

## 1. Group Work-1 “Drafting Contracts”

### Group Members

#### Group A (Group of Publishers)

Facilitator: P.Tserendolgor  
 Resource Person: Jane Palfreyman  
 Presenter: P.Tserendolgor  
 Members: G.Ganbaatar  
 D.Ugantsetseg  
 P.Erdenetogtoh  
 M.Battugs  
 B.Chuluudai  
 E. Myagmardorj  
 E.Odgerel  
 A.Oyuntuya

#### Group B (Group of Administrators)

Facilitator: Bathyag  
 Resource Person: Tanaka Kentaro  
 Presenter: G.Gantsetseg  
 Members: Nyam-od  
 D.Tserenbat  
 B.Tumurbat  
 D.Ayush  
 B.Bathuyag  
 Ts.Sreenov  
 S.Tsogbayar  
 Z.Badam  
 Ts.Tsendsuren  
 Ch.Uznee  
 D.Dulamsuren  
 M.Nomintsetseg  
 O.Bayarmaa

#### Group C (Group of Media)

Facilitator: Temuulen  
 Resource Person: Okamoto Kaoru  
 Presenter: Enkhdavaa  
 Members: L.Enkhtuvshin  
 B.Munkhbayar  
 D.Enkhtsetseg  
 D.Nyamaa  
 Ts.Chimiddondog  
 M.Khatanbaatar

#### Group D (Authors/Composers)

Facilitator: S. Yundenbat  
 Resource Person: Caroline Morgan  
 Presenter: S. Yundenbat  
 Members: S.Soronzonbold  
 B.Erdenechimeg  
 P.Khayankhyarvaa  
 M.Ganjargal  
 S.Lkhamsuren  
 T.Khantu lga  
 P.Khayanhyaarvaa  
 B.Tungalag  
 N.Narantsetseg

### Presentation and Results of the Group Work-1

#### Group A

More interested in specific contracts with author than general model. They run into questions about whether the supposed owner of a copyright really is the author/owner, especially since some pre-1992 works are technically owned by the government. Urged specificity in all areas, and said author was responsible for legal issues. The results of the Group A are as follows:

Items which must be included in contracts;

- *General backgrounds*
  - *Contracts articles*
  - *Contract terms*
1. Determine the right owner of the copyright
  2. Having right drives to make a contract
  3. Determine and indicate the terms
  4. Determine the territory
  5. Distribution
    - commercial (more than 1)
    - once
  6. The author must be responsible for the products protected by the others' copyright
  7. The author has a duty not to give the product before making a contract or during the contract term.
  8. The author must participate in the advertising process when the product is completed
  9. Both sides must agree the way to distribute the product.
  10. The way to implement the right of wealth must be determined and indicated specially when buying copyright

#### Group B

Contract should never be oral, always written. Authors don't have the time or experience, though, to draft one themselves. The following should be specified: valuation, duration, number of copies, territory, reversion, provisions for financial sponsors, republication and rights of re-negotiation.

In general, it was pointed out that copyright in Mongolia is only really about ten years old. One major sticking point is how to deal with works produced before 1992 under Socialist regulations. There needs to be clarification, information, and legal protections. The results of the Group B are as follows:

One of the most essential issues in Mongolia is the written contract and the conditions which have to

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be included in the contract.

1. The contract must be made by professional managers and law counsellor.
2. It must include the right to utilize fully.
3. It must include value of the creation.
4. It must include the number of copy, terms and reprinting.
5. Utilise the inspection symbol of the author.
6. Indicate the territory range.
7. Indicate the conditions to use in manners.
8. Indicate the printing company.
9. It must include the mutual relationship between sponsor, author and printer.

