



Authors' Rights For All Summit 2000

Background Document

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Authors' Rights For All Background Document

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I. Introduction

Welcome to Authors' Rights For All – Summit 2000 – a meeting for writers, journalists, creators and trades unionists committed to justice and fair play over the way content is used in mass media and new information services.

We are all experienced campaigners for authors' rights. We all know the problem and who is causing it so let's not spend our time together dispensing rhetoric and fiery speeches that leave us no better off.

We are here to work. We are here to come up with a plan.

The organising committee proposes

- That we define strategies for a global campaign in defence of authors' rights;
- That we work together to build coalitions between creators and other groups in civil society to fight for these rights;
- That we launch a campaign to share essential information between all partners, covering legal actions, data on collective bargaining and political developments at national and international level.

Let's get to work!

The Organising Committee

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II. A Global Organising Campaign

Our goal is to launch and sustain an international organising campaign to strengthen the rights of authors. Although the difficulties we face are daunting, we start with a number of advantages.

Firstly, we are international. Our constituency exists in countries around the world and we have the talent and creativity of foot soldiers who write throughout the media sector.

Second, the issue we are dealing with – intellectual property – is the acknowledged gold dust of the new economy. Our people work with information, the most tradeable commodity in the world today and the economic currency of the future. Exploitation of intellectual property rights is a topic for virtually every government, major company and every economic forum worldwide.

Third, through our outreach capacity we can use digital technologies to organise a literate group. But, as yet, it is only a capacity; it exists but has yet to be effectively exploited.

To launch a successful campaign, however, we must be aware of the obstacles we face. Chief among these are differences in terms of culture, experience and philosophy.

Some authors' groups have operated in a more "author friendly" environment, while others, many in freelance journalism, for example, struggle to have their problems recognized and taken up.

Diversity of experience and culture lead to philosophical differences of approach, for instance in the debate over whether author protection is best won by confrontation or by accommodation. Differences between organisations and disputes over areas of representation often restrict the development of strong, enduring alliances.

On an international level - or any level for that matter - these discussions lead nowhere unless they are based on concrete facts and knowledge of the history of the struggle for authors' rights in the countries or regions involved. No one, however, has proved successful in gaining or retaining authors' rights without being able to master both confrontation and accommodation.

A particular problem is the, sometimes, tricky relations between staff and freelance writers. To be effective, any campaign must bind together their common interests. Often, there are not enough points of contact between the two groups, nor is there enough analysis of how relations can be improved and contact strengthened.

We also need to articulate our case with words and facts that are strong, unassailable and, as important, rhetorically inspiring without being hackneyed.

Inevitably, the problem of resources is what differentiates our methods of tackling these problems from those of the powerful interest groups of media owners and other

big industrial players. Authors' groups and authors' unions do not have enough money, staff or time to subscribe to an international campaign. As a result, on a day-to-day basis, we often don't know enough about the overall picture to be able to take the micro-steps beyond an overall statement that international cooperation is critical. How then, do we move forward?

Towards a New Approach

Overall, our aim is to establish an international corporate campaign. We should not think of the campaign strategy in geographic/national terms, but rather in corporate terms.

A corporate campaign will generally target one company (although it could take on a set of companies within a sector or particular group). It involves a kaleidoscope of actions beyond writers' direct protest, including, simultaneously, or in a targeted manner, approaches to advertisers and stockholders and lobbying of regulators where a company might have a request pending. It can also involve identifying other avenues, such as raising concerns with related bodies and groups where the company exercises patronage, for instance when the Chief Executive sits on some publicly visible board.

It is important that we employ more than one tactic.

Legal action, while effective and potentially decisive, will undoubtedly take time — as will achieving changes to the law, new regulations, or other pieces of a coordinated action. However, lobbying to change the law and legal action are also important elements in the campaign.

An international campaign can insert itself into new discussions now at the top of the international trade agenda – on new trade laws and regulations, for example. Additionally, in parallel, an international campaign would employ a legislative component.

