

Taiwan Copyrights/Trademarks/IPR Understandings--AIT And CCNAA Copyright Agreement

AGREEMENT FOR THE PROTECTION OF COPYRIGHT BETWEEN

THE AMERICAN INSTITUTE IN TAIWAN AND

THE COORDINATION COUNCIL FOR NORTH AMERICAN AFFAIRS

The American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA), in order to promote extensive, close and friendly commercial, cultural and other relations and desiring to facilitate the expansion of commerce on a non-discriminatory basis, have established this Agreement to enhance the rights or authors and other copyright owners without impairing any protection in their works enjoyed by virtue of any prior agreement other arrangements.

(1) The AIT and the CCNAA, as Parties to this Agreement undertake to provide for and to maintain in the domestic legislation of their respective authorities and understands agreement the adequate and effective rights of authors and other copyright proprietors in their literary and artistic works.

(2) "Territory" shall describe the are under the jurisdiction of the authority of either Party to this Agreement as the context may require.

(3) A "protected person" shall mean:

(a) An individual or juridical person who under the laws of either territory would be considered a citizen or national of that territory and

(b) An individual or juridical person who first publishes his or her works in that territory.

(4) In the territories represented by the Parties, each of the following also shall be deemed a "protected person" upon the fulfillment of the conditions set out in the proviso following paragraph (b) below

(a) A person or entity identified in paragraph (3) (a) above; and

(b) A juridical entity wherever located which is directly or indirectly controlled by, or where majority of the shares or other proprietary interest is owned by a person or entity identified in paragraph (3) (a) above.

A person or entity designated in paragraph (4) shall be considered a protected person to the extent that he owns, by easy of any written agreement signed by the parties thereto, exclusive right(s) in a literary or artistic work in the territories represented by the Parties provided that:

(a) The ownership of such right(s) was acquired by way of any written agreement signed by the parties thereto, within one year following the first publication of the work in a country that is party to multilateral copyright convention to which the territory represented by either Party belongs and

(b) The work has been made available to the public in the territory represented by either Party.

For the purpose of paragraph (4) indirect control means control exercised through subsidiaries or affiliates wherever located.

(5) Full copyright protection will be provided in the territory represented by AIT to protected persons of the territory represented by CCNAA for such exclusive rights in literary and artistic works upon the condition that such works are first published in territory that is party to an international copyright convention to which the territory represented by AIT adheres.

(6) Authors and other copyright owners who have their habitual residence in one of the territories represented by either Party to this Agreement shall for the purpose of this Agreement, be assimilated to protected person of that territory.

(7) Notwithstanding the provisions of paragraphs (3) (b) and (6) above, if a territory not a Party to this Agreement does not protect works of protected persons of the territory represented by CCNAA first published in the non-Party's territory, protection accorded to the works of such citizens, nationals, or juridical entities of that non-Party territory shall be restricted by the authorities of the territory represented by CCNAA in a corresponding manner.

(1) The expression "literary and artistic works" shall include every original production in the literary, scientific, and artistic domain, whatever may be the mode or form of its expression, including books, pamphlets, computer programs and other writings; lectures, addresses, sermons and other oral works; dramatic or dramatic-musical works; choreographic works; musical works with or without words; sound recordings; motion pictures fixed in any form including videotape; pictorial works; artistic works; photographic works; maps; scientific-technological or engineering design drawings; translations; compilation; and other works. The categories of such works shall be determined by the applicable laws of each territory.

(2) Whether all or specific categories of literary and artistic works must be fixed in some material form in order to be protected will be determined according to the laws of each territory.

(3) Without prejudice to the copyright in the original work, and except as otherwise provided for in this Agreement, translations, adaptations, arrangements of musical works and other alterations of a literary or artistic works shall be independently protected in accordance with this Agreement and the laws of each territory.

(4) It shall be a matter for the legislation in each territory to determine the protection be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

(5) Collections of literary or artistic works or compilation of other preexisting materials which, by reason of the selection and arrangement of their contents, constitute intellectual creations such as directories, encyclopedias and anthologies regardless of their means of fixation, and reproduction whether in print or analogous form or in electronic media, shall be independently protected; however such protection shall not affect the copyright, if any, in any works forming part of such collections or compilations.