### Group C

In general, discussed the need for collective management and a model contract regulating all issues. There was a question about what ways in which the “yellow news” and internet might be regulated. Also needed is a different model for works produced within the business community or as an employee. The results of the Group C are as follows:

1. What kind of organizations
2. Who will be participants of contracts?
3. What kind of duties and rights?
4. Others (payment, time, conditions)

### Group D

Their primary wish is to get work out to the public. They're concerned about costs and that they don't know how to calculate a work's value. Also stressed specificity, but also the need for economic and legal advice. The market might not be so large, but without these works, there can be no cultural development. The government should pay attention; they used to support such works, but now just best-sellers. Suggested model contract with training on how to understand specifics. They would like transactions to be subject to an external audit, and to have arbitration available in the case of disputes, since the regular court system is often prohibitively expensive. The results of the Group D are as follows:

#### *Contract model*

Manners to utilise copyright

1. Determine the ways to utilise copyright and other ways which are not included in a contract are prohibited.
2. Number of copies
3. Territory
4. The terms
5. Payment

6. Monitoring system
7. Prohibited conditions (such as to distribute, etc)
8. Rules of sentencing the argument

#### *The most confronted issues*

How to make a contract to use a work?

1. A contract must be written.
2. Make assessment of a definite work
3. Right to use a work must be real and clear.
4. Indicate the territory range definitely
5. Issues on number of copies, terms of a contract and reprinting
6. Control of author

### **Resource Persons' Comments for the results**

#### *1. Ms. Caroline Morgan:*

She got a sense of “same but different.” The problems in Mongolia are the same as in many other countries, but there's a difference in the issue of pre-'92 works.

She wanted to highlight the importance of proper negotiation. It should be conducted in an atmosphere of mutual respect, with a clear understanding of the two parties' rights and responsibilities. She wondered if there was an authors' society in Mongolia. In Vietnam, such a group provides education about how to negotiate a contract, including a checklist. They're also a young market economy, and are assisted by trade reps. They exchange folk tales with other countries' groups.

#### *2. Ms. Jane Palfreyman:*

She agreed about the usefulness of an authors' organization. The collective is powerful and can help defray individual expenses, such as for legal advice. One beneficial activity is to hold writers' festivals, where work and knowledge can be shared, and public interest can be focused on the creative part of the culture. Such a group can also address issues like pre-'92 State works and can negotiate on behalf of heirs, relatives, etc.

#### *3. Mr. Okamoto Kaoru:*

He chose to share three relevant stories;

In the first one, an author had a long, fruitful relationship with a publisher. In gratitude, he handed the publisher a group of 20 essays and said, “You can use these in any way you like.” The publisher chose to upload these essays to the company website and offer them for free to the public. The author was upset and said, “Yes, I told you to use them in anyway, but I meant printing

them as a book, or in journals.” The publisher was also upset, saying, “You said I could use these in any way. The internet is one of those ways.” In this case, it’s impossible to help. Don’t be stupid. You must have a contract. Eighty percent of problems are contractual problems.

The second story illustrated how diversification requires updating of legal provisions. Mr. Okamoto told about how, 30 years ago in Japan, there was a problem with foreign students arriving, and apartment owners eventually refusing to rent to them. The issue was foreign students not taking off their shoes before entering the apartments. “If these students do not respect Japanese customs, they cannot use our apartments,” the owners said. “But,” the students complained, “removing our shoes wasn’t mentioned in the contract!” This was resolved by a Japanese real estate company owner who established a model contract just for renting to foreign students. When a society diversifies and there is no longer common understanding, contracts must change. In this case, sometimes American business models are good, because of the diverse society there.

The third story shows how copyright is everywhere. Mr. Okamoto will give a speech at the conference in English, and it will be simultaneously translated into Mongolian, and it may be recorded. If the speech is published in Mongolian, the publisher should get permission. But who is the author? It’s the interpreter. This is called a “derivative work.” The publisher should get permission from the original author and the live interpreter but these are somewhat new issues. For example, sometimes such addresses are broadcast live on the internet. Specific contracts are important for symposia. The interpreters probably didn’t know they were authors.

#### Q&A between participants and resource persons

Q: About the flood of pirated, foreign DVDs and CDs which are broadcast, there’s a concern that there’s too much foreign product and the public has less access to Mongol work. At the enforcement level, it seems that Mongol products are seized, but not foreign ones.

A: On behalf of the IPOM, Mongolia is part of international conventions, and none of these can be used without authorization.

