New Model Contract Between Public TV and Video Artists

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

By Douglas Davis

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

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

The moment of its birth is a moment when the hitherto private arts in this society are increasingly going public, on every level, from funding to programming. This moment holds peril as well as promise. It was not long ago that all of us took up arms in behalf of public support of the arts. Not only did the nation owe this support to its expanding and vigorous (continued on page 2)

An Open Letter from R. Buckminster Fuller

If you've gone to a museum, attended a play, seen an opera, or bought a painting in the last year, you were responsible for keeping the arts alive. Yet despite your support, the arts in this country are in serious trouble. The future looks even worse.

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

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

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

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

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

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

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

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

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

I urge you to do as I have - join Advocates. Without you, it is only a great idea. With you, it's an opportunity to improve the arts and the quality of life of our society.
This issue of *The Arts Advocate* devotes a great deal of attention to copyright, an issue politically hot and enormously consequential to the arts. Too few individuals understand just how consequential it really is — or how much the artist stands to lose if Congress acts without adequate public input.

Advocates for the Arts will keep its members informed of all legislative developments on the new copyright bill. We hope you will familiarize yourself with its provisions, which are covered at some length on page 4. We will also ask you to pay close attention to its passage through the committee and onto the floor of the Senate and House.

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

It would be ironically self-defeating if the debate, which the Supreme Court recently entered to decide, were decided in favor of the politically muscular merchants of creative work whom the Constitution was specifically trying to protect when it gave Congress, in 1798, the power "... to promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries..."

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

In February the Supreme Court handed down the anxiously awaited "Dred Scott decision of copyright law." It was no decision at all. The case of Williams and Wilkins v. the U.S. Government, considered by experts of our rickety copyright laws to be the most important copyright case in forty years, now goes back to the 1973 decision by the U.S. Court of Claims which regarded the economic claims of the person who created whatever is worth copyrighting. The Williams and Wilkins case was significant. It could have been an important guide for the legislation now before Congress. The Supreme Court's decision was on a 4-3 basis. The four judges of the Court of Claims, who held the majority opinion, drove a sizable hole through the protective wall of copyright that the Constitution specifically provided in a time when "ideas and facts" are not protected by copyright. The decision allows the performers or creators to collect royalties on their work. The four judges of the Court of Claims argued that their income was being substantially threatened.

The problem is now up to Congress which will have to make hard decisions in an atmosphere of mounting pressures from special interest groups: artists, authors, composers, playwrights, poets, choreographers, photographers, painters, and sculptors as well — could copyright their work and have it published. The pressure to be the most at stake. Because the National Institutes of Health and the National Library of Medicine contain literally tens of thousands of pages from the medical journals published within one year, and that of stealing copyrights, the publisher justifiably — or so it is often said. With that many copies being cranked out of the duplicating machines of these two agencies, Williams and Wilkins argued that their income was being substantially threatened. The Court of Claims thought otherwise and ruled in favor of having the government provide copies of journal articles for anyone who wanted them for their own use and against every kind of copyright protection. Thus the four judges of the Court of Claims, who held the majority opinion, drove a sizable hole through the protective wall of copyright that the Constitution specifically provided in a time when ideas and their expression were more valued than they are now judged to be. In conclusion, the Supreme Court's decision is that this is not pre-eminently a problem for Congress. Clearly, it was beyond the Constitution as Supreme Court.

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The Commissioning Contract for Video Artists

By Harvey Horowitz

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

The legal sense a video artist is defined by his commissioning contract. This contract, traditionally called a "commissioning agreement," obliges and binds the artist to create and deliver a work, usually called a "_master tape" or "finished product," which is defined as a "video presentation" or "video art." The artist cannot work independently of this contract, which is a legal document, and it will be enforced by law.

The contract should include the following:

- Definition of the work to be created.
- Payment terms and conditions.
- Ownership of the work.
- Termination and cancellation rights.
- Dispute resolution mechanisms.

