During the past five years, I have had to be concerned with problems involving individual artists and funding agencies, first as co-director of the video program at The Kitchen, and then as a recipient of grants and a member and coordinator of grants panels. I have discussed these problems with many creative artists in media and related fields, and with individuals from funding and funded institutions.

Some of the recurrent problem areas that need discussion are (1) the direct funding of artists (2) the relative proportion of money going to artists and to institutions as funding for the arts increases, (3) the participation of artists in the funding process, (4) the place of conduit institutions and their fees, contracts and ownership agreements with artists, and (5) the artists as directors or coordinators of their own institutions.

Thus, I am inviting artists and other interested persons to mutually discuss and formulate their opinions on these issues in meetings at The Kitchen/ 59 Wooster Street/ New York, New York 10012 on Tuesday and Wednesday, November 25 and 26, 1975 at 8:30 P.M. each evening;

I have asked three artists to make short statements (5 to 15 minutes) each evening to introduce open discussions by all attending. These are their topics.

Juan Downey High Art and Social Process
Jennifer Muller Choreography and Funding
Frederic Rzewski The Need for Action in Music
Paul Sharits The Filmmaker and the Galleries
Stan Vanderbeek Some Personal Experiences with Contracts & Ownership
Woody Vasulka Unfundable Modes of Creation

I want to urge you to formulate problems and to write statements for discussion at this meeting. If you have any questions or suggestions please telephone me at home (716) 856-3385 before November 14 or at The Kitchen (212) 925-3615 after that.

STEINA VASULKA
Dear Colleague:

In February, 1973, a group of thirty film and video makers, educators, programmers, archivists and administrators met at the Mohonk Mountain House in New Paltz, New York. Their goal was to begin a discussion that would bring solutions to the problems facing moving image media in America today.

Realizing that the issues before them could not be adequately discussed at that meeting, the participants elected a committee to continue the inquiry and, eventually, to report their findings.

In the two years since the Mohonk meeting, the Committee on Film and Television Resources and Services has used funds from the Public Media Program of the National Endowment for the Arts, the John and Mary R. Markle Foundation and the Rockefeller Foundation to poll thousands of institutions and individuals concerned with the problems of film and video. Its sub-Committees have interviewed many individuals in order to incorporate their special expertise into sub-Committee drafts. The Committee has invited outside experts to contribute directly to the writing of this draft and has discussed its content in a series of meetings held around the country. During the entire process, the Committee has continued to expand its own membership to include more diverse points of view and new areas of expertise.

The Committee is now ready to circulate this draft which contains papers that analyze problems and proposed solutions in the areas of film-making, preservation, distribution, exhibition, study and video. These papers are preceded by an introduction that explains the Committee's evolution, methodology and plans.

The draft report is available without cost to any individual or institution requesting it. It must be stressed that it is a preliminary document meant to stimulate response from its readers. It is not to be reviewed or quoted. It is hoped that those reading the report will send their written responses to the Committee at the above address no later than August 30, 1975. These responses will be used to prepare the Committee's final report — which will be made available to the field by the end of 1975.

Those requesting the draft report are encouraged to suggest the names of individuals and institutions which might be interested in analyzing and responding to the report.
Dear Gerry,

I guess you’ve heard about our struggles with the IRS this past year and a half. It seems to be narrowing down essentially to the question of whether artists should be taxed on grants or not. Please do read the enclosed memorandum for all the details. It’s rather amazing how they have a special approach for artists.

Anyway, we feel honor-bound to take this as far as we can afford, as it seems to affect us all. Therefore, we’re sending this as a plea for help with court expenses. These will come to perhaps $10,000 or so. If you know anyone who could help us, please pass this on. Any amount, like they say, will be a help. We will apply all that we get to court expenses. This is not a plea for help in paying our taxes. We’ll pay those ourselves.

Many thanks for your concern and your help. Have a lovely summer.

Sincerely,

Jane Brakhage
November 19, 1975

Ms. Steina Vasulka
257 Franklin Street
Buffalo, New York 14202

Dear Steina,

Your letter concerning the kitchen meetings came on the same day as a request for reference for you from the Guggenheim Foundation. Naturally, I replied with a song of praise and wish you well. I'm on my 15th year of application and so let's wish each other that "well". I hope I get a chance sometime in the near future to show you and Woody the Teleportraits tape I've been working on. Been waiting for a while to transfer it up to 2" for editing at GBH and then will be finished, maybe around the 1st of the year.

Would have loved to come on the 25th and 26th, but it turns out now, that I will be in guess where? Yes, Caracas. First time since the video art show. Diego called on Monday and asked if I could come down for a couple of days to plan a show for him, and given the rather low level of our business activity right now, I said "yes" although I would have preferred to wait a few weeks, but I'll be back late Wednesday in time for Turkey Day. Since I can't be there, I think I ought to give you a couple of short takes on your questions, since as you know, I'm very involved and concerned about these issues. By the way, as per the enclosed copy, I will be talking on public art at that conference and will send you a copy of that paper on public funding in which I'll address some of these same issues. I'm on my way right now for the panel meetings in New York, so here goes in a hurry and in dictation.

1. In my heart, I feel that we should pressure legislatively for direct funding of artists. With my mind, I know that this is going to create a hornet's nest of outcry. Why should we fund the artist when we don't fund the whatever other occupation, the crier wants to profess. This is not a legitimate comeback, however; the answer to it is so complex that the issue becomes clouded. As I feel about all these issues, I think it's a long
term job of establishing a climate, not of making rules or formulating a code.

2. The relative funding of artists and institutions is a problem which shifts with form. For instance, in the performing arts, it makes much more sense for the artist to direct funding to the organizations which mount and support and provide audiences for their creation; however, in the visual arts, the new technical arts, the literary arts, the private work which also takes part in the performing arts in the composition stages, is not easily nurtured by institutions. And again, I believe we have to create a climate for the understanding of the environment which is necessary for the artist. We know personally that often support can be counter-productive, especially when it puts the artist in an institutional setting or under institutional supervision. So we are often ambivalent. I believe that if we started saying something like we think certain percentages should go here and there we would start inflicting the kind of inflexibility which labors against one's purpose because it would give a mark for people to shoot down rather than to strive for. In general I think the growth of institutions with large overheads and with ambitions toward immortality should be discouraged. In particular I value certain such institutions. This is a problem which is really responsible for USCO going, myself kind of dissolving, out of the art world. We had that feeling that the institutions were all living at a grand scale on the exhibition and touring of our work, patronizing us in a really negative sense, exploiting us and putting us in a state of mind which was absolutely contrary to the spirit of our work. We really decided on not becoming an institution ourselves and I haven't gotten out of that quandry of resolution.