A: Domestic and foreign representation is important. In the U.S., the first copyrights in the 19th c. were just for U.S. nationals. The result was that no U.S. work could get published. The American writer Mark Twain campaigned for foreign copyright so that all could be protected equally and there would be no advantage for

pirated foreign works.

Q: Young people like rock and pop music, but sometimes Mongolian performers and composers use it as plagiarism. I request the IPOM to work with other countries to identify whether there is unlawful use.

A: Mongolians are creative and intelligent on the one side, but they lack economic and legal knowledge on the other. We tend to get information from each other, but not to consult the actual law: “I heard this” or “Someone told me that.” As to the counterfeit products seized, they’re not just domestic, but also foreign. I would ask the participants to be creative on both sides.

## 2. Group Work-2 “Drafting Questions and Answers for the Mongolian Version of Asian Copyright Handbook”

### Group Members

#### Group A (Group of Publishers)

Facilitator: P.Tserendolgor  
 Resource Person: Jane Palfreyman  
 Presenter: P.Tserendolgor ,  
 Members: D.Uugantsetseg,  
 P.Erdenetogtoh,  
 M.Battugs  
 E.Myagmardorj  
 G.Ganbaatar  
 M.Nomintsetseg

#### Group B (Group of Administrators)

Facilitator: Badam  
 Resource Person: Tanaka Kentaro  
 Presenter: Badam  
 Members: D.Tserenbat  
 D.Ayush  
 S.Tsogbayar  
 B.Tumutbat

#### Group C (Group of Media)

Facilitator: G.Gantsetseg  
 Resource Person: Okamoto Kaoru  
 Presenter: G.Gantsetseg  
 Members: G.Munkhzul  
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 D.Nyamaa  
 O.Bayarmaa

#### Group D (Authors/Composers)

Facilitator: S.Yundenbat  
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 M.Ganjargal  
 T.Khantulga  
 B.Tungalag  
 N.Narantsetseg  
 S.Tserendorj

### Results of the Group Work-2

#### Questions from Group A

1. Is it possible to obtain copyright by transferring the rights of a work created before 1993, from being state-owned property to its creator or creator’s heirs by way of compensation?
2. When does copyright protection start?
3. If I bought a CD (copyright product) and then made a copy on my PC, then sent it to my friend by e-mail, is that a form of copyright violation?
4. How can copyright be guaranteed? Does the copyright holder need to register his or her work at the Intellectual Property Office of Mongolia?
5. What are the benefits of obtaining copyright and consequences of not obtaining it?
6. What is the difference between a certificate and a license?
7. Can a work be considered as a statutory fund structure (real property) of private entities?
8. Can historical scripts be considered as intellectual property, for example, the History of Chinggis Khan?
9. How does one evaluate the value to be demanded from a copyright work?
10. What are the main responsibilities of the IPOM in terms of disseminating clear information to Mongolian citizens?
11. To which government agency does the IPOM belong? If someone thinks the IPOM made a wrong decision, to whom does one appeal that decision?
12. Is traditional artwork protected by copyright?
13. If a State-owned organization is privatized, along with its property, to whom is the ownership rights of intellectual work transferred?
14. From which school year – secondary school, high school, university – is it appropriate to start teaching about intellectual property in Mongolia’s education system?
15. When will the IPOM open consulting offices and conduct activities for the people who live in local provinces?

#### Questions from Group B

1. Who can be the owner of copyright?
2. What are the legal requirements of an author?
3. What is a collective management organization?

4. What is the difference between ownership and property rights?
  5. Where can you get information concerning copyright?
  6. What are moral rights?
  7. When are works considered to have legal protection?
  8. At what point is a copyright work considered to have been disseminated to the public?
  9. What kinds of works are protected by copyright law?
  10. Within which international treaties and entities does one get permission to exploit works by foreign people?
  11. Where and how can Mongolian citizens and entities get permission to exploit works by foreign people?
  12. How can the copyrights of Mongolian citizens be protected in foreign countries?
  13. Who owns the translation rights for a creation?
  14. What is the duration of copyright protection?
  15. How much should an author pay to register his intellectual work with the authorized organization?
7. Which international protection rights exist when foreign singers and groups exploit works by Mongolian authors and composers without any permission?

