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## Introduction and Proceedings

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### Introduction

National Workshop for Copyright Awareness and Production and Utilisation of the Mongolian Version of “Asian Copyright Handbook” (hereinafter called “Workshop”) was co-organized by the Asia/Pacific Cultural Centre for UNESCO (ACCU), Mongolian National Commission for UNESCO (MNCU) and Intellectual Property Office of Mongolia (IPOM), in cooperation with UNESCO, the Japan Copyright Office (JCO) of the Agency for Cultural Affairs and Foundation for Protection Historical and Cultural Heritage Mongolia, from 5 to 7 October 2006 in Ulaanbaatar, Mongolia.

Copyright is a key driver for developing creativity in the society and at the centre of the cultural and scientific industries – art, music, books, journals, films and video materials. Nowadays, the growth and development of digital technologies and rapid dissemination of cultural works via internet and increasing pressure of globalization have brought copyright to the fore in the modern world.

In this situation, the ACCU has been promoting copyright among writers, publishers and other creators in Asian countries. ACCU produced a handbook titled “Asian Copyright Handbook” in English in 2004 and has organized National workshops in Vietnam, Myanmar and Indonesia to disseminate basic information about copyright, to promote copyright awareness and help to produce vernacular versions of the Handbook.

The issue of raising public awareness on copyright by disseminating and using “Asian Copyright Handbook” is a topical matter deeply relevant to Mongolia at this time. Since 1990, when Mongolia began transition from a centrally-planned economy to a market economy through democracy and an open policy, cultural, artistic and scientific activities have been encouraged, and copyright has assumed a greater importance. It is only recently that Mongolia began developing copyright legislation to meet international standards. The first copyright law came into force in 1993, and was revised in 1996, 1999, and most recently in 2006.

The existing legislation of Mongolia on copyright has not yet been duly implemented in practice and the rights of authors and other creators have been infringed in some cases. The main reason for this situation is insufficient public awareness and lack of qualified personnel in Mongolia to work in all

infrastructures concerned with copyright (governmental bodies, courts and cultural enterprises, etc).

In order to promote better understanding of the concept of copyright through lectures and the handbook among the people engaged in cultural and scientific activities as well as in related fields in Mongolia, the objectives of the Workshop were:

- 1) To promote copyright awareness to all concerned in Mongolia;
- 2) To share information about the current situation and problems regarding copyright in Mongolia and other countries in Asia;
- 3) To introduce and promote better understanding of the handbook by reviewing a draft Mongolian version and to identify points and sections where more explanation would be necessary for the handbook to be useful in Mongolia;
- 4) To draft an additional explanation for the points and sections identified above, which will be appended as a supplement to the Mongolian version of the handbook; and
- 5) To develop action plans to promote copyright awareness in Mongolia, including an activity schedule and responsible organization for compilation, publication, distribution and utilisation of the handbook in Mongolia.

More than 50 participants, including local copyright administrative officers, publishers, educators, NGO workers and creators from various regions of Mongolia, gained the effective knowledge on copyright from useful lectures of resource persons including copyright experts from UNESCO, Australia, Japan and Mongolia. In the latter half of the Workshop, about 40 participants were selected to attend group work sessions. In the sessions, they eagerly shared issues and problems related to copyright that Mongolia faces today, suggested solutions and actively discussed how to utilise the Mongolian version of the handbook. Lastly, a number of action plans to promote copyright awareness in Mongolia were presented by the participants with the assistance of international and national resource persons.

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### Proceedings

#### Day One: 5 October 2006

The Workshop commenced with an opening ceremony at 9:30 on 5 October 2006 at Chinggis Khan Hotel with the attendance of more than 50 participants and organizing committee members.

The opening ceremony began with opening addresses, moderated by Dr. Norov Urtnasan, Secretary General of the Mongolian National Commission for UNESCO. He first introduced Mr. S. Tumur-Ochir, Vice Minister of the Mongolian Ministry of Education, Culture and Science.

Mr. Tumur-Ochir welcomed the assembly, and began his address by remarking that, according to the United Nations' Universal Declaration of Human Rights, copyright law is included within human rights, and that such laws have been adopted by most countries to benefit the further creation of original work. He then cited the history of Mongolia's legislation of such copyright guarantees following its 1990 democratic reforms, beginning with legislation enacted in 1992. He stressed Mongolia's efforts to comply with international copyright standards, including joining the World Intellectual Property Organization (WIPO), formally adhering to the Berne Convention, and ongoing cooperation with UNESCO, the World Trade Organization (WTO), and other relevant organizations. Mr. Tumur-Ochir concluded by identifying the challenges of respecting copyright in the age of pervasive information technology, and the dissemination of knowledge about the importance of such laws among the general Mongolian public.