Research: Getting the Facts

Central to the strategy must be the provision of hard facts about the issues. We need an effective research element that will provide data on a number of key areas.

a) Economic Realities

We need up-to-date facts and information about the economic conditions in which authors' work and the current cash flow of the industry.

To win internationally, we will have to rely on non-author allies, many of whom may initially view authors as privileged workers. We must acknowledge that, compared to many other sectors of the workforce asking for support, authors often enjoy better conditions. So, we must provide easily understandable data regarding our own economic circumstances. We need solid economic research that compares standards

of working writers, on the one hand, with the profits and revenues enjoyed by companies.

We must be able to make consumers understand that they will not obtain cheaper products or easier access by backing the producers and publishers in their demands for full and automatic transfer of all rights to them.

In order to undertake this work we need a good team to pull together a report on authors' economic standing, worldwide. Some of the data exists but it requires organization, as well as additional research. This could be the basis for the creation of an international economic database.

b) The Law and Collective Bargaining

We need an analysis of the various laws in countries to ascertain where precisely there are effective laws that provide support for individual authors and provide us with the potential to push for more protection (for instance through the elimination of all-rights contracts). Specifically, we need to have a sound understanding of the current status of collective bargaining rights and freelance authors rights in as many countries as possible.

Currently, the international situation can be described in three general ways:

1. Companies where neither enforceable authors' rights exist nor the rights of employees via collective bargaining agreements.
2. Companies where authors' rights or the rights of employees (via collective bargaining agreements) do exist, but in an uneven way, from country to country, and, in terms of authors rights, with weak enforcement.
3. Companies with strong employee rights, but no authors' rights.

A survey of unions worldwide should be carried out to provide details of collective bargaining rights (who bargains, the scope of contracts, status of relationship etc.); and the current status of authors' rights (where freelancers have minimum standard agreements with enforcement power, where freelancers have some leverage through union-backed advocacy, but without contracted enforcement power). Some background to this is available in the IFJ's recent report on the status and conditions of freelance journalists for the International Labour Office.

c) Trade Agreements

It will be important to examine whether there are there any trade laws (for instance, GATT, TRIPs, NAFTA, European Union) that can be used to defend authors' rights. In some cases it might be possible to argue that countries without moral rights, such as the United States, are effectively operating with unfair trade barriers.

While doing so, we must be aware of the dangers of discussing anything to do with authors' rights at WTO. Legislation on authors' rights should be harmonised at WIPO

(as the administrator of the Berne Convention and other important conventions and treaties). At the WTO, authors' rights are seen as a commodity, which is why countries adhering to the Anglo-American Copyright System are trying to make the WTO the correct forum for copyright discussions.

An expert in international trade law, familiar with the aspects of intellectual property rights and investment laws contained within existing international trade arrangements and laws, should be commissioned to look at the possibilities of such action.

d) Legal Actions

What can be done using current law or legal precedents to mount or threaten lawsuits?

One critical area to explore is whether or not the flow of digital information globally might suggest a coordinated legal campaign in a number of different countries. For example, can we sue one company in four or five countries? The answer should be in the affirmative, but to get started the campaign needs to have specific jurisdictional legal information.

A small, international legal team (connected via e-mail) should produce a concrete analysis of jurisdictional issues and the best legal environments for victory. In addition we need an analysis of potential litigation costs (even with pro-bono assistance — i.e., legal fees waived — there will be significant out-of-pocket costs).

e) Governmental Action at National and International Level

Are there governments where, based on legal and economic analysis, authors can push for stronger contractual protections? Such possibilities require the presence of strong national co-ordination, linked to the international campaign. Simultaneously, we have to take advantage of existing international governmental forums to pursue the campaign, such as through the institutions of the European Union and WIPO.

A small team should commission, in coordination with the legislative teams (see above), a detailed examination of the environment for authors at national governmental level.