### **Resource Persons' Answers for the Compiled Questions (Plenary Session)**

Q1. Who can be a copyright owner?

- A. Ms.Morgan: This is reflected in six other questions. In general, it's the creator of the work. This can be varied by employment. If the work was created in the course of employment, the employer is the copyright owner. It can also be varied by contract, in which the author may transfer ownership rights.
- A. Ms.Erdenechimeg: The individual owner has economic and moral rights. It's a little legally ambiguous, but it's linked to civil law in the sense that copyright can be rented, transferred and gifted.

Q2. What are the legal requirements of an author?

- A. Ms.Myagmardorj: There are none for the author. He or she has automatic rights.

Q3. What is the difference between ownership and property rights?

- A. Ms.Erdenechimeg: This is legally difficult. The owner is an individual within a certain timeframe, and there's a difference between the right holder and right owner. The owner has the power to dispose of the right, but the holder can only exploit the right, not dispose of it. There must be a contract between the owner and holder to clarify this.

Q4. In which international treaties and conventions of copyright has Mongolia become a party?

- A. Ms.Myagmardorj: Mongolia is party to the Berne Convention, WTO (TRIPS), and WIPO (WCT and WPPT).

Q5. How can the copyright of Mongolian citizens' works be protected in foreign countries?

- A.Mongolian Ministry of Education representative: If the other country is party to the Berne convention, all the countries have agreed to protect these rights. If not, some have a system of registry and inventory and they regulate these activities in that way.

### Questions from Group C

1. Are there ways to transfer the rights of works produced before 1993, which are held in national TV and radio archives?
2. What is the case if someone produced a CD including the song "18 Years" without any permission from the writer?
3. How is copyright guarantee provided for a video recording?
4. How can the copyright issues of a work be resolved when it is produced during employment?
5. Which laws apply when foreign citizens and companies exploit works of a country's traditional art?

### Questions from Group D

1. How are payment problems resolved when an organization or an individual exploits the work of authors and creators without any permission or contract?
2. Who holds the priority right to a work when it has more than one author?
3. Can ideas or activities be protected by copyright?
4. How can you solve inheritance issues concerning a copyright work?
5. Which rights does an author hold, when he has made a formal adaptation of the state anthem?
6. When a person has found a rare historical photo with an unknown author, which rights can he or she obtain?

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Q6. Who owns the translation rights of a work?

A. Ms.Morgan: If the translated work is still in copyright, the original owner still controls the work. But if a work is, say, from the 18th c., it's out of copyright (the duration of a copyright is generally the creator's life, plus 50 or 70 years, depending on the country) and can be translated freely and the translator becomes the owner of his or her work. This does not prevent another, however, from doing their own translation.

Q7. What is the duration of copyright protection?

A. Ms.Myagmardorj: It is the life of the author plus 50 years.

Q8. How much must an author pay to register his intellectual work with an authorized organization?

A. Ms.Myagmardorj: It is a minimum of 20,000tg but other fees exist, depending on what the author wishes to do.

Q9. What are other ways to hold the special rights of works, produced before 1993, that are held in national radio and television archives?

A. Ms.Myagmardorj: Since before 1993 MNR and MNTV were state organizations, those works, including the "golden collection," belong to the state.

Q10. What happens if someone produced a CD including the song "18 Years" without any permission from the writer?

A.Mongolian Ministry of Education representative: The CD producer should have sought permission. Camerton [the band that wrote that song] can go to court over this.

Q11. Which regulations apply when foreign citizens and companies exploit works of traditional art?

A.Mongolian Ministry of Education representative: The traditional arts themselves are not protected, but if a singer records a traditional song, for example, he or she enjoys the copyright to that performance.

Q12. How are payment problems resolved when an organization or an individual exploits the works of creators without any permission or contract?

A. Ms.Erdenechimeg: If there's a dispute, the administrative court should arbitrate, for example if IPOM issued a certificate to the wrong person.