Next, Mr. Shiraishi Masaru, President of the Asia/Pacific Cultural Centre for UNESCO (ACCU), introduced this non-profit organization. He then mentioned the importance of copyright protection. The greater such awareness, the more creators can just focus on their creations. To contribute to better copyright public awareness in Asia, ACCU first published the Asian Copyright Handbook in 2004, and follow-up with a series of workshops on how to use it. Mr. Shiraishi expressed pleasure that this handbook met Mongolia's current needs and hoped the conference would result in improvement of copyright awareness and enforcement among the participants.

Ms. Beatrice Kaldun, Programme Specialist for Culture from the UNESCO Office Beijing, followed. She stated that copyright is a traditional and very useful tool for encouraging creativity, advancing culture and guaranteeing freedom. It

helps promote progress in both the arts and sciences. As such, it's an integral part of the UNESCO mandate. She also noted that the biggest challenges were digital technology and piracy. Ms. Kaldun named teaching about copyright at the university level as a UNESCO priority and outlined four focus areas: information, training, research, and enforcement.

The final opening address was provided by Mr. Akiba Masashi, Director of the International Affairs Division of the Agency for Cultural Affairs of Japan. While echoing that copyright law was a key to cultural development, he also noted its role in promoting economic progress through stimulating ongoing creation by writers, musicians, etc. This, then, directly benefits the citizens of any given country who enjoy the diversity of work created. Mr. Akiba pointed to Japan's ethnic ties with Mongolia, mentioned that *khoomii* throat singing and *matouqin* (*morinhuur*) playing were both popular in Japan, and drew a laugh by praising Mongolia's sumo wrestlers. He expressed his hope that the efforts of the Workshop would enhance Mongolia's modern culture.

#### **MNCU Presentation**

Following a break, Dr. Urtnasan delivered an address on behalf of the Mongolian National Commission for UNESCO. Dr. Urtnasan began with the observation that just as nature was inconceivable without bio-diversity, human life was inconceivable without cultural diversity. He expressed regret that during most of the 20th century, adherence to socialist ideology in Mongolia both restricted freedoms and impeded intellectual opportunities. In these circumstances, he said, observing copyright protections was unthinkable. Mongolia's 1990 transition to democracy and a market economy, however, offered new opportunities for intellectual development. As a UN member, Mongolia is taking steps to protect copyright, adhering now to the concept that cultural rights were integral to overall human rights.

Dr. Urtnasan detailed Mongolia's benchmarks in both enacting copyright legislation, up to the constitutional level, and its entry into international organizations dedicated to the protection of such rights. He also expressed appreciation for UNESCO's recognition of Mongolia's Orkhon Valley as a World Heritage Site and its intangible cultural treasures such as the *morinhuur* and the *maatgal long song*. He also mentioned several recent workshops and symposia hosted in Mongolia aimed at enhancing awareness and enforcement of copyright protection. Still, he said,

there is insufficient knowledge among artists and the public about copyright, and there are still ongoing violations. He cited four factors:

1. Old attitudes from the Socialist era that have been slow to change. He recommended the production of simple explanatory brochures and ongoing training.
2. Digital technology, which offers unprecedented opportunity for the dissemination of works. Because it's difficult to control copyright violations in this sphere, special training of artists and entrepreneurs is needed.
3. Low pay rate for labour. This inhibits interest in copyright because there's little economic incentive. The high poverty rate also means few can afford to invest in new work. He recommended lobbying Parliament to raise the pay rate for artists.
4. There is yet no systematic awareness of copyright, especially among artists and entrepreneurs. He suggested developing education systems at the university level, through the mass media and in other non-formal networks, and beginning inculcation even from kindergarten.
5. Slow development. He recommended government support for collective management, improving products and services, and fighting illicit trade.