There should also be a realistic assessment of the possibility and advisability of furthering authors' rights through multilateral, international forums.

f) Regulatory Action

Today's media world is changing radically, with new mergers, acquisitions, joint partnerships and restructuring affecting almost every sector of the traditional landscape. We need to monitor these changes and examine where authors can apply pressure to block or delay requests for licenses or business deals.

We should commission an expert(s) in communications law, ideally internationally, but at least nationally in major markets, to examine possibilities as they arise.

Resources: Getting the Means

We know that we have the theoretical capability to mount an international campaign — the ideas are there. However, can we pay for it? We must make a serious inventory of our resources — both in terms of people and money.

It is vital that our campaign does not stumble or fall away because of a lack of resources. We would harm authors' rights by starting something we can't finish effectively. Therefore, the issue of funding and finding people to undertake the work we require must be given the highest priority.

There are many potential sources for funding the campaign or some of its aspects. Most of the world's private and charitable foundations are found in the United States. There are also special interest groups and some governmental funders that would support some of the research components of the campaign within the European Union or within national jurisdictions both inside and outside the EU.

Campaign: Actions and Tactics

a) Legal Action

We should aim to launch multiple lawsuits over authors' rights infringements in a tactical fashion, in more than one country, after possibly giving notice that such suits will be initiated unless authors' rights are respected.

Targets: One or more companies, in one or more national jurisdictions, either as class action or individual actions.

b) Contractual

Looking at bargaining arrangements and contracts we should:

1. Develop international standard contracts, setting basic minimum standards for which authors should negotiate (e.g., with appropriate language defining scope of rights) with addenda addressing specific national environments.
2. Develop training programs to assist authors' organisations to provide concrete and useful advice to individuals involved in their own negotiations.

c) Collective Bargaining

The campaign could target one company. The possible criteria to select the target could include choosing a company with no collective bargaining agreement with its

employees or its freelance authors (which broadens our potential alliances); or, alternatively, a company that does have a collective bargaining agreement with its employees (which *may* indicate a less resistant target) but not with its freelance authors.

d) Changing the Law Internationally and Nationally

We must have the preparedness at all times to be able to lobby for changes in the law at both the international and national level. This means:

- constant focus on activities within the World Intellectual Property Organization (WIPO) whether the activities concern authors or performers, producers or publishers;
- focus on whether WTO or similar fora are trying to draw authors' rights into their sphere;
- active co-ordination of views and interests before meetings at the international level;
- in each country authors and performers must co-operate closely and lobby for changes in their respective legislation;
- these lobbying efforts should also be directed at the stand each country's government should take at WIPO meetings etc.;
- these lobbying efforts are not the least important in the countries that adhere to the Anglo-American Copyright System;
- as the European Union is the keeper of the Continental European System of Authors' Rights (and thus the keeper of the system with the highest level of protection of authors' rights in the world today) it goes without saying that great care must be taken to follow and participate actively in the legislative process of the EU.

We must form a team to keep an eye on WIPO and similar important activities concerning authors' rights at the international level. This team must also take the necessary initiatives to secure the necessary co-ordination before important meetings.

e) Encourage and Establish A Single International Author-Controlled Licensing System

For authors who are protected by authors' rights (hold copyrights) but do not have collective bargaining rights, licensing systems may serve the function of a traditional collective bargaining agreement, until collective bargaining agreements are widespread.

If a collective bargaining agreement determines terms and conditions for a worker's sweat of the brow, a licensing system can set the terms and conditions for the use and reuse of an author's sweat of the brow — a piece of intellectual property.

Authors' groups throughout the world have begun forming author-run licensing systems, where adequate systems do not already exist.