Q13. Who holds the priority right when a work has more than one author?

A. Ms.Morgan: If there's collaboration and the contributions can be separated, each controls their own. For example, in the case of musician Elton John, he wrote the music and Bernie Taupin wrote all the words; each controls their own part of the work. But if the contributions are not separable, there is no priority right. Each can exercise full rights, but only with the consent of all the other collaborators. This can be complicated, so often a decision is made first about who will control the copyright. This is another example of "varied by contract."

Q14. Can ideas or activities be protected by copyright?

A. Ms.Myagmardorj: Only expressions can be under copyright, not ideas or activities.

Q15. How are the inheritance issues of a work resolved?

A. Ms.Morgan: The owner may have neglected to spell out transfer of his works in a will, but they will be included in the residue of the estate and automatically inherited by his named heirs.

Q16. Which rights does an author hold who created a formal adaptation of the national anthem?

A. Ms.Morgan: If a formal work was contracted by the government, there should have been a decision made about who would own the work, and what aspects can be controlled by the creator.

Q17. If a person finds a rare, historical photo for which the author is unknown, what rights does he or she hold?

A. Ms.Palfreyman: As long as every effort has been made to trace the copyright owner, you might use it with a disclaimer indicating that you're prepared to pay after the fact if the owner appears.

- Q18. Which international protection rights exist when foreign singers and groups exploit works of Mongolian authors and composers without permission?
- A. Ms. Myagmardorj: Foreigners have to get permission in advance if their country is under the same treaties as Mongolia.
- Q19. If someone participated in competitive bidding for the work of another person, without the permission of that person, if the work is awarded, which laws apply?
- A. Ms. Myagmardorj: They can be the owner only with a contract specifying this, even if they've already provided financial support. Any assignment should be done with a written contract.
- Q20. If someone participates in a contest with a work, and it doesn't receive an award, can the company that organized the contest exploit the work afterward without permission?
- A. Ms. Myagmardorj: A work cannot be exploited without the permission of the author.
- Q21. Can a person who found a copy of a work for which the original work is lost hold a copyright for that work?
- A. Mongolian Ministry of Education representative: No. The finder of a work cannot be the automatic owner of a copyright, only the creator.
- A. Ms. Palfreyman: No, but we did have the experience of publishing a WWI diary. The diarist was the author, but the man who found it, edited it and provided extensive annotation, so he gets remuneration.
- Q22. Is it possible to obtain a copyright by transferring the right of an authorized work created before 1993, from State-owned property to the creator or the creator's heirs, by giving remuneration?
- A. Ms. Myagmardorj: The 1993 law is no longer enforced. The 2006 law indicates that this should be regulated at the Parliamentary level.
- Q23. If I bought a CD, copied it on my PC, and emailed it to a friend, would that be a form of copyright violation?
- A. Ms. Morgan: It's a violation.
- Q24. Does the copyright holder need to register his or her works at the Intellectual Property Office of Mongolia to guarantee that copyright?
- A. Ms. Myagmardorj: It is not mandatory, but one can apply for such registration.
- Q25. What are the benefits and consequences of registering a copyright or not?
- A. Ms. Myagmardorj: Mongolia is party to the Berne Convention, so copyright is automatic and there is no need for registration. Some like to do this, however, and some judges in the case of disputes tend to ask for physical proof.
- Q26. What is the difference between a certificate and a license?
- A. Mongolian Ministry of Education representative: A certificate states who is the rightful owner of a work. A license grants permission to use it.
- Q27. Can a work be considered as the real property of private entities?
- A. Mongolian Ministry of Education representative: Copyright work can be part of the initial fund for a private company.
- Q28. In the case of any misunderstanding arising about a copyright work, how does one determine the work's value in order to make a claim?
- A. Ms. Myagmardorj: It's the owner's job to make an estimate and IPOM can certify it.
- Q29. What are the main responsibilities of IPOM regarding the dissemination to the public of clear information regarding copyright?
- A. Ms. Myagmardorj: IPOM is a government agency operating from within the Deputy Prime Minister's office. All of our functions are spelled out in Mongolia's copyright law and one can read through it for details.
- Q30. To which government entity does IPOM belong? If someone disputes a decision made by IPOM, to whom do they appeal?
- A. Ms. Myagmardorj: IPOM is under the Deputy Prime Minister's jurisdiction. If there are disputes, there is a resolution committee and the owner can appeal at the office, and also in the regular courts.