3. Certain artists are willing to take the responsibility of that participation in the funding process. When they are, I think they are the best people to conceptualize and evaluate the funding process. Other artists stay away from it as if it were a plague and I respect their point of view. But I think artists who can be effective and want to be in this process should be encouraged, for the very words conduit and umbrella, in this context, have become perjorative. I think the role of not for profit institutions such as Elaine Summers' group which embraces other artists as part of its purpose and life metabolism should be encouraged and that the whole idea of conduit should be done away with. The importance is for there to be an organic bond inside an institution. It ties in to your next question. However, as far as ownership goes, the ownership resides in the artist and the artist ought to be encouraged by his fellows not to sign away or dilute that ownership. However there is a tradition in this country that the work of an employee belongs to the corporation or the university. And in a sense, there is a rightness to the principle that if one's keep is paid, then one's work should be available for the benefit of the public. But that is a very different benefit than the benefit which
redounds to exploitation, be it commercial or not for profit for the artist, for the perpetuation of an institution or for the greater profit of the institution. So, I think a definition and again an orientation to the climate for the artist is of great importance.

5. It is my personal view that the artist makes the best head for the organism which directs and produces and exposes his or their work and that the finest model is the artist working with a compatible and competent administrative personality. However these kinds of relationships are hard to find and hard to perpetuate. I don't know of any technique of magically establishing more such relationships, and I am continually looking for them unsuccessfully. But, I have seen them, and I've had a few in the past.

Such is my rambling, and I fear not terribly useful dictation. As of this time, until we next meet, which I hope will be soon. Love to all there.

Gerd

GS/bs
enc.
MEMORANDUM

The Purpose of this memorandum is to outline briefly the main issue surrounding the alleged federal income deficiencies of Stanley and Jane Brakhage for the years 1970, 1971 and 1972. The Internal Revenue Service has rejected the position of the taxpayers, and the taxpayers are considering the possibility of appeal.

FACTS

During the years in question, Mr. Brakhage received various amounts of money from individuals and from charitable or educational institutions. Some of these payments were intended as outright gifts, awards or honoraria, and other payments were made for the purpose of providing Mr. Brakhage with uninterrupted periods of time for filmmaking and not for specific research, writing or publication. All of the payments were unsolicited, and these payments were not reported as taxable income by the taxpayers for the years in question. The Internal Revenue Service is claiming that the payments made by the tax-exempt institutions constitute partially taxable "scholarships or fellowships" under Section 117 of the Internal Revenue Code or income for services under Section 61 of the Code. The position of the taxpayers is that the payments in question are either (1) non-taxable gifts under Section 102 of the Code, or (2) non-taxable prizes or awards under Section 74 of the Code.

THE LAW

The basic position of the Internal Revenue Service is that if a payment to an artist constitutes a "fellowship or scholarship," its tax treatment is determined under Section 117 of the Code, even though the payment could also be properly called a prize or award. See Rev. Rul. 66-241, 1966-2 C. B. 40, and I.R.C. Reg. §1.117-1(a).

"Scholarship" and "fellowship" under Section 117 are defined as follows:

a. "Scholarship generally means an amount paid or allocated to, or for the benefit of, a student, whether an undergraduate or a graduate, to aid such individual in pursuing his studies." (The term also includes contributed services, accommodations, fees, tuition, family allowance or other payments made on behalf of the student.) I.R.C. Reg. §1.117-3(a). (Italics mine.)

b. "Fellowship grant generally means an amount paid or allowed to, or for the benefit of, an individual to aid him in the pursuit of study or research." (The term also includes contributed services, accommodations, fees, tuition, family allowance or other payments made on behalf of the individual). I.R.C. Reg. §1.117-3(c). (Italics mine.)

The contested payments to Mr. Brakhage were not made to allow him to continue as a student or to enable him to pursue studies or research. Therefore, looking at the definitions alone, Section 117 does not appear to be applicable. Also, the decided cases hold that the primary purpose of the scholarship or fellowship must be to further the education and training of the recipient if Section
117 is to be applicable. Woddail v. Commissioner, 321 F.2d 721 (C.A. 10th, 1963); Ussery v. United States, 296 F.2d 582 (C.A. 5th, 1961); Howward Littman, 42 T.C. 503 (1964); among others. It is our position that the primary purpose of the payments made by the various institutions to Mr. Brakhage was to either make outright gifts to him or to assist him in the pursuit of his artistic livelihood, not for education and training.

The IRS auditor cited Rev. Rul. 72-168 as his authority for finding that Section 117 applies to our case. In Rev. Rul. 72-168, the Service was considering whether grants-in-aid by a foundation to creative writers are excludable from gross income as gifts under Section 102 or as scholarships or fellowship grants under Section 117. The particular foundation was a tax-exempt organization. The grants were unsolicited, the grantees were not candidates for degrees and there were no strings attached. The purpose of the grants was to enable the writers to pursue their artistic work without having to work at other jobs to earn a living. Our factual situation is very similar. In essence, the Service, in Rev. Rul. 72-168, gave two reasons for holding that Section 117 applies:

1. That the grants had definite scholarship and fellowship characteristics.

2. That the grantor institution was a tax-exempt organization, and the awarding of grants was the reason for its existence.

It is our contention that Rev. Rul. 72-168 is both illogical and contrary to prior case law and regulations. There are other issues which would form the basis of the taxpayers' appeal, but for the sake of brevity and clarification of the main issue involved, only the main issue has been dealt with in this Memorandum.

**EFFECT OF REV. RUL. 72-168**

In short, if Rev. Rul. 72-168 continues to be followed by the Internal Revenue Service and if the reviewing courts adopt its reasoning, artists receiving payments intended as gifts by the tax-exempt foundations or institutions making such payments will be required to report such payments as taxable income, even though the foundations or institutions attach no strings to the payments and even though they intend that the money be used by the artists in the pursuit of their artistic endeavors in any manner they see fit. This type of reasoning and legal interpretation can only have the effect of impairing artistic achievement and growth.

BRENNMAN, SOBOL & BAUM

By (signed)
Terry J. Miller
Attorneys for Stanley and Jane Brakhage
1321 Bannock Street
Denver, Colorado 80204

- 2 -
Dear Friend,

Artists are denied equitable treatment in tax and copyright legislation and by unfair practices concerning the sale and transfer of their works of art.

We suffer serious financial setbacks because tax laws discriminate against artists in the sale and donation of art work. Inadequate legislation and artists' unawareness of correct copyright procedures result in a scandalous loss of copyright protection. Unfortunately, artists' rights in the sale and transfer of their work are little understood and consequently almost always lost.

To remedy inequities such as the lack of artists' participation in the appreciated value of their work, loss of reproduction rights, and lack of any say in the use of their work, sales and transfer agreements have been drawn up and are being used in many art transactions.

Such contracts have advantages for collectors and dealers. A written history and provenance of the work by the artist guarantees its authenticity. Provision for an ongoing association between artist and collector assures the integrity of the work should repairs or restoration become necessary.