The campaign should focus on the importance of close co-operation between licensing systems for authors all over the world and the possible advantages of creating one worldwide, author-controlled licensing system. Work on these lines must not endanger the already existing, well-functioning collecting societies, whether or not they are run jointly with producers and publishers.

f) Establishing New Legislative Frameworks

We should launch a coordinated effort to pass legislation aimed at:

1. Establishing enforceable authors' rights and expanded, enforceable employee rights, both via collective bargaining rights based on freedom of association.
2. Outlawing all-rights contracts as contracts of coercion/adhesion, and in some countries, as unfair, anti-competitive trade practices.

g) Economic Database

During the past battle between MCI, WorldCom and British Telecommunications, where would you have looked to find out that Rupert Murdoch had an interest in particular companies involved in the fight? To the newspaper? A website? An expert? A colleague?

The answer is maybe one or all of the above — or maybe none at all. (The information was available in a not widely available report by a British union – the National Communication Union.)

This underlines the need for one coordinating body to methodically collect, analyse and make available comprehensive information about an exponentially growing information industry that a wide spectrum of policy makers view as the fulcrum of the economy.

A database would:

1. Include a comprehensive media database that tracks mergers and acquisitions, ownership, internal corporate strategies, regulatory environments and changing employment conditions worldwide. The information would be accessible both for free and on a fee-for-service basis.
2. Issue regular, self-generated reports on topics of media concentration. Such reports would have the dual purpose of providing specialised information to targeted constituencies and stoking additional interest about media concentration.
3. Become a pro-active educational and network-building center for unions seeking to better inform and empower their constituencies.

III. Ethics, Quality and Authors' Rights

Moral Rights: A Prerequisite for Other Human Rights

The right to be named as the author (or performer, for that matter) and the right of protection of the artistic or journalistic integrity of a creator and his or her work are rights of immense importance. They help preserve our cultural heritage and they ensure public access to authentic scientific, documentary and artistic works.

Moral rights are also a prerequisite for a decent press characterised by editorial independence, high standards and quality. The sound development of democratic society depends on the ability of the press to secure free access to information and freedom of expression. It also depends on the ability of the press to fulfil the role of public watchdog.

There is a strong and close connection between the moral rights of journalists and their personal press liability and their *personal press* ethical standards.

Rights That Should Never Be Signed Away

Authors have to make a living, whether they write novels, film scripts or work in journalism. In countries where moral rights can be waived by contract, waiving them becomes the rule rather than the exception. The economic and other pressure that publishers and producers are able to bring to bear is simply too great for the individual to withstand.

It is, therefore, essential for legislation to protect authors against such pressure by stating that moral rights cannot be waived by contract (unless it concerns a very specific and very limited use of the work involved).

Global harmonisation of authors' rights legislation (and copyright legislation) is consequently high on the agenda for authors (and performers) but only – and this goes without saying – if harmonisation takes place at the highest level.

Personal and Professional Ethics and Moral Rights

Most people find that personal integrity and high professional and ethical standards are important qualities for an author. Most likely *everyone* would agree that these are essential qualities in a journalist.

Living up to the role of public watchdog, maintaining good press conduct, and being liable for everything one writes or otherwise creates are big personal responsibilities that journalists throughout the world take upon themselves.

Authors' moral rights are linked to these responsibilities and are necessary for the journalist in order for him or her to be able to exercise influence on the authentic and proper use and, not least, the further use of his or her articles or photographs.

When a journalist has written an article for an editorially independent newspaper or magazine, informing readers and consumers of the positive qualities of wooden window frames in comparison with plastic window frames, he or she should not have to endure their article being used in brochures and advertisements for a firm producing wooden window frames.

A photographer who has been permitted by the parents to take a photo of a child with AIDS for use in a scientific journal must be able to react if a third party uses the photo in another context without permission.

Guaranteed moral (and *strong* economic) rights enable a journalist (or photographer etc.) to sue those (typically third) parties that exploit independent editorial material for advertisement, marketing or political purposes or otherwise violate the integrity of the work and/or the journalist.

In Appendix B (below) there are descriptions of *the above mentioned and other selected cases* in which individual journalists (staff as well as freelancers) have taken legal action against infringements that have relevance to both moral rights and press ethics.