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Q31. Can traditional artwork be protected by copyright?

A. Ms. Morgan: No, but if you write up a story in your own words, or paint in your own unique way, you own the copyright to that expression. To deal with this in Australia with our aboriginal population, we've developed a concept called "community moral rights".

Q32. If State-owned is privatized, to whom will the ownership of intellectual property be transferred?

A. Ms.Erdenechimeg: All rights previously owned by the state transfer to the private organization.

Q33. From which educational level is it appropriate to begin teaching about copyright in Mongolia?

A. Ms.Baasandorj: This should be provided from the first school years.

Q34. When will IPOM open consulting offices and begin activities for those who live in local provinces?

A. Ms.Myagmardorj: Presently, IPOM cannot do this, but there are legal officers to oversee these affairs in each aimag governor's office.



### 3. Group Work-3 “Drawing up Action Plans to Promote Copyright Awareness”

#### Group Members

##### Group A (Group of Publishers)

Facilitator: E. Myagmardorj  
 Resource Person: Jane Palfreyman  
 Presenter: P.Tserendolgor ,  
 Members: A.Oyuntuya,  
 Ts.Enkhmaa,  
 G.Ganbaatar,  
 D.Uugantsetseg,  
 P.Erdenetogotoh,  
 P.Tserendolgor

##### Group B (Group of Administrators)

Facilitator: Ts.Sereenov  
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 P.Khayankhyarvaa  
 M.Ganjargal  
 S.Lkhamsuren  
 L.Erdenebat

#### Results of the Group Work-3

##### Action Plans presented by Group A

1. Prepare professional personnel to teach copyright subject
2. Cooperate and study experience of foreign countries and international organizations to promote copyright awareness
3. Get involved in training personnel in direction of Mongolian intellectual property organizations or of foreign countries (especially Japan)
4. Submit for confirmation to Mongolian National Programme of Intellectual Property Awareness
5. Publish materials for distribution such as book, manual, movie, game, etc. for children of pre-school age and school age joined with UNESCO, ACCU and Japanese government
6. Translate to Mongolian comic book for copyright of World Intellectual Property Organization and distribute to public
7. Organize competition of painting and composition among children
8. Use broadcasting media broadly
9. Broadcast transmission about copyright by broadcasting radio television
10. Publish a number of handbooks that will be produced in January 2007, 2500 copies in minimum
11. Include lessons on Intellectual Property in the standard of education system within 2007
12. Get involved in advertising of copyright artists and singers

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Action Plans presented by Group B

		Objects	Action tools	Person for responsible	Source for financing	Outcomes
Formal Education	1	Pre-school	Game, painting, song, poem	Teacher, pupils, MECS	MECS	Create an image
	2	Secondary school	Reflect in educational standard plan	Teacher, society, technology	MECS	Give a basic knowledge
	3	University	To specialize	Teachers, school administration	School	Specialized training
	4	Master, doctors	To specialize	Master, doctor, specified organization	State and person	Advisor, not doctrine
Non-formal Education	5	To own Copyright awareness	1.Distribute by book, newspaper and media 2.Radio and television 3.Proclaim competition 4.Hold workshop 5.Professional organization	Intellectual Property Organization, international organization, radio, television	State budget, Project of international organization, and others	

Action Plans presented by Group C

1. Publish pictorial book for children of pre-school age
2. Prepare materials in DVD form for secondary school
3. Advertise to public by all advertising tools in new level of technology
4. Advertise by show

Action Plans presented by Group D

1. Promote public knowledge primarily by press media
2. Reflect on official and unofficial educational training standard
3. Broadcast on television regularly
4. Reform website of IPOM
5. Create a guideline and distribute it to public
6. Cooperate with collective management companies