

8. Issues of Mongolia's Copyright Protection

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1. Copyright Protection Issues in General

Following the 1992 article on copyright issues included in the Mongolian Constitution, the basis for copyright development was established in Mongolia towards international standards of treatment and practice. Based on this legal precedent, the particular law on copyright was enacted in 1993 and its revision was approved in January 2006. By 1997, Mongolia had joined with the Agreement on Trade-Related Aspects of Intellectual Property Rights. It joined the Berne Convention in 1998 and Internet Treaties of the World Intellectual Property Organization in 2002. Regulatory provisions on copyright issues have been included in several other laws such as the Public, Criminal and Commercial laws. Thus, Mongolia has reached a relatively successful milestone in terms of creating a legal environment for the protection of copyright.

As you all may aware, there was an inadequate and rather odd system for regulating copyright issues prior to 1992. There remain necessary tasks to attend to from that time, specifically in reconsidering former regulations on ownership of copyright works that were created before 1992. This is one of the topics on which I would like to share my point of view.

According to the Law on Government, which regulates operating an agency to implement government duties on a contract basis, the Office of Copyright was opened in 1994 and operated until 1996. This agency was financed by the State fund. By 1996, the Intellectual Property Office of Mongolia (IPOM) was established with responsibilities for copyright protection issues. The following are included in the responsibilities of IPOM:

- Receive applications from authors and creators for copyright registration
- Grant certification and register the works
- Assess creative works
- Give expert comments and conclusions upon the request of private persons, legal and other institutions
- Conduct and facilitate training programs for particular territories and publicize through media

After the establishment of the first collective management organization in 2000, similar associations were organized for poets, composers,

movie producers, audio and visual recording manufacturers and song creators. So far, four such collective management organizations have been operating to protect their members' copyrights.

It is within the duties of each law enforcement institution, including the justice and police departments and prosecutors, to make resolutions concerning copyright issues. The Customs Office of Mongolia also implements a number of activities to monitor art works passing through border control.

IPOM takes responsibility for the implementation of Mongolia's law on Intellectual Property, including copyright issues. Since 2000, every year within its functional framework IPOM has resolved in various ways numerous cases and complaints about violations of copyright, reaching decisions by civil agreements or legal actions for cases with criminal intentions.

2. Problematic Issues

(1) First, I will retrace ownership issues of copyright for works that were created during the previous socialist system. The major legal documents endorsed in the years 1956, 1965, and 1987 described compensation awards for authors, varying according to the types of works. Several associations of authors and creators were established according to decisions by the country's highest administrative institutions that also funded them, assigned regular employees and approved the organizations' structures. At the same time, as some of you may be aware, a monitoring organization operated with the mandate to monitor and approve creative works. Except "to use his/her name on his/her works" the essential treatment of authors' rights were nonexistent in the public mind, legal acts and in the overall practice of the prior social system. Thus, the very term "author's right" has been confronted with great difficulties in its recent application.

The previously created works are still alive and well in our lives today. According to applicable laws, ownership of such works belonged to the government. An author got paid from the government fund as a salary, while his duty was to write and his assigned job position was as a writer. Each work got evaluated in accordance with the prices set up by the government. For instance, a regulation of payment for writers based on number

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of his/her book's printed pages was approved in 1966 in a joint order of the Ministry of Finance and the Chief of the Press Affairs Committee of Mongolia. The government took sole responsibility to publicize the authors' works and for the ways in which they would be turned into books, movies, songs, TV and radio broadcasts. The benefit from all of these works transferred to the state as revenue and the author was paid a small percentage.

Since 1990, this system has gone, but an author's name stays with his or her works. Ironically, it might have seemed to many people that "a mother left her children in the middle of nowhere", but now they (the author and his or her work) recognize one another, mostly with skepticism. We should not hide from the reality that many works that were created during the previous system have survived in a similar condition as homeless children whose lives have been destined to be chaotic since 1990.

(2) The next issue is the cost evaluation of art and intellectual works and this issue has two sides. The first side is that, in terms of legal and economic theories, there is a non-existence of studies and surveys on the cost evaluation of art and intellectual works. Secondly, in practice, the evaluation of intellectual and art works has been made on unreliable bases and the effort is at its beginning stage.

The increasing need for reliable evaluation is required for Mongolia's on-going privatization campaign. While the privatization process takes place at state-owned institutions and industries, an issue always arises as to how to evaluate intellectual property relating to copyright issues and the exchange rate of currency. Evaluation of intellectual and art works is also required to resolve uses of trade, rent, and loan within the legal framework of civil laws.

In the resolution of civil and criminal cases the intellectual works are evaluated within the frameworks of legal procedures. IPOM is appointed to evaluate and grant copyright works in accordance with the article 26.1.8 of the law on copyright. But the effort of IPOM alone is insufficient to meet social needs.

(3) Another issue of copyright protection that needs to be addressed is the lack of a course of action to implement relevant laws and regulations in local areas.

IPOM does not run local branch offices in the aimags. When the Minister of Justice and Internal Affairs was responsible for intellectual property issues, a law division in each aimag governor's office ran intellectual property affairs and this structure still exists today. According to this structure, at least one government officer in each aimag is liable to take care of the issues of intellectual property and copyright. Unfortunately, it seems that his or her "job" is to put the magazine "Intellectual Property News" into a drawer. This type of "effort" causes a general lack of understanding, insufficient awareness of the laws and legal protection of intellectual property, and disrespect for copyrights.

The major operations of IPOM take place in the capital city where less than half of the country's population lives. Most of the training workshops and classes are held in Ulaanbaatar as well. To illustrate this, consider that only one third of the participants of this Workshop came from countryside.

As of 2005, IPOM had organized training seminars in three Aimags in the eastern region and six Aimags in the western region by 2006. In cooperation with the Aimag governors' offices, they concluded that professional personnel should be assigned to take care of intellectual property affairs at each Aimag governor's office.

(4) Violation of copyright is an unavoidable issue, of course, and always exists on the scene to be considered. During the initial few years of Mongolia's transition to a free market, most cases of copyright violations had occurred unintentionally due to lack of appropriate awareness, but gradually such incidents have been found to be intentional violations of copyright.

Since 2000, the Office of Intellectual Property has monitored the implementation of the law on intellectual property. According to statistics compiled between 2000 and 2005, 28% of violations were cases of copyright violation. The following are the copyright violation cases in each year between 2000 and 2005: 35% or 21 in 2000, 43% or 60 in 2001, 32% or 53 in 2002, 24% or 49 in 2003, 28% or 61 in 2004, and 5% or 37 in 2005.

These facts are only a small part of the numerous violations occurring every year in reality. Due to the increasing number of complaints about violations of intellectual property rights, state inspectors are overwhelmed by a heavy workload.