We strongly urge you to join us in this important effort to make the use of a protective contract common practice in all sale and transfer situations. We ask that you insist upon its use with galleries, collectors and other outlets, whenever possible.

Your help is also needed to mount an effective national educational and publicity campaign. If you support the goals outlined in this letter, please sign and return the enclosed endorser coupon and send as generous a financial contribution as you can.

It is only by a concerted effort that artists can change the inequitable conditions that destroy and undermine our lives and achievements, and the total art experience.

Charles Addams

Red Grooms

Les Levine

Les Levine

Barbara Nessim

Barbara Nessim

Alfonso A. Ossorio

May Stevens

May Stevens

June Wayne

June Wayne

Jack Youngerman

Jack Youngerman

Judy Chicago

Red Grooms

Chaim Gross

Nathaniel Kaz

Jacob Landau

David Levine

president

vice-president

media & literature

Judy Pendleton

Helen Lau

Michael McGrinder
Dear Woody,

Here is the contract from the Lab. I received it on the first day of studio time. It came by messenger to me and I was told to sign it while the messenger waited. I refused. I said that I wanted to keep it until I had time to read it and know exactly what I was signing. I still haven't signed it. In order to get around all of the rules regarding broadcast and distribution to PBS stations, we decided that 3-D was the thing to do. The contract says nothing about gallery shows or even VLPs. Unfortunately, it does talk about WNET having exclusive cable rights... Tom had an exchange with Carol Brandenburg and the Lab's lawyer about that, they claim cable is a competitor and therefore will not allow our projects from the lab cablecast without written approval from WNET. Of course it's impossible to enforce the prohibition of cablecasts outside the NYC area, so the rule is unrealistic. Well, to make a long story short, we plan to offer them the right to broadcast VideOcean (but not distribute) in exchange for the cable rights for the 3-D stuff. Here in Albany, public access could involve the community in the station by asking those who are watching the channel to come to the cable station to see 3-D---- hence developing an audience for this type of work and using the communicative power of cable to facilitate this development.

Anyway, an exchange of rights should result from this situation.

The 3-D work is coming along well. So far I've had 3 days of time and recorded 1/2 hour of material. I need lots more practice before it's what I really want. I'll fill you in on the details later.

As for now, all is well with both Tom and myself. I hope that you and Steina har det godt. Vi ses snart! (Det er sa dejligt at have et andet sprog... man kan taenke pa en anden made-fredeligt! Maske er det fordi Danskerne ikke har det samme regler med hensyn til kunstner som her i Amerika. Kunstner i Danmark forhalvdelen af alle pengene tjent pa deres arbejde. Det kunne godt vaere sadan her i Amerika... vi mangler nogen gode Sagforer!)

I'll be in Buffalo June 26 and 27. Maybe I'll see you then.

Love, Vibeke

June 19, 1976
June 15, 1976
as of June 1, 1976

Ms. Vibeke Sorensen
111 North Pine Avenue
Albany, New York 12203

Dear Ms. Sorensen:

The following shall constitute the agreement between you and the Television Laboratory of the Educational Broadcasting Corporation (hereinafter referred to as "EBC"):  

1. You shall serve as Artist-in-Residence at EBC for the period of June 1, 1975 through July 31, 1976. EBC hereby commissions you as the Artist to create an original video work utilizing the facilities of the Television Laboratory. You will do so in consultation with David Loxton, Director of the Television Laboratory.

2. For your services and all rights granted hereunder, EBC will pay you the fee of Four Hundred ($400.00) Dollars, as follows: $200.00 within ten (10) business days after mutual execution of this agreement; and $200.00 upon satisfactory completion and delivery of the video work to EBC.

3. All right, title and interest in the video work created hereunder will belong solely and exclusively to you as Artist for your use throughout the world in perpetuity. Similarly, materials, ideas, or other creative and literary property furnished by you hereunder will belong to you. You grant to EBC the exclusive right to distribute the video work for unrestricted noncommercial broadcasting purposes (including but not limited to broadcast over public television and radio stations and CATV channels on a nonsponsored basis). You further grant to EBC the exclusive right to sell, rent or lease the video work to foreign television stations. EBC and you will share equally in any monies received from the sale of foreign television rights. Notwithstanding anything mentioned above, EBC shall have the right upon request from the New York State Council on the Arts to make videotapes of this work available to nonprofit, cultural or educational systems or organizations, including but not limited to libraries, schools and public television stations within the State of New York. Payment to EBC for this type of distribution shall be limited to tape and transfer costs.
4. You will confer with EBC to arrange for audiovisual distribution of your video work by EBC wherever feasible.

5. EBC may use and authorize others to use your name, likeness, and biographical material about you for publicity and institutional promotional purposes hereunder.

6. EBC will hold for broadcast, institutional purposes, and duplication all master tapes created and used by the Television Laboratory. All parties will make every good effort to preserve your valued works. However, EBC cannot be held responsible for loss of master video tapes.

7. You will receive one copy of your work on whatever videotape format you choose for your own personal and professional audition use. Additional copies of the tape, as requested by you, will be paid for by you.

8. You warrant that you are fully ready, willing and able to perform services hereunder and are free to enter into this agreement. You further warrant that all material conceived or furnished by you hereunder will be either your own creation or fully cleared by you for EBC's use and that such material will not violate or infringe upon any rights of any nature whatsoever of any person, firm, or corporation. You will indemnify and hold EBC harmless from and against any and all claims, damages, liabilities, costs and expenses arising out of breach of the foregoing warranty.

9. You represent and warrant that you have not accepted or agreed to accept and will not accept or agree to accept directly or indirectly from any person, other than us, any money, service, or other valuable consideration for the inclusion of any matter as a part of any program matter or program hereunder and that you will not mention or identify on any program hereunder any product, service, trademark or brand name.

10. This agreement is made under the laws of the State of New York, contains the entire agreement relating to the subject matter hereof and cannot be orally waived or altered in whole or in part.
Ms. Vibeke Sorensen
June 15, 1976
as of June 1, 1976
Page 3

Please indicate your acceptance and agreement by signing in the space provided below.

Very truly yours,

EDUCATIONAL BROADCASTING CORPORATION

By: ____________________________

ACCEPTED AND AGREED:

______________________________
VIBEKE SORENSEN

______________________________
Social Security Number
New Model Contract Between Public TV and Video Artists

Could Lead to General Reform of Artist's Rights.

A leading critic - and artist - explains why.