(6) The works mentioned in this Article shall enjoy copyright protection in each territory represented by a Party to this Agreement. This protection shall operate for the benefit of the author and his or her successors in title.

(1) The protection of this Agreement shall apply to works created by protected persons of one of the territories represented by a Party to this Agreement, for their works, whether published or not.

(2) The expression "published works" means works published with the consent of their author, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. Provided further that, the performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a

(1) In respect of literary and artistic works for which they are protected persons under this Agreement, authors and other copyright owners shall enjoy in the territory represented by either of the Parties to this Agreement, the rights which their respective, laws do now or may hereafter grant to their protected persons consistent with the terms of this Agreement and in accordance with their respective laws.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the territory of origin of the work. The extent of protection and the means of redress afforded to such protected persons hereunder to protect their rights shall be consistent with the terms of this Agreement and governed by the laws of the territory where protection is claimed.

(3) Upon compliance with procedural measures, if any, not precluded by (2) above, and concerned with enforcement of the rights embodied in this Agreement in each territory, the author or copyright owner and his or

her assignees and exclusive licensees shall be entitled to institute in that territory infringement proceedings and to secure effective criminal or customs enforcement of the rights embodied in this Agreement and in accordance with the laws of the territories represented by the Parties to this Agreement.

(4) Such procedural measures, if imposed, shall:

(a) be applied equally to all protected persons; and

(b) be implemented by-- regulations and instructions published so as to be readily available to applicants.

(5) The territories represented by the Parties to this Agreement shall afford to the works of a protected person, in a suit brought to enforce the rights provided in the domestic law of either territory, a presumption that if the name of such person or the date or place of publication appears on copies of the work, such person is the author or copyright owner, as the case may be, and such date or place represents the facts with respect thereto until the contrary is proved.

(1) The term of protection shall be no less than the life of the author and fifty years after his or her death.

(2) In the case of works not authored by a natural person, the term of protection shall expire no less than fifty years after the date of creation or first publication of the work, whichever expires first.

(3) If, however, on the date on which this Agreement comes into effect, the legislation of the territory represented by a Party to this Agreement has established periods of protection for certain categories of works as from the day of creation or the day of first publication, they may maintain this exception and apply it to works created after the Agreement comes into effect. The period of protection for such categories of works may not be less than fifty years after the day of completion.

(4) In the case of a work of joint authorship, the term shall be measured from the death of the surviving author.

Authors of literary and artistic works protected under this Agreement shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works except as otherwise provided in this Agreement and the Appendix which is an integral part of this Agreement.

Except as otherwise provided in this Agreement, authors of literary and artistic works protected by this Agreement shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) Any sound or visual recording of any such work shall be considered as a reproduction for the purposes of this Agreement.

(1) Authors of dramatic works, dramatico-musical works, musical works, and sound recordings for which they are protected person hereunder shall enjoy the exclusive right of authorizing:

(i) the public performance of their works, including such public performance by any means or process; or

(ii) any communication to the public of the performance of their works.

(2) The law of the territory represented by either party may limit or not extend rights of public communication, or broadcasting to sound recordings, notwithstanding the provision of this Article and Article 9.

(3) For the purpose of this Article and Articles (9) and (10) to perform or present a work in "public" shall mean:

(a) to perform or present it in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(b) to communicate, or transmit a performance or presentation of a work in any form or by means of any device or process to a place specified in clause (a) or to the public, regardless of whether the members of the public capable of receiving such communication receive them in the same or separate places and at the same time or at different times.

(1) Except to the extent otherwise provided in paragraphs (2) and (3) of this Article, authors of literary and artistic works protected under this Agreement shall enjoy the exclusive right of authorizing:

- (i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
- (ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work this communication is made by an organization other than the original one;
- (iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work;
- (iv) the exercise of the foregoing rights in the territory represented by a Party to this Agreement shall be in accordance with the legislation of that territory.

(2) The rights of authors and copyright owners in works to authorize cable retransmission of broadcasts may be limited to a right of remuneration notwithstanding the provision of this Article. Such limitations shall apply only in the territories where they have been prescribed, and shall be accompanied by detailed laws and regulations that provide strong safeguards, including notification of the copyright owner and effective opportunity to be heard, mechanisms to ensure prompt payment and remittance of royalties consistent with those that would be negotiated on a voluntary basis.