### UNESCO's Keynote Address

Ms. Beatrice Kaldun delivered the keynote address on International Protection of Copyright and Related Rights – UNESCO Copyright Activities. Ms. Kaldun began by reiterating that copyright is a traditional tool for encouraging creativity in the visual arts and publishing industries. She then highlighted today's biggest challenge, which is the development of high-tech digital methods for the dissemination, storage and retrieval of created works. Low-cost, high-quality reproductions may now be made and sent quickly, free of boundaries. There is a benefit to this, but also the ongoing threat of economic loss. Works can easily be changed or falsified, and piracy in the form of low-quality copies inhibits creativity. The challenge is to find a balance, taking into account this new social and technical arena. Ms. Kaldun surveyed the evolution of UNESCO's work in this arena, citing the historical significance of the Berne Convention in 1886 (updated in 1971), the Universal Copyright Convention of 1952 from which the © symbol came, and the creation in 1967 of the World Intellectual Property Organization (WIPO).

UNESCO's copyright activity, Ms. Kaldun explained, falls into four categories:

#### 1. *Information and Awareness-building*

UNESCO published its first copyright bulletin in

1948 in French and English. Since 2004, it has become available in the six UN official languages, adding Spanish, Russian, Chinese and Arabic. They have created *the ABC of Copyright* to make the issues easily understood – an updated version is due in 2007 – and have provided constantly updated lists of international rights and laws online at [www.unesco.org/culture/copyrightlaws](http://www.unesco.org/culture/copyrightlaws).

#### 2. *Training and Teaching*

UNESCO has established a network of UNESCO Chairs in universities worldwide, developing and disseminating support materials to these institutions, as well as the education ministries of participating countries. They publish a thorough, 800-page manual for specialists.

#### 3. *Studies and Research*

Ms. Kaldun particularly cited a 2003 study of copyright exceptions and limitations in the digital era.

#### 4. *Enforcement and Management of Rights*

UNESCO provides technical assistance to members when requested; provides anti-piracy training; provides support for collective management, promoting multi-lateral networks; trains copyright enforcement personnel; and encourages governments to enact up-to-date copyright legislation.

### ACCU Presentation

Ms. Sasaki Mariko, Deputy-Director of the Culture Division of ACCU, offered an overview of ACCU activities and the Workshop orientation.

Ms. Sasaki first explained that ACCU is a Tokyo-based non-profit organization founded in 1971 and works for the promotion of mutual understanding and cultural cooperation among peoples in Asia and the Pacific in line with UNESCO's basic principles.

After highlighting ACCU's publications and accomplishments on its cultural cooperation programme, Ms. Sasaki addressed why ACCU promotes copyright awareness. She cited three reasons:

- In the digital age, anyone can hold, use or violate copyright
- Creators need to be protected both economically and morally
- Both creators and users should share the same understanding

ACCU published the English version of Asian Copyright Handbook (ACH) in 2004, with the support of the Agency for Cultural Affairs of Japan. Since then, ACCU has conducted workshops on how to utilise the handbook in Vietnam, Myanmar and Indonesia. Editions of the ACH were published

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in those countries' national languages, with appendices added to address each country's particular problems.

Toward that end, she explained the flow of the Workshop; it consisted of two sessions, which were lectures by national and international resource persons and participatory group sessions. In particular, the group sessions included three tasks: discussion of essential points on copyright contracts; drafting of questions and answers to be included in the Mongolian version of ACH; and drafting of follow-up action plans for copyright awareness. The goal of the Workshop was to train the participants in the field of copyright and to publish the Mongolian version of ACH, with 2500 copies in January 2007 and distribute it to related organizations all over the country in February 2007.

### **Lecture 1: “What is Copyright I -Works, Rights and Ownership”– Caroline Morgan**

Ms. Caroline Morgan, General Manager, Corporate Services Division of Copyright Agency Limited, Australia, gave the first of three lectures on copyright system that she would deliver this day, defining works, rights and ownership.

A “work” subject to copyright, she explained, must adhere to four rules: it must have a material form, a human author, be original, and be an expression, not just an idea. Translations, published folklore, and collections (eg. an encyclopaedia) are included if they adhere to these rules. What are excluded are legislation and official texts, political speeches and lectures so they might be reproduced by the press and add to the political culture.

“Rights” fall under two categories: economic and moral. The former deals with the rights to present a work to the public and the latter deals with how it's presented.

The first “owner” of a work is its creator, exceptions being work created under employment, commission, for the government, and some aspects of computer software. They may also be joint authorship.

Finally, she introduced the international copyright framework focused on the Berne Convention, the Rome Convention, the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement WIPO Copyright Treaty (WCT) and WIPO Performers and Phonograms Treaty (WPPT).