In principle, editors have just as good reason to pursue infringements. But in practice they fail to do so. Many third party infringements of moral rights (and often also of good press conduct) are made by advertisers (customers) of the media in question, and for this reason editors are often not happy to raise such matters.

However, when journalists pursue third party infringements, media managements rarely try to block the actions and sometimes even offer support. In countries where journalists have inadequate or simply no authors' rights protection the field is wide open for cynical and commercial exploitation of what should remain independent editorial material.

No conflict between the right of anonymity and moral rights

For good measure it should be mentioned that there is no conflict between the moral right to be named the author whenever your work is used in public and the fact that the editor of a mass medium can allow material to be published anonymously. The right to anonymity is essential for press freedom as it ensures a greater freedom of expression.

It is counter-balanced by the responsible editor taking on full ethical and legal liability for the anonymous author. Professional journalists rarely make use of the right of anonymity for themselves except in circumstances of extreme danger.

Why We Need Stronger Moral Rights In The Online World

There are many reasons why there is an even greater need for strong protection of moral (and economic) authors' rights in the online environment.

a) Convergence and Media Concentration

The merging of text, still photo, moving pictures and sound, and the lucrative position of those who own both the content and the delivery system, combined with the effect of market forces, poses a real threat to traditional publishing and broadcasting.

The concentration of ownership that is taking place has the potential to put an end to pluralistic national newspapers, radio- and TV-broadcasts and magazines that are rooted in our respective democracies, diverse cultures and differing standards for media ethics.

The traditional professional press media of Europe are unlikely to survive the process of restructuring and increased competition as the huge, monopolised, multinational media, entertainment and online industry redefines the global media landscape.

It is not pleasant to envisage a new world of centralised information and entertainment services, created by global companies, with near monopoly status, in which the national press and publishing houses exist in a franchise system, much like those that may be excellent at providing us with standardised burgers and petrol stations.

This is not as distant a prospect. It is a reality when one examines what has already taken place in the field of commercial satellite and cable TV.

There is a genuine risk of a few media monopolies owning practically all rights to publish and otherwise use the knowledge, information, history, pictures, music, films and stories of our human culture.

Against this process we rely on antitrust legislation, support for public service broadcasting and other regulations that try to maintain a balance in favour of national and traditional cultural values and community rights to diversity and plurality.

The individual author's moral (and economic) rights are a very important bulwark against the negative effects of monopolisation of media resources. These rights enable the author (individually or collectively) to exert at least some influence over his or her work, and this acts as a counterbalance to purely commercial interests. Increasingly, editorial material is manipulated and edited for multiple distribution in different media. In this process quality and content can suffer.

b) Risk of Violation of Integrity and Other Unauthorised Use

Another reason for even stronger moral rights protection in the online and digital environment is the added risk of manipulation of information concerning the identity of the author and of alterations of the content. Just as worrying is the ease by which information can be misused or used in a derogatory context that violates the integrity of the author or his or her work. It is a "cut and paste" mentality in which quality and standards suffer.

Computer specialists are often asked to handle journalistic material and, having no qualifications or experience in this field, they can add to the many infringements of moral rights taking place.

Below are some examples of common occurrence:

- Independent editorial material is mixed with advertisements in such a way that the public cannot see which is which.
- Sensitive material intended for publication in a serious and sober context only is used in a frivolous or detrimental way.
- Independent editorial material is made available online without directions on use or technical safeguards, and is thus beyond the control of any editorial guidelines and open to misuse in a fashion that traditional newspaper cuttings or analogue copies of radio and television programmes have never been.
- Satirical cartoons are separated from the text that is an integral part of the work.

The incentive to combat or prevent these infringements is mainly rooted in the professional integrity and pride of journalists. It is, therefore, essential that they be equipped with the capacity to do something about it. Strong protection of moral (and economic) authors' rights is an absolute precondition.