By havin signed a contract, the artist becomes a party to the legal relationship and has rights and obligations.

Note: All monetary amounts and time periods given are, of course, arbitrary, included for the sake of continuity, and are not intended to suggest a value or price.

Artists' Share of Royalties

First, a few words about the concept of "share" and its rules. By definition, share means the "division of an income or profit," which is why the artist cannot avoid a share of the "royalties," which are the income that is derived from the sale of the work.

The share of the artist is always the same, regardless of the medium or the purpose. There is no difference between a share in a short film, a share in a feature film, or a share in a video artwork. The rules for the share are the same.

The share of the artist is determined by the artist's agreement with the artist's agent, and it is subject to change at any time. The artist should consult with an attorney before signing any agreement.

Par 1. In consideration of the rights to the Work granted to the Artist hereunder, Artist shall be entitled to one dollar for each finished hour of broadcast time or...
to perform and produce and work and view the finished product as their own. They further agree that any act of exploitation, reproduction, distribution, sale, or broadcast of the Work or the original or derivative work which is based on the Work will be considered to be the exploitation of the Work by such methods in the traditional legal format for as long as the Work is not broadcast. The Work shall be deemed completed on delivery of a finished master tape to BIE. In connection with the creation of the Work, BIE shall reimburse the Artist for the expenses itemized on the expense schedule annexed hereto.

Comment: The guiding principle the artist should understand is that the artist originally owns the work and all rights connected to it. What any contract does is exchange these rights for certain benefits to both sides. This contract tries to do it in a way that give and take on an even basis so that the end is balanced with the goal equally for both parties. Where there is large asymmetry of weight, for example, if one is being offered a pretty heavy commissioning stations, for example, to produce and distribute the Work and all rights connected to it, it is to be compensated, and so on.

In television, including public broadcast, contracts are commonly made. The following contract is not earthshaking, innovative, or novel in the law. It may be standard or innovative for the video artist, who is drafted to serve as the contractual vehicle that deals with the issues that matter. The first must become familiar with the contract is signed, and the second will take a step forward for the economic rights of artists—a primary and increasing concern of Advocates for the Arts.

**Contract Draft**

This letter will confirm the agreement reached between A. Artist (herein "the Artist") and BIE Inc. (herein "BIE") with respect to the television Work known as "A Tower." A Tower ("the Work") is hereby commissioned by BIE Inc. ("BIE"), for a period of two years commencing with the completion of the Work. A Work is hereinafter defined as the video work having a working title of "A Tower." The Work will be produced and owned by the Artist, unless otherwise noted. The Work will include all royalties from the station's exploitation of the Work, at least three principles should be observed.

**Terms and Conditions:**

BIE hereby commissions the Artist to create a video work, hereinafter referred to as "A Tower," for a period of two years commencing with the completion of the Work. The Work is hereby defined as the video work having a working title of "A Tower." The Work will be produced and owned by the Artist, unless otherwise noted. The Work will include all royalties from the station's exploitation of the Work, at least three principles should be observed.

1. **Payment:**

   a. All monies due to the Artist under this Agreement shall be paid to the Artist at the rates specified in Schedule 2 (Annexed).

2. **Ownership:**

   a. The Work shall be owned entirely by the Artist and no rights to the Work shall pass to BIE.

3. **License:**

   a. BIE hereby grants the Artist a non-exclusive license to use the Work in any manner it deems appropriate, provided that the Artist shall be given credit for the Work and for the station.

4. **Indemnification:**

   a. BIE shall indemnify the Artist against any claims, losses, or expenses arising out of the use of the Work.

5. **Termination:**

   a. Either party may terminate this Agreement upon sixty (60) days notice, provided that the Notice is given in writing.

6. **Confidential Information:**

   a. Each party agrees to keep all information received under this Agreement confidential and not to disclose it to any third party without the written consent of the other party.

7. **Disclaimer:**

   a. Neither party shall be liable for any loss, damage, or expense arising out of the termination of this Agreement.

This Agreement shall be governed by the laws of the State of [State]. In the event of any dispute arising out of this Agreement, the parties shall first attempt to resolve the dispute through good faith negotiations. If such negotiations are unsuccessful, the parties may submit the dispute to arbitration.

SIGNED:

[Signature]

Date:

[Date]

FOR ARTIST:

[Signature]

Date:

[Date]

FOR BIE:

[Signature]

Date:

[Date]

**Comment:**

This Agreement is a standard form of contract for the television industry. It is intended to provide a clear and concise means of protecting both the artist and the station in the negotiation of the work. The key terms include payment, ownership, license, indemnification, and termination. Each party agrees to keep all information received under this Agreement confidential and not to disclose it to any third party without the written consent of the other party.

**Payment:**

The Artist is paid a percentage of the net revenue generated by the station's use of the Work. The percentage is determined based on the net revenue and a formula agreed upon by both parties.

**Ownership:**

The Work is owned by the Artist, and BIE is granted a non-exclusive license to use the Work.

**License:**

BIE hereby grants the Artist a non-exclusive license to use the Work in any manner it deems appropriate, provided that the Artist shall be given credit for the Work and for the station.

**Indemnification:**

BIE shall indemnify the Artist against any claims, losses, or expenses arising out of the use of the Work.

**Termination:**

Either party may terminate this Agreement upon sixty (60) days notice, provided that the Notice is given in writing.

**Confidential Information:**

Each party agrees to keep all information received under this Agreement confidential and not to disclose it to any third party without the written consent of the other party.

**Disclaimer:**

Neither party shall be liable for any loss, damage, or expense arising out of the termination of this Agreement.

In the event of any dispute arising out of this Agreement, the parties shall first attempt to resolve the dispute through good faith negotiations. If such negotiations are unsuccessful, the parties may submit the dispute to arbitration.

I want to join Advocates for the Arts, and receive The Arts Advocate News Quarterly.

Enclosed is my check* for $15 payable to: ASSOCIATED COUNCILS OF THE ARTS

I would like to contribute more.

Enclosed is my check* for $25 $35 $50 $100 $more

* Contributions in any amount are tax-deductible.

Name:

Address:

City State Zip

Cut out and return to: Advocates for the Arts, c/o Associated Councils of the Arts, 1566 Broadway, New York, N.Y. 10036.

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

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

(continued from page 11)

The station would determine whether or not to broadcast the Work. If it elects not to broadcast the Work it would then assume the risk of such lawsuits. The station and the Artist, i.e., the attorney, is in a better position to evaluate the possibility of such litigation and be guided accordingly. This point is being raised for discussion purposes.

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

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

Part 7 This agreement contains the entire understanding of the parties and may not be modified, amended or changed except by a writing signed by the parties. Except as is expressly permitted under this agreement, neither party may assign this agreement or rights accruing under this agreement without the prior written consent of the other except either party may assign rights to receive money or compensation without the other party's consent. This agreement shall be interpreted under the laws of the State of New York.

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

(continued from page 9)
Three recent controversies have drawn attention to the need in this country for a new body of law guaranteeing the artist's right to protect the quality of his creation and to profit from its success. Ken Kesey's battle against the producers of the film version of "One Flew Over the Cuckoo's Nest" is the Monty Python group's unsuccessful struggle to keep their work off network television rather than have it censored and cut, as promoters, bankers, big shot, top banana, agent, producer, disseminate it over the network if they desire to. But, aside from money, another fact is that the artist's moral right to a say in the production, or a percentage of its success, is also at stake.

As an artist who is currently engaged in a costly and debasing court battle about the film treatment of my first novel, I wish my fellow creators good luck, but I am hardly-creators.
ISSUE:
SURVIVAL OF THE VISUAL ARTIST IN THE 70'S: OUR CHALLENGES, OUR CONTRIBUTIONS, OUR PROPER ROLES IN SOCIETY, OUR EFFORTS TO FUNCTION AND SUCCEED.

Today artists are experiencing problems comparable to those of the 30's - the decade of the First American Artists Congress. Issues unresolved then are unresolved now - augmented by contemporary complexities and chaos. To air, discuss and help deal with these issues the BOSTON VISUAL ARTISTS UNION, the largest individual and organization of artists, is offering the 2nd Annual American Artists Congress.

PARTICIPATING GROUPS:
• Boston Visual Artists Union, host
• Artists Equity
• Brazilian Artists Coalition
• Jamaican Artists Mobilization (JAM) (Queens)
• Kansas City Visual Artists Union
• Massachusetts Foundation for the Arts and Humanities
• National Art Workers Coalition
• New Art Examiner Foundation
• New Organization for the Visual Arts (Cleveland)

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

Registration:
We are requesting a nominal Registration Fee of $5.00 per person to help defray partial expenses of conducting the Congress.
To insure reservations at all events please complete Advance Registration Form A and return with Fee, preferably by 23 November 1975. Please indicate anticipated attendance.
Final registration will occur at the Congress. (BVAU Gallery)

For additional information, inquire at the BVAU Gallery.

Hours: Tuesday - Saturday, 10 - 6; Wednesday, 10 - 6
Telephone: (617) 227-3076
BACKGROUND

In February 1936 the FIRST AMERICAN ARTISTS CONGRESS was formed (by artists) to deal with the plight and survival of visual artists - conditions singular and universal, all worsened during the Depression. The artists believed that through collective effort and organizing strength, they could protect themselves, gain social respect and resolve in kind problems not feasible on an individual basis. Enthusiasm, cooperation and activity ensued. A national headquarters was established in New York City. Branch offices sprang up across the country. Programs benefiting all visual artists were begun. World War II with its political and social dilemmas, however, overshadowed the usefulness of the Congress. Inevitably the Congress dissolved, but during its 31 years' existence it was a major focus for visual artists throughout the nation.

28-29-30 November 1975

ACCOMMODATION INFORMATION

Please complete forms in entirety to expedite application handling.

If more than one person in party, fill out separate form for each attendee and indicate preferences in shared spaces. Specify names of individuals.

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

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

Gallery Hours are: Tue. - Sat., 10-4; Wed., 10-8
Telephone: (617) 227-3078

The average November-December Boston temperature ranges from 45 - 35 degrees Fahrenheit.

Please dress for comfort.

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

2nd AMERICAN ARTISTS CONGRESS REGISTRATION FORM A

Please Print or Type

Name __________________________________________
Address _______________________________________
Art Affiliation __________________________________
Art Medium _____________________________________
Expected Nov 28 Nov 29 Nov 30
Attendances: □ □ □
Enclosed is a check for money order for _____________ please do not send cash.
Registration Fee: $5.00 per person
Make checks payable to: BVAU/2nd AAC

BVAU/2nd AAC PLANNING COMMITTEE

Director: Mark L. Farrer, Secretary-General
Program: William Barron
Richard Pacheco
Jo Ann Berthechild, Alt. Sec.-General
Helen Shinian
Registration and Housing:
Dorothy Moeller, Clerk
Barbara Apel
Business: Virginia Magboo, Treasurer
Publication and Design: Virginia Mason

2nd AMERICAN ARTISTS CONGRESS REGISTRATION FORM B

Please Print or Type

Name __________________________________________
Address _______________________________________
Art Affiliation __________________________________
Art Medium _____________________________________
Nights Requested: Nov. 29 Nov. 30 □ □
Smoker? □ □
Non-smoker? □ □
Indicate preference Options: Sleeping Bag Space □ □
Can you bring a Sleeping Bag? □ □
Dear Friends:

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

Happiest New Year,

(address over)