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 the 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 Hightower, Harvey Horowitz, and Advocates for the Arts, together with the collective experience represented by five artists working predominately in video -- in addition 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 commissions, grants, or opportunities to create tapes or broadcasts without a contract -- and the 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 community of artists; the nation stood to benefit from that support, in practical and philosophic ways. For a variety of reasons, we succeeded beyond our wildest dreams: the sum total of the budgets of the two main agencies for aiding the arts -- the New York State Council and the two National Endowments -- jumped more than 300% between 1969 and the present year. Where once almost no one working in the arts received a penny of federal support, now thousands do. In New York City today there are very few artists of any serious commitment who are not involved in some way with either the State Council or the CAPS (Creative Artists Public Service) program.

The peril in all this is that it can be an esthetic and philosophical quicksand. Where once the artist had only his own bank account and an occasional private
patron or collector to worry about, he now confronts a bewildering array of funding bureaucrats. While it is impossible to document the pressure that a funder can impose upon an artist, it would be naive for anyone to contend that such pressure does not exist. No one does. Often the funder is unaware that his procedures do create such pressures. The creation of the model video contract has been in fact aided and abetted by representatives from both the New York State Council and the National Endowment for the Arts, as well as several private foundation, all of whom are eager to make sure that monies granted to artists for work in television stations are used primarily for his benefit and that his working conditions therein leave him as free as possible to pursue his artistic goals.

But video as a medium for artistic expression is a brand new one. It is thus a field ripe for reform almost before it begins. If we cannot straighten out and equalize the relationship between the artist and the newly public source of support here, we can't do it anywhere -- least of all in the traditional genres of painting, sculpture, theatre, literature and even, to some extent, film. Why is it important to put art and public power (for power is undoubtedly the function of funding or money) on a 50-50 footing? Why are a few malcontent artists and critics beginning to complain about all the largesse now being showered upon them by a grateful society, ostensibly in the pursuit and perfection of the true, just, and beautiful?

Because this largesse is being dispensed not by disinterested angels but by human beings. These are, furthermore, human beings whose opinions and
political considerations are often in conflict with their pursuit of divine beauty, as were the old sources of patronage -- kings, queens, nobles, and merchants. Worse, these thoroughly human dispensers of funds come armed now with paper, with application forms, contracts, statements of intent, expense accounts, and more.

Most artists are not equipped to deal with this cannonade of paper. They are less equipped to deal with contracts that are normally based like all contracts in historical precedent. It seemed to both Stan Vanderbeek and me that the contracts we had been handed by television stations had all been prepared by lawyers employed by the station, and therefore inevitably biased in favor of management. The model contract is biased in the other direction, but surely this is fair game at best and a novelty at least.

There is also the whole question of esthetic or philosophical meddling by the new superagencies in the American arts. It is certainly a basic dilemma with which reform activity of this kind must deal. There is no reason for granting the artist more control over the funds that are appropriated in his name to a television station, except the good one that he must have as much control over his work as a painter has over his canvas, or a draughtsman over his drawing. Why is this a desirable objective -- for the whole society? A brief reference to recent history may be instructive.

Not long after the Russian revolution in 1917, the new government decided to turn the engine of patronage in the arts completely around, taking it out of private hands and putting it into the public domain. The new Commissar
for Culture (though his ministry was officially named "Public Education") was an intelligent and sensitive man, himself a poet and critic, named Lunacharsky. Funds flowed from Lunacharsky's discerning hand into the pockets of a brilliant generation of avant garde artists, all of whom, unlike their colleagues, had been sympathetic to the revolution. To mention a handful of names is to indicate the genius at work, for all have since become legends: in painting, Malevich, Chagall, Lissitsky, and Rodchenko; in sculpture, Tatlin and Lissitsky; in film, Eisenstein and Vertov; in architecture, Vesnin and Leonidov; in theatre design, Meyerhold; in poetry, Mayakovsky.

But it was not long before certain bureaucrats and politicians decided that these men were not really "popular" artists. Mayakovsky, the spokesman for the entire movement, began to be attacked regularly in public meetings by his fellow poets and certain politicians. On one occasion, a colleague in the audience shouted that Mayakovsky's poems could not possibly be understood by the "workers". Mayakovsky countered that he had just returned from a long reading trip which attracted large audiences of workers, but to no avail. Lunarcharsky himself lost power, in time. With the onset of Stalin, public support for artists who did not paint in a "popular" and realistic style ended. I need not tell you what that did to Soviet art: now 40 years after the triumph of a debased "public" ethic in the USSR, Russian art is in a sad and exhausted state -- as even the government itself now recognizes. It will not be long before that situation is remedied by increasing contact with the culture of other countries, particularly our own,
but think of the intervening waste of time and talent. Mayakovsky committed suicide in 1930. Now there is a small museum in Moscow devoted solely to his work. It is very popular.

All of this may sound melodramatic, but the truth often is. So is confrontation with the hardest aesthetic and moral issues that attend the expansion of public arts funding in the United States. That confrontation is often avoided for the safe, bland discussion of process and mechanics -- but at great cost. The video contract, though it attempts fairly modest adjustments in the prevailing relationship between art and power, is inevitably a step toward the modification of that relationship all along the line, and is thus a contribution to the health of the whole culture.

It is only since 1968 -- roughly speaking -- that artists have gained access to television stations, and to broadcast. There is no more difficult accommodation than between art (essentially private and independent in spirit) and television (essentially the most public of mediums). But there is no precedent, either, and therefore no backlog of past contracts and understandings to oppose. If the "video artists" currently at work will therefore try to understand and use this contract -- insisting particularly that they are the basic owners of their own work (the contract's key point) -- they will create in this newest of the arts a sane precedent, for once, with application (in time) to the older arts. Needless to say, this responsibility is shared by the funders, their middle-umbrella organization, and by the television
stations. The artists must, however, begin the change by speaking out for their own rights. This essentially is what we are doing through the contract.

Douglas Davis is art critic of Newsweek and a noted video artist.
In reaction to too many radical and unproven proposals for revision and adjustment of our national cultural policies, I would like to suggest some options which are more in line with the established fiscal policies of the current administration.¹

I. Eliminate the erratic and inequitable program of individual fellowships, to be replaced by enlistment in a national art corps. Rate of pay and advancement are to follow that of commissioned officers in the military service², including benefits, leave, R & R, retirement, hospitalization, rotation to foreign duty at government expense, and free burial in a national cemetery. Funding for this program is to come from the budget for military bands.²

II. The art market is often criticized for elitism, inflexibility, centralization, narrow range of taste, and domination by fashion trends. The only real problem is that the market is overwhelmed by the glut of work produced by millions of eager artists. Based upon standard policy established by the department of agriculture, artists will be paid not to produce art.⁴

III. Patterned after a White House proposal for divestment of the FHA, the US Government should sell the National Endowment for the arts into private ownership as a public corporation. Every professional, amateur, and popular artist would own a piece of the rock for $10 a share. This move would conflate the problematic divisions of public/private, artist/patron, administration/constituent into congruent entities. In mythic embodiment of the artist's dream, we would literally be working for ourselves.⁵

IV. Eliminate the word "Excellence" from our lexicon forever. We don't need the marble pedestals, satin cushions, velvet ropes, gold frames, ivory towers, crystal palaces and armies of palace guards required by its enforcement.⁴

Jim Pomeroy
Montauk, NY
5/8/86

¹. These are offered as provocative reflections of our contemporary social and cultural priorities.
². Artists are 'commissioned', too.
³. This is sort of an extended form of Artist-In-Residence, or rather, seeing the whole country as an Artist Colony. This seems to be a more appropriate form of colonialism than our government is currently exporting (and probably cheaper, too).
⁴. If these two propositions cover problems of individual support and the marketplace, then we can really concentrate on the functions, services, resources, and answerability of our major cultural institutions. Thus, proposition III.
⁵. A similar offer was recently made by the ACLU toward purchase of the Justice Department. They were told it had already been sold.
⁶. 'Nuff said.
contract draft

Dear

This letter will confirm the agreement reached between A. Artist (herein "the Artist") and Broadcasting in Education (herein "BIE").

Par 1 By commissioning the Artist to create a video work having as a working title, "The High Tower" (herein "the Work"). In connection with the production of the work, the Artist shall have the right to use the production facilities of BIE in accordance with Schedule A attached hereto. The Work shall be approximately fifteen minutes in length and consist of seven talking head segments with subject of high towers. The Artist agrees to consult with members of the staff of BIE at reasonable times although it is recognized that all artistic decisions with respect to the Work will be made by Artist.

Comment: For the purpose of this agreement, "commissioning" means being paid for the creation of a work and includes such activities as design, direction, acting, scriptwriting, music composition, and other activities related to the making of the Work.

Par 2 The Work will be completed within 30 days of the completion of the Work or upon broadcast of the Work whichever is later.

The Work shall be deemed completed upon delivery of a finished master tape to BIE. In connection with the creation of the Work, the Artist shall have the exclusive right to use the Work for the purposes of exhibition, promotion, and distribution for a period of two years commencing with the completion of the Work.

Comment: The rights referred to in the preceding paragraph shall expire on the date of the completion of the Work or upon the broadcast of the Work, whichever is later.

Par 4 BIE shall not, without the prior written consent of the Artist, authorize the production or broadcast of any work which is substantially similar to the Work.

Comment: No work created for BIE shall infringe any copyright, trademark, or other proprietary interest of any third party.

Harvey Horowitz, who prepared the video contract and accompanying textual notes, is a member of the Bar. Comments by the artist on the contract draft are welcome.

Douglas Davis is an artist of Newsweek and a noted

fifteen minutes in length and will be included in the broadcast starting on the specified date or delivery to BIE. The Work shall be delivered to a station by BIE.

Comment: The Work shall be delivered to the station at the time and place specified in the broadcast agreement. The station shall be responsible for any subsequent expenditures incurred for broadcast.

Par 3 The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Comment: The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Par 5 The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Comment: The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Par 6 The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

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Par 9 The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

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Par 10 The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

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Par 11 The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Comment: The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Par 12 The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Comment: The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Par 13 The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Comment: The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Par 14 The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Comment: The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Par 15 The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.

Comment: The Work shall be deemed completed upon the broadcast of the Work or upon delivery of the Work to a station, whichever is earlier.
During the planning phase for this endeavor, Video artists are those who conceive and produce their work and view the final product. They usually function simultaneously as producer, director, cameraman, technician, sound synchronizer, and editor. There is often confusion over the rights to the product of video artists—who wins it and for how long?

The guiding principle is that the artist should understand that the artist originally won the work and all rights connected to it. From that premise on, what any contract does is to exchange part of those rights for certain benefits to both sides. What this contract tries to do is to keep the artist and the station balanced with the quote equally for both parties. It is up to the artist to make sure he is not being short-weighted. Some commissioning stations, for example, begin negotiations with a pretty heavy push and for how long?

The argument may hold for the station's employees over whose work the station may have blanket rights, but not for the independent artist who already owns his package, and barter rights in exchange for guarantees of how it is to be used, compensation.

In television, including public broadcasting, contracts are commonplace. The following is not earthshaking, innovative, or novel in the law. It may, however, be innovative for the video artist, as drafted in the traditional legal format and deals with the issues that matter. The artist should become familiar with the import of its language.

If we could win acceptance for a form contract tilled somewhat in favor of the artist who takes most of the risks, makes the most creative effort, and who, by rights, ought to be the one to propose the terms of agreement, we will have taken another small step for the economic rights of artists—a primary and continuing concern of Advocates for the Arts.

Survey Horowitz, who prepared the video contract and accompanying textual notes, is a member of Squadron, Hacker, Goodbody & Horowitz for the Arts. The contract is now under discussion by representatives of public TV, state and federal funding agencies, foundations, and by video artists.

Contract Draft

This letter will confirm the agreement reached between A. Artist (herein "the Artist") and Broadcasting In Education (herein "BIE") for the artist to create a video work having as a working title, "The High Tower" (herein "the Work"). In connection with the production of the work, Artist shall have the right to be the production facilities of BIE in accordance with Schedule A attached hereto. The work shall be approximately 8 minutes in length and deal with the topic of "towers of light." The work will be shown, with the permission of the artist, to members of the staff of BIE at reasonable times although it is recognized that all artistic decisions with respect to the work shall be made by Artist.

Comment: The main thrust of the commissioning clause is to provide for the work to be commissioned. Usually the unconscious is to describe the work beyond the contract draft. The Work shall be deemed completed upon delivery of a finished master tape to BIE. In connection with the creation of the Work, BIE will reimburse Artist for the expenses itemized on the expense schedule annexed hereto. Comments: Aside from the obvious fact that the amount to be paid Artist should be explicitly stated, some attention should be given to the language used to describe the method of payment. Cure should be taken so that payments should be related specifically, such as selected date or delivery of a finished segment, rather than subjective criteria such as approval or acceptance of the Work. Additionally, in the event upon the happening of an event under the control of the station, an outside date should be included in the schedule. The Work in BIE's possession shall be broadcast, but if the Work is not broadcast by November 30, 1976, then the final installment shall be paid to the station prior to the final sale date.

Par 4 BIE shall not have the right to edit or excerpt from the Work except with the written consent of Artist. Notwithstanding, the foregoing, BIE shall have the right to excerpt up to sixty (60) seconds of running time from the Work for the purpose of advertising the telecast of the Work or publicizing the activities of BIE. On all broadcasts or showings of the Work except the up to sixty (60) seconds publicity uses referred to above the credit and copyright notice by Artist shall be included.

Par 5 BIE will be provided with the Master Tape of the Work which it shall hold until termination of the license granted to it in paragraph 3 above (or if more than one license has been granted, then the last license referred to the Master Tape license). BIE agrees to take due and proper care of the Master Tape in its possession and insure its loss or damage against all causes. All insurance proceeds received on account of loss or of damage to the Master Tape shall be the property of Artist and shall be promptly remitted to Artist. Any Master Tape received by BIE shall be returned to Artist. BIE shall receive one copy of the Master Tape of the Work in any tape format selected by Artist. BIE agrees to use its best efforts to give Artist reasonable notice of scheduled broadcast dates of the Work.

Comment: Custody of master tapes and duplicate tapes will largely depend on the nature and extent of rights to exploit the Work granted or reserved by the Artist. The Artist should understand that a station will attempt to assume responsibility for caring for the Master Tapes. In general, the law does not impose absolute responsibility on the station to take care of the Tape. In the absence of language to the contrary, the station will be held to what is described as a negligence standard: that it will be liable for a loss of the Master Tape only if it was negligent. While the Artist through bargaining may not be able to improve upon this measure of responsibility, the Artist should attempt to have the station assume reponsibility to adhere to the negligence standard.

Par 6 Artist authorizes BIE to use Artist's name, likeness and biographical material solely in connection with publicizing the broadcast of the Work or the activities of BIE. Artist shall have the right to require all material published or used for promotional or trade purposes. The Artist should limit this consent to use in connection with the Work or in connection with materials for the station. It is of course desirable to
In Television, including public broadcasting, contracts are commonplace. The following contract is not earth-shaking, innovative, or novel in the law. It may, however, be innovative for the video artist, drafted in the traditional legal format and deals with the issues that matter. The artist should become familiar with the heart of its language.

For the greater publication of the actions of the artist who takes most of the risks, makes the most creative effort, and has the least control over the outcome of the work, the artist may find the following guidelines on handling the television rights in the Work to be beneficial. The artist should have a general understanding of the meaning of the foregoing terms, working out wording for appropriate definitions would be useful.

When dealing with the artist's rights question, two issues are involved: the question of who will control the rights; i.e., who can arrange for broadcast, and the second is whether there will be a sharing of receipts from the exploitation of the Work.

Rights can be granted to the station by the artist on an exclusive or non-exclusive basis. As a starting point for discussion purposes, I will suggest the following guidelines:

(a) The artist should not grant a license to the station to exploit or distribute the Work in a market in which the station does not have some degree of control. Thus, if a station has no experience dealing with cable television, the station should not request a license in such a market. If the station has no experience dealing with a previously unexploited area, it should only be on a non-exclusive basis. Even though the grant of a non-exclusive license has some appeal as a compromise, the Artist should be aware that if the work has commercial value, a distributor may wish to have all the exclusive rights. In addition, the fact that there are non-exclusive licenses outstanding may affect the marketability of the Work. On the other hand, if the station is very active in a market, for example, distribution to school systems, it might be in the interest of the artist to have the station serve as a licensee for that market. Under such circumstances, the second issue, sharing of receipts or revenue arrangement, becomes relevant.

(b) All licenses granted by the artist should be limited as to geographic area and as to time. There should be an effort to grant world-wide rights to the artist unless the artist views himself basically as a non-commercial, educational, non-sponsored or public television artist.

Note: All monies and time periods given are, of course, arbitrary, included for the sake of continuity, and are not intended to suggest actual rates and durations. The foregoing, BIE shall have the right to pay the artist up to sixty (60) percent of the Work. For the purpose of advertising the telecast of the Work or publishing the activities of BIE. On all broadcasts or showings of the Work (except the up to sixty (60) percent publicity used refers to above) the credit and copyright notice supplied by the artist shall be included.

Comment: This clause limits the station's right to edit or change the artist's Work and limits rights to exploit except under stated circumstances. The language assumes that the artist has written and copyright notice in the Work. The station may request the artist to include an acknowledgment among the credits recognizing the station's contribution to the creation of the Work.

Par 5 BIE will be provided with the Master Tape of the Work which it shall hold until the artist agrees to the Master Tape is released to it in paragraph 3 above (if or if more than one license has been granted, the clause should refer to the release of the Work and specify the Work BIE agrees to take over and properly care of the Master Tape in its possession and assume all its risks without any compensation or liability for it.

Comment: Custody of master tapes and duplicate tapes will largely depend on the nature and extent of rights to exploit the Work granted or reserved to the artist. The artist should be asked to understand that usually a station will not attempt to disclaim responsibility for the Master Tapes. In general, the law does not impose absolute responsibility on the station to take care of the tapes. In the absence of language to the contrary, the station will be held to be responsible for negligence only. It will be for the artist through insurance or otherwise to improve upon this measure of responsibility, the artist should be asked to understand that usually a station may not readily agree to this proposal. Under such circumstances, the Artist agrees to take over and properly care of the Work. The station through insurance or otherwise safekeeping may not be able to improve upon this measure of responsibility, the artist should be asked to understand that usually a station may not readily agree to this proposal.

Par 6 Artist agrees to BIE to use its name, likeness and biographical material solely in connection with the broadcast of the Work or the activities of BIE. Artist shall have the right to reasonably approve all written promotional material about Artist or the Work.

Comment: Because of right of privacy laws, the station must acquire the consent of the artist to use its name, likeness and biographical material in connection with the Work. The language suggested confirms the principles that the station should have the right to use the Work in a market in which the station does not have some degree of control. Thus, if a station has no experience dealing with cable television, the station should not request a license in such a market. If the station has no experience dealing with a previously unexploited area, it should only be on a non-exclusive basis. Even though the grant of a non-exclusive license has some appeal as a compromise, the Artist should be aware that if the work has commercial value, a distributor may wish to have all the exclusive rights. In addition, the fact that there are non-exclusive licenses outstanding may affect the marketability of the Work. On the other hand, if the station is very active in a market, for example, distribution to school systems, it might be in the interest of the artist to have the station serve as a licensee for that market. Under such circumstances, the second issue, sharing of receipts or revenue arrangement, becomes relevant.

Note: All monies and time periods given are, of course, arbitrary, included for the sake of continuity, and are not intended to suggest actual rates and durations. The foregoing, BIE shall have the right to pay the artist up to sixty (60) percent of the Work. For the purpose of advertising the telecast of the Work or publishing the activities of BIE. On all broadcasts or showings of the Work (except the up to sixty (60) percent publicity used refers to above) the credit and copyright notice supplied by the artist shall be included.

Comment: This clause limits the station's right to edit or change the artist's Work and limits rights to exploit except under stated circumstances. The language assumes that the artist has written and copyright notice in the Work. The station may request the artist to include an acknowledgment among the credits recognizing the station's contribution to the creation of the Work.

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Comment: Custody of master tapes and duplicate tapes will largely depend on the nature and extent of rights to exploit the Work granted or reserved to the artist. The artist should be asked to understand that usually a station will not attempt to disclaim responsibility for the Master Tapes. In general, the law does not impose absolute responsibility on the station to take care of the tapes. In the absence of language to the contrary, the station will be held to be responsible for negligence only. It will be for the artist through insurance or otherwise to improve upon this measure of responsibility, the artist should be asked to understand that usually a station may not readily agree to this proposal. Under such circumstances, the Artist agrees to take over and properly care of the Work. The station through insurance or otherwise safekeeping may not be able to improve upon this measure of responsibility, the artist should be asked to understand that usually a station may not readily agree to this proposal.
Copyright and will in general not violate rights of others. The language of the indemnity or hold harmless clause should be examined closely. The Artist should not be liable to the station unless there has been an actual breach of the representations as distinguished from merely a "claimed" breach of the representations. Some hold harmless clauses are worded so that if someone claims the Work is, for example, defamatory the station is permitted to settle the claim and charge the settlement to the Artist. It is this latter circumstance that is to be avoided. Consideration should also be given to obtaining insurance coverage for the Work against defamation, copyright and right to privacy claims. Stations usually have a form of this so-called "errors and omissions" insurance. Also at least one artist has suggested that stations should be required as a preliminary matter to have its attorney view the Work to determine the probability of defamation or right or privacy claims. Based upon the advice of its attorney, the station would determine whether or not to broadcast the Work. If it elects to broadcast the Work it would then assume the risks of such lawsuits. The rationale for such argument is that a station usually has an existing relationship with a lawyer and, as between the station and the Artist, is in a better position to evaluate the possibility of such litigation and be guided accordingly. This point is being raised for discussion, to evaluate the possibility of such litigation and be guided accordingly. This point is being raised for discussion.

Par 8 In the event BIE 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 BIE, or if BIE ceases to actively engage in business, then this agreement shall automatically terminate and all rights theretofore granted to BIE 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 BIE shall revert to Artist. Upon termination of this agreement or expiration of the license granted to BIE under this agreement, all copies of the Work shall be delivered to Artist. Comment: This clause is intended to terminate the contract if the station should go bankrupt or cease business. Also, while a station usually will not agree to actually broadcast a 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 goes out of business or, in essence, refuses or fails to broadcast the Work.

Par 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 "boilerplate" or standard jargon usually included in written agreements, and should be self-explanatory. Also, as a miscellaneous matter, the Artist should be prepared to adhere to policy or "taste" standards or rules adopted by the station. Most stations have some form of policy guidelines and the Artist should obtain a copy of these guidelines before signing the contract.

(continued from page 11)


I want to join Advocates for the Arts, and receive The Arts Ad.
Enclosed is my check $15 payable to: ASSOCIATED COUNCILS OF THE ARTS
I would like to contribute more.
Enclosed is my check $25 $35 $50 $100
* Contributions in any amount are tax-deductible.

Name __________________________
Address _________________________
City ____________________________ State ___________________
Cut out and return to: Advocates for the Arts, c/o Associated Councils of the Arts, N.Y. 10036.
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)
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 fairly from its success. Ken Kesey's battle against the producers of the film version of "One Flew Over the Cuckoo's Nest," the Morry Peck's unsuccessful struggle to keep their work off network television rather than have it censored and cut, and the attempts of two sculptors to withdraw their works from the Whitney Museum rather than have them displayed in ways that they consider destructive.

As an artist who is currently engaged in a costly and debuting court battle about the film treatment of my first novel, I wish my fellow creators good luck, but I am hardly sentimental about their chances for success.

Until this country adopts legislation, preferably on the Federal level, that insures an artist a minimum percentage of the profits of his work and certain reasonable artistic controls (no matter how many times it changes hands; books, pictures and dramatic works will continue to be sold like sacks of sugar for whatever price the artist's heirs or lack of theirs can demand at the time of negotiation).

It is a fact little known by the public that an artist normally relinquishes all creative control at the time of sale of a work, that oral promises of excellence are completely unenforceable, and that cash percentages are only received by those with enough business clout to enforce them—which rarely includes the artist.

It is possible for an author like Kesey to create a literary work that grosses millions of dollars for others. And I have virtually no share in the financial success of its adaptations.

Furthermore, most courts in this country will uphold the producer's or collector's contractual rights, rather than the artist's moral rights—because the famous French droit moral, which currently means that the artist has absolute control of his work, is not recognized in law in this country. For this reason, Kesey is fighting to get a new body of law guaranteeing this control, to protect the quality of his work and to keep the profits he created from the film version in his hands.

As I watched Academy Award after Academy Award go to "Cuckoo's Nest," I was struck by the fact that nobody except Milos Forman, even thought to mention Kesey. It was as if, having kidnapped his book, the kidnappers now had the delusion that they had created it. Not only did they not want to give the artist the financial due, but they did not even want to acknowledge his contribution.

The truth is that many artists are so savvy and so1, savvy they don't want to have to fight for what should be theirs by right, but their work itself may be poisoned by the law in no way recognizes their moral rights to a say in such things. Hence, a law of this sort of thing, but their bitterness turns out to be even more terrible for them than not protesting at all. Not only do they get the reputation for being "litigious," difficult to deal with, and a pain in the ass (merely for wanting what should be theirs by right), but their work itself may be poisoned by protest. The anger at their own oppression has no place to go, so it may go into self-destruction, self-loathing, depression, or, still worse, into their future works—if they are lucky enough to have future works.

So often, in the battles that develop between artists and their self-styled patrons, the crux of the problem is that the promoter envies and despises the artist and wishes that he were somehow not necessary at all. Often the promoter suffers from the delusion that he is really the creator, and the very presence of the artist is an embarrassment because it gives the lie to his self-delusion.

Artists understandably get bitter about this sort of thing, but their bitterness turns out to be even worse for them than not protesting at all. Not only do they get the reputation for being "litigious," difficult to deal with, and a pain in the ass (merely for wanting what should be theirs by right), but their work itself may be poisoned by protest. The anger at their own oppression has no place to go, so it may go into self-destruction, self-loathing, depression, or, still worse, into their future works—if they are lucky enough to have future works.

Erica Jong is the author of "Fear of Flying" and three books of poetry, the most recent of which is "Loveroot."
The Boston Visual Artists Union is grateful to the Massachusetts Council on the Arts and Humanities and the National Endowment for the Arts for their continuing support.

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 $6.00 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)

If you plan to attend the Congress, please complete the forms on the reverse side and return with registration fee as soon as possible.
SURVIVAL!
2nd american artists congress

HOST:
BOSTON VISUAL ARTISTS UNION
THREE CENTER PLAZA
BOSTON, MASSACHUSETTS 02108

For additional information
Telephone: (617) 227-3076

BVAU/2nd AAC PLANNING COMMITTEE

Director: Mark L. Fawerman, Secretary-General
Program: William Barron
Richard Pacheco
Jo Ann Rothchild, Alt. Sec.-General
Helen Shlien

Registration and Housing:
Dorothy Moeller, Clerk
Barbara Apel

Business: Virginia Magboo, Treasurer
Publication and Design:
Virginia Mason

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 organizational strength, they could protect themselves, gain social respect and resolve kinds of 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 third 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 a separate form for each attendee and indicate preference in sharing spaces. Specify names of individual(s).