(3) It shall, however, be a matter for legislation in the territory represented by each Party to this Agreement to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

Authors of literary and artistic works for which they are protected person here under shall enjoy the exclusive right of authorizing:

- (i) the public recitation of such works; including such public recitation by any means or process;
- (ii) any communication to the public of the recitation of such work.

Authors of literary or artistic works for which they are protected persons hereunder shall enjoy the exclusive right of authorizing adaptations, arrangements, and other alterations of their works.

Notwithstanding the provisions of Article 7, each territory represented by a Party to this Agreement may be permitted without the consent of the author or copyright owner of a musical work including both words and music to impose a non-voluntary license for the making of a sound recording of the musical work and any accompanying words, provided that the author or copyright owner of the work has already authorized the making of a sound recording of the work. Such a non-voluntary license shall not permit the duplication of a sound recording fixed by another, shall apply only in the territory which has imposed such non-voluntary license, and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

It shall be a matter for the legislation of the territories represented by the Parties to this Agreement to make limited exceptions to the exclusive rights specified in articles 6,7,8,9,10 and 11 of this Agreement, provided that such exception shall neither conflict with a normal exploitation of the work nor prejudice the legitimate interests of the author or copyright owner.

(1) Infringing copies of a work protected in accordance with this Agreement shall be liable to seizure in either territory where such work enjoys legal protection. An infringing copy shall mean a copy of such work that infringes any of the exclusive rights provided in domestic law and in this Agreement including a copy which is imported into the territory represented by either Party where, if made in such territory by the importer, would constitute an infringement of the copyright.

(2) The seizure shall take place in accordance with the legislation of each territory.

The provisions of this Agreement cannot in any way affect the right of either territory represented by a Party to this Agreement to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

(1) The provisions of this Agreement shall apply in each territory represented by a Party to this Agreement to all works that are protected under the copyright law of that territory on the effective date of this Agreement. The provisions of this Agreement shall not affect obligations arising under earlier agreements except as specifically provided for in this Agreement.

(2) Works created in the twenty years prior to 1985 shall be included as works protected under this Agreement in the territory represented by CCNAA, unless the work was registered pursuant to the copyright law then in effect and the term of protection under that law expired prior to 1985.

Article 17

The provisions of this Agreement shall not preclude either Party to this Agreement from granting protection at a higher level than that provided for in this Agreement. In such event, however, such protection shall be afforded equally to all protected persons under this Agreement.

Juridical entities of the territory represented by each Party to this Agreement shall be entitled to full rights of filing suit or prosecution in the territory represented by the other Party, whether or not that entity is recognized by the authorities of the other Party.

Each territory represented by a Party to this Agreement shall adopt such measures as are necessary Under its domestic law to ensure the application of the terms of this Agreement. It is understood that at the date this Agreement comes into force for either territory represented by a Party to this Agreement, that territory must under its domestic law give effect to the terms of this Agreement.

(1) The Parties to this Agreement shall consult periodically in order to review the operation and application of this Agreement so as to assure that, with the passage of time and changes in circumstances, the objectives of this Agreement may be effectively maintained.

(2) In order to assist in the carrying out of functions referred to in the Appendix to this Agreement, the Parties shall identify and ensure effective communication between the copyright information centers established by the Parties or by rights holders or users represented by the Parties.

This Agreement becomes effective on the date of the final signature hereafter and shall be valid until terminated by one Party upon notification to the other Party in writing at least six (6) months before the termination is to take effect.

In witness thereof the Parties hereto have hereby set their hands by their duly authorized representatives and have caused this Agreement to be signed and effective the date of the last signature hereafter.