Authors' Rights Promote Constructive Co-operation

Constructive co-operation between editors of news media and the journalists who provide its content is of considerable importance. Where journalists have both moral and economic authors' rights the atmosphere is created for sound co-operation with editors.

Moral (and economic) rights necessitate negotiations between journalists and their editors at the onset of employment or assignment, and later if the editor wishes to make further use of the material (beyond that agreed in the original contract). In these talks journalists are able to influence the manner, for example, in which their journalism is made available online, and what precise guidelines must be followed by anyone granted rights to use the material.

It can be substantiated that this does not hinder the use of new information technologies. Nor does it reduce the competitiveness of companies in the countries where these practises are already in place.

Appendix C (below) gives some examples of collective agreements between publishers and broadcasters and staff and freelance journalists. In each of these agreements a great deal of effort has gone into ensuring that any use of the material must respect the moral rights of the author and the guidelines on good press conduct of the country in which the collective agreement has been entered into.

Authors' Rights, or Anglo-American Copyright?

The Continental European model of authors' rights and the Anglo-American system of copyright co-exist under the auspices of the Berne Convention, WIPO treaties, and the UN Declaration of Human Rights etc. Over the years the systems have converged on many points, but major differences still remain.

This section is not a comparative study of the different legal systems. Its purpose is to focus on the differences regarding moral rights, statutory transfer of rights and legal presumptions.

a) The Differences Regarding Moral Rights

The Continental European system of author's rights builds on the concept that there is an *everlasting* bond between the author and his or her work, which forms the basis for claims of moral jurisdiction. Only the rights of use (economic rights) can be transferred by contract (or through statutory transfer or exemptions). The moral rights cannot be signed away. This is elaborated in law (or through court practice) in most Continental European countries. This elaboration permits the author to waive his or her moral rights for a very limited and special use of the work.

The Anglo-American system of copyright, however, builds on common law and the principle that authors' rights are copyrights and that ownership of all copyrights can be transferred by contract. Moral rights are not considered to be copyrights and are in principle not assignable. But the moral rights may be waived in writing by the author. And an act of ownership will not be considered an infringement of the moral rights if the author has consented to this act, even if it would otherwise constitute an infringement. Consequently, authors are routinely pressured into waiving their moral rights at the same time that they are pressured into signing over all the rights of present and future use.

Not only can the moral rights be waived as described above. Only certain types of works are protected by moral rights. Among works that are exempted in UK legislation are "works made for the purpose of reporting current events", and "anything done by the author as a result of the work having been made in the course of the author's employment".

All in all, it must be said that moral rights do not protect most journalistic work whether the work has been produced by freelance journalists or during employment.

Strong protection of moral rights is essential for journalistic standards and a pluralistic and independent press and, not least, when it comes to exploitation of journalistic works online. The almost total lack of protection of moral rights in countries that adhere to the Anglo-American system is a cause for major concern, not least in the field of journalism.

It also distorts competition in the market.

For both of these reasons it is very important to seek harmonisation of moral rights legislation at the highest level, both within the European Union (EU) and globally.

b) Works Created in the Course of Employment and Work-for-Hire

In the Continental European system of authors' rights the rights originate in the author. The author will always have the right to be named the author and the right to claim protection against derogatory alterations or other use that is an infringement of the artistic or professional integrity of the author and/or his or her work. The author can transfer the economic rights by contract or through statutory transfer and/or legal presumptions of transfer.

In the UK and in the USA, for example, the authors are, in principle, considered to be the first owners of the copyright. However, there are quite a few exceptions to this overall rule of principle. The most important of these is that when an employee in the course of his or her employment, under a contract of service or apprenticeship, creates a protected work, *the employer is the first owner* of the entire copyright in the work.

In the US Copyright Act of 1976 a work made for hire is defined as “*a work prepared by an employee within the scope of his or her employment or a work specially ordered or commissioned for use... if the parties expressly agree in writing that the work shall be considered a work made for hire.*”

In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author and, unless both parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised within the copyright.