### **Lecture 2: “What is Copyright II - Use of and Access to Copyright Works” – Caroline Morgan**

After lunch break, the lecture session resumed with the second presentation by Ms. Morgan. Ms. Sasaki moderated from this session.

In this lecture, she addressed how to use others' copyright works, explaining the balance between the public's right to access its culture and the protection of property. Before using a work, one must ask four questions: Is the work copyright protected? Is the copyright current? Does the use fall under copyright protection? Is it subject to an exception? If so, one must get permission from the owner.

Ms. Morgan went on to detail exceptions and the different means by which collective licensing might govern mass use. If no exception applies, and permission to use a work must be sought from the owner, Ms. Morgan described the process of negotiation and the basic elements of drawing up a contract.

This lecture also touched on digital rights, infringement, the internet, and “open access movements.”

### Q&A Session

Q: What about the copying of legislation?

A: It's the government's decision whether to make legislation freely accessible or what methods to employ to ensure standards of reproduction.

### **Lecture 3:“Collective Management of Copyright and Neighbouring Rights” – Caroline Morgan**

In this lecture, Ms. Morgan explained the rationale for collective management of copyright and analyzed the role of copyright management organizations. She described the various aspects of collective management, including options for copyright licensing, monitoring and distribution of payments.

A mechanism for this is the “collecting society,” which collects fees from works' users, deducts its costs, and disburses the remainder to the works' owners. These can function both within a country and in international networks.

Ms. Morgan then detailed the work of her own organization in Australia, Copyright Agency Limited, the key roles being to give users access to cultural repertoire and to create ease and economy for owners to disseminate their work.

She detailed rights acquisition, licensing, fees, monitoring and distribution, with an emphasis on clear rules and transparency.

#### Q&A Session

Q: If two works are created from one source, who has the rights, the first or the second?

A: It depends on the work. If they're both expressed differently, each one owns theirs. Precedence doesn't apply unless the use is exactly the same.

Q: We're close to Korea. Does Australia have phonogram enforcers who work internationally to seize or prohibit unauthorised reproductions?

A: The question is, can one issue and enforce? Musicians, publishers and composers got together in Australia to form the Music Industry Piracy Investigators. But this can be dangerous, because often this is done by organized crime syndicates.

Q: Are membership fees paid to a collecting society?

A: Some collect all their fees from users. The thinking is that then you'll get very good at collecting fees! Others do have member fees.

#### **Lecture 4: "Copyright and Related Rights Law" – Erdenebayar Myagmardorj**

Ms. Erdenebayar Myagmardorj, Legal Officer, Intellectual Property Office of Mongolia (IPOM), began with the statement that observing copyright is a new subject in Mongolia; only with the ratification of the new Constitution in 1992 was the property of authors officially recognized. This was followed by the introduction of this concept into the legal code in 1993, followed by amendments in 1996 and 1999 to make the law conform to international agreements into which Mongolia had entered. The latest addition to the law was in March of 2006, enacted because of the increase in copyright infringements and the establishment of more collective management organizations.

The new provisions include revised and new language including the precise definition of terms; regulation of derivative works, works for rent, works produced during the course of employment, and works offered on the internet; definition of moral and economic rights; what is deemed infringement; and limitations and exceptions.

After detailing each category, Ms. Myagmardorj said IPOM aspires to more efficiency, especially in the arena of enforcement. Though raids are regularly conducted on pirated goods in the black market, for example, almost none have successfully

resulted in imposing fines and meeting out punishment. IPOM is now monitoring advertisement, one of the largest areas for infringement.

#### Q&A Session

Q: About collective management organizations with respect to karaoke, small entertainment venues, restaurants, etc. We now have such organizations for authors, composers and phonogram producers, and I'm pleased to say there's cooperative agreement among members to protect the rights of performers. There are numerous cases of infringement of rights, but I believe enforcement is not up to the task.

A: The CMO represents authors and composers who joined on a voluntary basis. There might be several groups, but one shouldn't monopolize. Here it's voluntary, and if they're acting within the law, I recommend more cooperation.

#### **Lecture 5: "Issues of Mongolia's Copyright Protection" – Tseden-Ish Shinebayar**

Mr. Tseden-Ish Shinebayar, Director, Division of Copyright, IPOM offered a more detailed description of the evolution of copyright law in Mongolia, divided into three periods: pre-1992, 1992-2002, and 2002-Present.