For: American Institute in Taiwan

For: Coordination Council for North American Affairs

NAME: Natale H. Bellocchi

NAME: Ding Mou-shih

TITLE: AIT Director

TITLE: CCNAA Representative

DATE: July 16, 1993

DATE: July 16, 1993

APPENDIX

Article I

(1) To ensure an effective introduction of translation rights in the territory represented by the CCNAA, the AIT agrees that for a transitional period lasting until January 1, 2005 the authorities of the territory represented by the CCNAA may, so far as works published in printed or analogous forms of reproduction are concerned, substitute for the exclusive right of translation provided for in Article 6 of the Agreement for the Protection of Copyright Between the Coordination Council for North American Affairs and the American Institute in Taiwan (the Agreement) a system of non-exclusive and non-transferable licenses granted by the competent authority following notice of the commencement of a proceeding to the author or copyright owner under the following conditions.

(2) A license under this Appendix may be granted only if the applicant, in accordance with the procedure of the territory represented by CCNAA, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any information center referred to in paragraph (3).

(3) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application, submitted to the authority competent to grant the license, to the publisher whose name appears on the work and to any information center which may have been designated by the Parties to this Agreement.

(4) The name of the author shall be indicated on all copies of the translation published under a license granted under this Appendix- The original title of the work shall appear on all the said copies.

(5) No license granted under this Appendix shall extend to the export of copies, and any such license shall be valid only for publication of the translation in the territory represented by CCNAA.

(6) All copies published under a license granted by virtue of this Appendix shall bear a notice in the Chinese language stating that the copies are available for distribution only in the territory represented by CCNAA.

(7) The CCNAA shall ensure:

(a) That a license shall be granted only following a proceeding before the designated authority at which the author or copyright owner or his designated representative:

(i) has the right to appear with the assistance of counsel,

(ii) may introduce evidence and examine applicants for licenses; and,

(iii) has the right to a prompt appeal from the determination to grant a license.

(b) That the license provides, in favor of the owner of the right of translation, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two territories concerned, and

(c) Payment and transmittal of the compensation; should national currency regulations intervene, the Parties to this Agreement shall make all efforts to ensure transmittal in convertible currency or its equivalent.

(d) That prompt and effective procedures are established to enforce the termination of a license granted under this facility where:

(i) the licensee has violated the terms of the license established by the competent authority, including the terms of this Appendix; or

(ii) where the circumstances set out in Article 11(4) and (5) of this Appendix arise-

Article II

(1)(a) In the case of teaching, scholarship or research after the expiration of a period of one year commencing on the date of the first publication of the work, any protected person of the territory represented by CCNAA may apply for a license to make a translation of such work into Chinese and publish the translation in printed or an analogous form of -reproduction, provided that the work has not been published in Chinese anywhere in the world except the China mainland within that one year period by the owner of the right of translation or with his authorization.

(b) A license under the conditions provided in this Appendix may also be granted if all the editions of the translation published anywhere in the world except the China mainland are out of print.

(2) (a) No license obtainable after one year shall be granted under this Article until another period of nine months has elapsed.

(i) from the date on which the applicant complies with the requirements of Article 1(2) of this Appendix.

(ii) Where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article 1(3) of this Appendix, copies of his application submitted to the authority competent to grant the license.

(b) If, during the said period of nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under this Article shall be granted.

(3) Any license under this Article shall be granted only for the purpose of teaching, Scholarship or research.

(4) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that Formally charged in the territory represented by the CCNAA for comparable works, any license granted under this Article before such publication shall terminate if such translation is in Chinese and with substantially the same content as the translation published under the license.

(5) No license shall be granted or maintained under this Article when the author has withdrawn from circulation all copies of his work.

(6) In the event that any license granted under this Appendix is terminated in accordance with the procedure contemplated in paragraph (7)(d) of Article I of this Appendix or in circumstances described in paragraphs (4) and (5) of this Article 11, all copies already made on or before the date on which the license terminates may continue to be distributed until their stock is exhausted.

(7) (a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in the territory represented by CCNAA, upon an application made to the competent authority of that territory by the said organization, provided that all of the following conditions are met:

(1) the translation is made from a copy made and acquired in accordance with the laws of the said territory;

(ii) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;

(iii) the translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the said territory, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;

(iv) all uses made of the translation are without any commercial purpose.

(b) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in subparagraph (a) and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the territory whose competent authority granted the license in question.

(c) Provided that all of the criteria and conditions set out in subparagraph (a) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(d) Subject to subparagraphs (a) to (c), the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency.