art Medium ..... **Male** ☐ **Female** ☐

Nights Requested: **Nov. 29** ☐ **Nov. 30** ☐ **Smoker?** ☐ **Nonsmoker?** ☐

Indicate preference

Options: **Bed** ☐ **Sleeping Bag Space** ☐ **Can you bring a Sleeping Bag?**

NOTES 12/29

Dear Friends:

Here as promised is the contract, printed inside the essay that I already gave you. I wound up speaking for it, but Stan really gave it the first push. It is a document that some neutral organization—like the ACA or any other (ideas?)—ought to distribute to all artists working in video. The contract establishes basic fundamental rights for the artist instead of the institution (for a change). Let me know what you think of it and of any steps that now must be taken to mobilize artists in their own behalf. It is not that they are virtuous or better than others at it—it is just that they are no worse and have never tried.

Happiest New Year, Dara

(address over)