In 1966-67, civil law created a mechanism for awards and compensation for artistic works. At issue now are works created then, which continue to be used while the authors are still alive.

The '90s saw authors' works recognised as individual property and a copyright office created with enforcement powers. There were significant revisions in 2006.

A major issue in Mongolia is about works created during the Socialist period from 1921-90. These had not previously been regulated and now must be, to determine who owns the copyright, author or government.

Mr. Shinebayar also cited challenges, and offered recommendations, with respect to the valuation of works, improving the expertise and administration of copyright by local organizations in more remote aimags, and the overall weakness of enforcement and punishment within Mongolia's judicial system.

He said the IPOM should work more closely with Customs to combat piracy, and emphasised the overall need for more education to create clarity in contracts.

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### Q&A Session

Q: I represent our Press Institute. Copyright now covers aspects of our daily life and our journalists are interested in aspects of copyright protection. We have journals archived back to 1992. We're trying to put these in the internet so we and foreigners can have access. But we're concerned about copyright infringement of our reporters.

A: With the use of works on the internet, there are limitations and exceptions. The use of such work cannot be controlled altogether. A journalist's work is copyrighted if it's used in a book, derivative work, etc. But just reading it on the internet, it may not be a problem if it's offered for free. Regarding broadcasting, I don't think there's a problem. There are clear exceptions to the law. Also, there's freedom of speech, so there's no problem.

Q: I'm from the Institute of Cultural Study and want to clarify something. Our institute has published three books. In printing with Admon, we didn't keep a master copy and we still don't have one.

The next issue is about Swan Lake. It's produced around the world, so what is the issue, if any...

A: I have a counter-question. Did you enter into an agreement with Admon?

Q: No, not at all.

A: I have to urge strongly that instead of relying on a "gentleman's agreement," please make sure to get a contract. If you have already delivered your original copy and they have used it or given it away, it's all very difficult to prove.

You mentioned Swan Lake. If the performance was before '92 or after '93, I believe the choreographer retains the rights.

Q: I'm from Mongolian National Radio. We have recorded and maintained an archive of Mongolia's "golden songs." I understand the owner will be the government. On the other side are young performers and singers who do songs from before the '90s. What is the situation for them?

A: Recently, MNTV has been released by the government. There are specific provisions releasing archives from the government.

Q: The archive will be provided to the State Archive Agency. But they're still played on radio and TV. Who is the owner of these? It's an issue of who the archives belong to.

A: We have to see who the "golden songs" actually belong to.

### **Reflections on Day One**

Following the presentation, the moderator, Ms. Sasaki instructed all participants to write reflections including their own comments, learning

points or opinions for the Day One's contents down on blank papers. She then invited some comments from them.

1. I represent the Mongolian Composers Federation. Today's Workshop has been extremely thoughtful and interesting. We know about copyright but today we learned so much more detail. We are still developing. We don't have common agreements yet. In these three days, we'll gain knowledge and have dialogue afterward. It may be that we don't want to reveal issues in front of the general public.

There were recently laws enacted about the National Anthem. But pop singers use their own music and lyrics, in clear violation of copyright. So this Workshop may help to resolve those issues.

2. I represent the Distance Learning Center. Today's seminar has great significance for copyright protection in Mongolia. I already got new information and ideas about copyright not just in Mongolia but internationally. I was able to use the internet to prepare questions in advance. I really appreciate the work of the IPOM.

In the evening, all participants, VIPs and Mongolian organizers were invited to attend a welcome dinner, hosted by ACCU in the Rest Pub from 18:30.

**Day Two: 6 October 2006**

The second day of the Workshop started with a presentation of Ms. Jane Palfreyman, Executive Publisher, Vintage, Knopf and Random House. Ms. Myagmardorj, IPOM, moderated this day's activities.

**Lecture 6: "Parent of Many Children: The Relationship between Author and Publisher and Their Mutual Obligations" – Jane Palfreyman**

Ms. Palfreyman began with a quote from Australian author Thomas Kinneally concerning how the writer/publisher relationship is like that between a parent and a child. The author has one child, and the publisher has many; both have their roles, rights, and obligations.

The author's role is to harness ideas into original form, while the publisher's is to recognise talent or originality, propose a mutually beneficial business arrangement, put the work into a marketable form, and encourage the public to buy it.

While detailing the rights and obligations on both sides, Ms. Palfreyman emphasized that the contract between author and publisher was paramount in creating a clear legal foundation for the relationship.

**Q&A Session**

Q: I have a question about translation rights. In some cases, there are strict provisions, like for translating into Russian, but not for translating into Mongolian. What can we do?

A: If rights aren't specified, there should be a clause for all subsidiary rights. One should go to the original publisher for a new negotiation for Mongolian rights.

Q: I'm from the Press Institute. We publish serial publications on Mongolian folklore. We are concerned that other companies are trying to do the same. But often, we transcribe from traditional script to Cyrillic.

A: That's difficult, because traditional folklore is not in copyright. You can't have the exclusive right to reproduce it. People think of new forms, though, like how we put Shakespeare into comic book form. The imprint of the Press Institute might be enough. You can promote it as the best one to buy.

Q: I'd like to clarify one point. If in the contract it specifies that the author and publisher jointly own a copyright, what will happen after the termination of the contract? The author and publisher might produce a work jointly or the publisher might

commission an author to produce a book. In our case, we don't have joint ownership. But if it's the case, what happens with a joint ownership in the case of competitive bidding, or with textbooks, or with a group of authors bidding?

A: This is an example of why a contract is so important. If there's any confusion about who holds the copyright, it's not a good contract. You need to clarify this from the very beginning. My advice is to get the proper assignation of copyright.

Q: This question may not relate directly to the subject. The creation of intellectual work is important for the conservation of cultural heritage. We have problems such as a writer producing a wonderful libretto, but it cannot be produced because of no money. Or a writer with the same problem. I'm wondering about UNESCO, should its role be to support such people? If there's no money, nothing gets published. That's the situation in Mongolia.

A: Not only UNESCO, but many funds assist with the publication of important writings. I know there are some in the U.S., Europe and Japan where you can apply for such assistance.

A: I can't speak for UNESCO, but in the case of poor creators, because you're a democratic country and can vote, you can petition for government grant organizations, or get private companies to set up such funds. You shouldn't just roll your eyes and shrug and say it can't happen. Keep trying and you may be surprised.

Q: I agree that ambiguous situations are still occurring. Authors create works, and publishers purchase them for \$20-30 and publish them. It's very unfair, and it happens because authors have no money and publishers take advantage. Also, there are so many "yellow newspapers" that present authors' work without permission.

Q: Another example is the *Secret History of the Mongols*. We presented it with a new design, but others have published low-quality versions. We've also made an English translation. What happens with copyright in the case of different versions?

A: The government is buying works of cultural significance. If you believe your work is of great historical significance, the Commission will review your request and make a decision. Many such works have already been bought.

**Group Work-1: "Drafting Contracts"**

After the presentation of Ms. Palfreyman, the moderator, Ms. Myagmardorj, explained how to work in this session and divided all participants into four small groups, which were: Group A formed by publishers and printing houses, Group B formed by administrators from NGOs in cultural

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field, local cultural agencies and educational organizations, Group C formed by mass media such as radio and television and Group D formed by authors/composers. All groups decided first their presenter and rapporteur, and then a facilitator from IPOM and an international resource person assisted them in each group. In the group work, the participants made an active discussion and developed a list of essential points to be included in a specific contract on copyright. Finally, group presentations from each group and comments from resource persons were shared in plenary session.

(For the results of the Group Work-1, please refer to CHAPTER-III: Group Work.)

### **Lecture 7: “Copyright and Technological Development – Development of Legal Systems to Cope with Technological Changes” – Okamoto Kaoru**

After lunch break, Mr. Okamoto Kaoru, Professor, National Graduate Institute for Policy Studies, Japan delivered the two presentations. Mr. Okamoto quickly surveyed technological changes to show the necessity of evolution of copyright law governing how rights are granted to the author before perception by the user. One of the latest challenges is the onset of on-demand and interactive technologies diffused through a multiplicity of internet servers. A new right developed called the “right of making available,” i.e. to put work on a server. Other countermeasures include work that is “locked” with “copyguard” technology and made more easily traceable with an “electronic watermark.” The copyright now exists at the stage before a work is uploaded. Mr. Okamoto acknowledged that with the proliferation of users, there are more trying to circumvent this technology, and countries constantly have to develop new legal remedies.

#### Q&A Session

Q: With phonogram reproduction, we try to cooperate with ISP’s to protect against the illegal downloading of music. But there are mongolclub.com and other sites out of Korea offering free download. Who should be liable?

A: I have three points. The first is about infringement. If the work is uploaded, it is one. If it’s from Korea, if there is a treaty between your two countries, a Mongol can sue a Korean. The second is about the liability of the ISP, with a new law needed. If the work is on the server, you can ask the ISP to delete it. He might refuse, because he has a prior contract with the uploader. A new law would say that if there’s a copyright infringement, the ISP can delete it without legal

problems. It would further allow the ISP to reveal the identity of the uploader since otherwise the work might easily be placed with other ISPs. My third point is about technological adaptation, with one technology having the ability to overcome another. There’s an example of a Japanese composers’ group that employs a robot that searches through about one million sites a week looking for violations of its works.

Q: I’ve noticed the new provision in the law and I support it. But in real life, it’s difficult to enforce the provision. In other countries, there are technological measures to protect copyright, but I think we lack this. The issue is implementation and enforcement.

A: There is liability for the ISP; we do have that provision. If it’s liable, then according to the law, it does bear responsibility for the illegal activity.

Q: You mentioned robots. Do you think it’s possible to ask the Japanese government to produce such robots for Mongolia? We face a lot of piracy of Mongol works, especially songs. On our FM radio, for example, they play songs for payment.

A: Copyright is a private right. A professor might not care so much about copyright; if his paper is copied, it generates fame for him. It’s up to the owner. He has to make a fuss, and the owners should get together to concentrate power. In small countries it’s very difficult. Now, international cooperation is important. Australians help the island nations, for example. You all know about MOSROC. My understanding is they have a cooperative agreement with JASRAC so they can be approached about a robot device.

Q: Can you tell us about the electronic watermark?

A: They’re in CDs. More than 20,000 times, the information appears. In the binary stream, they can be silently inserted, but the computer picks it up. The problem is that there is technology to circumvent it.

Q: I’m from Mongolian National Television’s Cultural Department. How is the piracy of works controlled, especially if broadcast on TV? Some singers also use lyrics from the poems of famous poets. Who’s liable? Also, some folk artists are rich in the knowledge of music. These songs are also broadcast on TV without attribution.

A: Again, in general, copyright is a private right. When I speak to amateurs, I always say that live speech and the music and the recording are all under copyright. If someone’s recording my speech, it’s an infringement, unless I say it’s OK. That’s the difference between private and civil law. If someone wants to commit suicide and you kill him, it’s murder. The act of murder is illegal, but not in

copying. You have to know who the author is. I can say I wrote this paper, but it could be a lie. I might imitate creating a poem on the spot, but I could have memorized one. Another example is that if you copy one line out of a long novel, it could be an infringement or not, depending on how well known it is.

Copyright is risk management. It's always better to have a contract, but you can't bring the risk to zero. You can make it lower, but not to zero. This is especially true with broadcasters. That's high risk management. The ones in Japan, for example, refuse videos provided by their viewers. In the U.S., it's different. All the liability is on the sender. But they do have insurance just in case! Sometimes in Japan, works are reproduced that seem to be without an author, but they're ready to negotiate and pay if the author shows up.

A: About publishing in Khokhot, we established cooperation with China. There is a part in the agreement about intellectual property. In discussions with the Chinese, we complained about the broadcast of Mongolian copyright work on Chinese TV. You should enter into agreements about protection.

### **Lecture 8: “Copyright and Technological Development – Implications for Domestic/International Politics” – Okamoto Kaoru**

In this lecture, Mr. Okamoto began by pointing out that copyright issues were limited to a narrow segment of professionals. Now, with the technology boom and the ease of reproduction, almost everyone needs to know about copyright. This has also created a tension between users who would like copyright law weakened to allow for greater access to works, and a proliferation of producers who feel the laws should be strengthened. With more users who have less knowledge, there's greater risk of infringement. The lecture examined these issues from the point of view of both establishing national legislation and education, and the negotiation of international treaties.

#### Q&A Session

Q: How do the laws compare in the US and the UK?

A: Chart 9 in my paper shows the difference. The Berne Convention says that movie companies should have author's right. Internationally, phonograms have neighbouring right. In the US, phonogram producers have a stronger right as authors, but not in Japan. Take the example of a CD. In the U.S., you have to get permission from the musician and the phonogram producer. In Japan, it's just from the musician.