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: Tues.-Sat., 10-5; Wed., 10-8
Telephone: (617) 227-3076

The average November-December Boston temperature ranges from 45-35 degrees Fahrenheit. Please dress for comfort.

2nd AMERICAN ARTISTS CONGRESS REGISTRATION FORM A
Please Print or Type

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

Name..........................................................................................................................
Address......................................................................................................................
.................................................................................................................. Tel:...........

Art Affiliation..............................................................................................................

Art Medium ..............................................................................................................

Expected Nov. 28 Nov. 29 Nov. 30

Attendance: □ □ □

Enclosed is a check (or money order) for $5.00 per person
please do not send cash.

Registration Fee: $5.00 per person
Make checks payable to: BVAU/2nd AAC

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

2nd AMERICAN ARTISTS CONGRESS ACCOMMODATION FORM B
Please Print or Type

Name..........................................................................................................................
Address......................................................................................................................
.................................................................................................................. Tel:...........

Art Affiliation..............................................................................................................

Art Medium ..............................................................................................................

Expected Nov. 28 Nov. 29 Nov. 30

Attendance: □ □ □

Enclosed is a check (or money order) for $5.00 per person
please do not send cash.

Registration Fee: $5.00 per person
Make checks payable to: BVAU/2nd AAC
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 videocassette 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 Hightower, 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 the arrangements in the field of video whether they involve art galleries, video cassettes, 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 commissions, 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. Public funding is being programmed. This moment holds peril as well as promise. It was not long ago that all of us looked up in amazement to see public support for 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 admissions 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—and how much the artist stands to lose or gain by congressional action. Advocates for the Arts will keep its members informed of the progress of 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 use the machinery of your community of artists; the nation's arts, from the smallest to the national, need the support of the people. Advocates for the Arts hopes others will join it in making the strongest possible case for a Congress for artists—the source of the arts and the all but forgotten institutional reason for copyright.

John B. Hightower
Chairman, Advocates for the Arts
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 in the fine art of video. Despite its importance for the video artist engaged in this field to be aware of the legal ramifications and rights entailed in the terms of the agreement. In essence, the purpose of such a contract is to spell out the responsibilities of each party to the work to be performed, to define the scope of the project, and to provide a framework for the artist to create a work that is both aesthetically and legally sound.

The contract should include the nature of the work to be commissioned, the scope of the rights granted to the artist, and the terms for payment. The artist should have the right to approve the final work, and the commissioner should have the right to use the work as agreed in the contract.

The contract should also specify the responsibilities of each party, including the commissioner's obligation to pay the agreed-upon fee in a timely manner, and the artist's obligation to deliver a work that meets the agreed-upon standards.

In summary, the commissioning contract is an important document for both the artist and the commissioner to ensure that the work is created in accordance with the agreed-upon terms and that the artist is fairly compensated for their efforts.

Douglas Davis is an art critic of Newsweek and a noted critic of television art. The following contract draft is an example of a commissioning contract for a video artist.
Photo: Video artists are those who compose and produce their work and view the product as a work in progress. They are involved in a multitude of processes including: shooting, producing, directing, editing, and more. The end product is a video that is not intended to suggest actual rates and

A letter will be made by BIE.

BIE hereby commissions the Artist to produce a photographic or storyboard treatment of the work to be used in advertising the Work. "High Tower" (herein "the Work"). In connection with the production facilities, the Artist agrees to provide the production facilities of BIE in accordance with Schedule A attached hereto. The production facilities shall also include the rental of equipment, materials, and supplies, and the payment of any expenses itemized on the expense schedule annexed hereto.

The Artist shall not be paid a royalty for any John Doe, who is an employee for hire under the law. The station can be expected to register the copyright to the Work. The station will be held to who captured the work in BIE's ownership, and shall be reserved to Artist. It is understood that the Artist may copyright the Work in BIE's name. Artist grants BIE the right to have four releases of the Work on station WBE for a period of two years commencing with the completion of the Work. A release is defined as unlimited broadcast of the Work in a consecutive seven-day period; such consecutive seven-day period beginning with the first day the Work is broadcast. The rights shall expire on the last day of the second year period the master tape and all copies of the Work in BIE's possession shall be delivered to the Artist. Rights specifically granted to BIE are expressly reserved to Artist.

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All right, title, interest, and to the Work and all constituent creative and literary elements shall belong solely and exclusively to the Artist. It is understood that the Artist may copyright the Work in BIE's name. Artist grants BIE the right to have four releases of the Work on station WBE for a period of two years commencing with the completion of the Work. A release is defined as unlimited broadcast of the Work in a consecutive seven-day period; such consecutive seven-day period beginning with the first day the Work is broadcast. The rights shall expire on the last day of the second year period the master tape and all copies of the Work in BIE's possession shall be delivered to the Artist. Rights specifically granted to BIE are expressly reserved to Artist.

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The Work shall be deemed completed upon delivery of a finished master tape to BIE. In connection with the creation of the Work, the Artist shall be responsible for the expenses itemized on the expense schedule annexed hereto.

"Note: All money amounts and time periods given are, of course, arbitrary, and subject to the nature of the content, and are not intended to suggest actual rates and

within 30 days of the completion of the Work or upon broadcast of the Work whichever is earlier.

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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 "defeasible" or standard format usually included in written agreements, and should be self-explanatory. Also, as a miscellaneous matter, the Artist should be prepared to adhere to policy on "score" standards or rules adopted by the station. Most stations have some form of policy guidelines and the Artist should obtain a copy of these guidelines before signing the contract.

(continued from page 11)

GILL: Sure. But getting back to the private-public question, this is how great fortunes have been made in the past. We've always dodged this, this has been our hanky-panky by which every so-called socialist enterprise, anything that has to be nationalized is concealed. The pretext is made that we're still private enterprise for as long as the people in charge of private enterprise can exploit their advantage. Building subways was one of the ways of making great fortunes in New York. After the owners had squeezed the last drop of profit out of them they threw them into bankruptcy and then made the city take them over. Water companies do all this over America all the time. It's a great racket. Penn for years ran the Long Island Railroad as a pretense for just for its own benefit. It was kind of a sewer into which they could dump what funds they wanted to or show as a big loss as they needed. In the past railroads were so powerful we couldn't do much about it. Now it is public service we're going to have to pay so the pressure on and not private executives.

ADV: If you can't save Grand Central, really is it worth saving anything else?

GILL: We wouldn't stop trying to save everything else but it really would be a terrible body blow.