### **Group Work–2: “Drafting Questions and Answers for the Mongolian Version of the Asian Copyright Handbook”**

After the lecture of Mr. Okamoto, the moderator began with an orientation of the Group Work-2 and divided the participants into four small groups assisted by international resource persons and facilitators as well as the Group Work-1. In the work, each group had to draft a list of Questions to be included as Appendix in the Mongolian Version of the Asian Copyright Handbook. The participants therefore shared their problems on copyright that they faced in their daily works and made comments about the Mongolian Version of the Handbook. Then, representatives in each group presented the discussed Questions with their opinions.

## CHAPTER I

### Day Three: 7 October 2006

#### **Plenary Session: “Questions and Answers for the Mongolian Edition of the Asian Copyright Handbook” (Cont’d)**

At the beginning of the third day, the questions developed and compiled on Day Two were announced and answered by the national and international resource persons in plenary session. Along with further questions and discussions those questions and answers will be edited and compiled and added as supplement to the translated text. Ms. Bayaraa Baasandorj, Faculty of Management in Culture and Arts, the Mongolian University of Culture and Arts, moderated this session.

(For the contents of the Questions and Answers in this session, please refer to CHAPTER-III: Group Works.)

#### **“Promotion of Copyright Awareness”**

This session started with presentations of case studies on how to promote copyright awareness in Japan, Mongolia and some other countries, which were delivered by three presenters. Then, all the participants, divided into four groups, discussed and drafted follow-up activities for copyright awareness to the general public in Mongolia including dissemination plans of the Mongolian version of the Handbook as Group Work-3. Finally, the listed plans were presented by representatives of each group.

#### Case Studies -“Promotion of Copyright Awareness”

Mr. Tanaka Kentaro, Deputy Director, International Affairs Division, Agency for Cultural Affairs of Japan, made a presentation titled “Copyright education and promotional activities in Japan”. He first introduced his organization’s policies on intellectual property and the activities for increasing copyright awareness in schools and among general public.

Ms. Dashpuntsag Erdenechimeg, Law Teacher, from the Law Department of Mongolia’s Otgontenger University, then presented the results of her study concerning the situation of copyright awareness education and promotional activities in Mongolia. She explained how copyright trainings were implemented in schools at each level.

Finally, Ms. Sasaki Mariko from ACCU provided an overview of the follow-up activities in the countries where ACCU had previously held copyright seminars and workshops: Vietnam, Myanmar and Indonesia.

#### Group Work–3: Drawing up action plans to promote copyright awareness in Mongolia

After the short presentations, a moderator in this session, Ms. Myagmardorj, requested participants to form concrete action plans to promote copyright awareness for the Mongolian general public in practicable ways referring to the previous case studies. The four groups then made a bunch of plans and presented the results as follows;

The group of Publishers (Group A) focused on the production of live shows that could illustrate the concepts and even possibly raise money with the right celebrity participants. They felt that while the internet does not reach enough of Mongolia, perhaps CDs or DVDs that present the subject in an entertaining way might be effective. They also suggested promotional events for groups like writers who usually don’t produce such things. The group of Administrators (Group B) identified formal and non-formal education. For the former, they recommended instruction beginning in kindergarten. For the latter, they suggested the use of media, contests, workshop training, celebrity endorsement, and specialized training for creators.

The group of Media (Group C) added that Mongolian representatives could be sent for training to countries more developed in this area, that public radio and TV were natural outlets for education, and that it should be made sure that law textbooks were up-to-date. They further suggested that more than the slated 2500 copies of the ACH should be printed for distribution.

The group of Authors/Composers (Group D) also noted that creators needed strengthened collective management to cooperate internationally and learn from the experience of their peers around the world. They stressed the importance of penetrating locally, perhaps through trained IPOM representatives.

(For the listed results of the group work, please see CHAPTER III: Group Works.)

To wrap up the Workshop, comments and opinions for the Day Three were shared among participants and resource persons and, then closing remarks were provided by Ms. Sasaki from ACCU, Mr. Namjil Chinbat, Director General of the Mongolian Intellectual Property Office, and Dr. Urtnasan, Secretary-General of the Mongolian National Commission for UNESCO.

The three-day Workshop came to a successful end at 16:30. In the evening, all participants, VIPs and organizers were invited to join a dinner reception, hosted by IPOM in Ulaanbaatar Hotel from 17:00.