The UK copyright act distinguishes between those who work “*under a contract of service*”, however temporary, and those who will be “*under a contract for services (independent contractors).*”

As a result, neither in the US nor in the UK is a journalist considered to be the author of his or her work if he or she is an employee or does commissioned work or works under a contract of service.

This has the effect that a great many journalists (and other authors), whether working on a temporary or steady basis, have no possibility of exercising influence over either present or future uses of their editorially independent works.

Legal rules that transfer rights from the author or presume the transfer of rights unless otherwise stated in the contract can also be found in a few states in Continental Europe. These rules completely undermine the authors' rights of free negotiation and thereby also the author's possibilities of exerting influence on the future use of his or her work.

It is essential for authors to be able to negotiate terms that will enable them to prevent infringements of their moral rights by third parties, and to be able to take legal action against third parties who do so. (*See appendix A., for substantiation of this.*)

The employers (publishers, producers, broadcasters etc.,) are by far the stronger party and do not require strong legislative support at the bargaining table. On the contrary, they need to be coerced by necessity to co-operate with journalists and other authors who create the content of their media.

Conflict with Berne Convention and Human Rights Law

The lack of moral rights protection of journalistic works (and other works) in the countries that follow the legal tradition of the Anglo-American system of copyright is in conflict with the Berne Convention and basic human rights as expressed in the UN Declaration on Human Rights. The relevant Articles are cited below.

a) The Berne Convention Article (6bis)

In the Berne Convention the relevant Article (6bis) reads as follows:

“(1) Independently of the author’s economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.”

The USA, UK, Ireland and several other copyright countries have been allowed full membership of the Berne Convention, even though their legislation and legal practises concerning moral rights does not live up to either the wording or the spirit of the Berne Convention.

b) Universal Declaration of Human Rights

The right to be named the author and the right of protection against alterations or public use in a context that violates the integrity of your work or your professional or artistic integrity are basic human rights. They were first expressed in legislation in 1791 and 1793, following the French revolution.

They are also proclaimed in Article 27 (2) in the Human Rights Declaration of the United Nations:

“Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

Journalists and many other authors do not have these rights in countries with legislation on copyright that accords with UK and USA law.

Global Harmonisation

Business interests tend to give priority to rentability over cultural considerations and high standards, and seem always to seek markets in countries with the lowest level of protection of authors' rights, regardless of the fact that there may be many good reasons for this being unsound practice in the long run.

In the 21st century keen competition will be felt when it comes to high quality content. Democratic values and the rights of the individual will be prominent. The public and their governments want information, news and reporting of current affairs that they can trust.

For that reason, authors and journalists all over the world support strongly the need for global harmonisation of moral rights at the highest level of the Continental European authors' rights system.

IV. The Global Legal Landscape

Growing awareness of the importance of immaterial rights is due to both the explosive expansion in the economy created through sale of these rights and the recognition of the cultural significance of protecting the works and performances that are the basis for this booming economy.

In the field of audio-visual works (but also in other areas) the USA and the UK have a well-established industry and are leaders of the market, with a huge export of entertainment and other cultural products. Canada, Australia and Japan more or less follow the pattern of the USA and the UK.

Europe wishes to effectively compete with these players, not only to benefit the European economy but also in order to preserve and develop the European cultural heritage.

The differences between the Anglo-American system of copyright and the Continental European system of authors' rights have become an obstacle to both parties and are, therefore, at the top of the agenda whenever and wherever these matters are discussed.

Developing countries are not idle bystanders in this debate. They, too, have a lot at stake and have a keen interest in the outcome of the attempts at global harmonisation.

Major Players and the Two Competing Systems

a) The Continental European Approach

There are many differences in legislation concerning authors' rights within the countries of Europe. The description below should therefore be seen as a general characterisation of the authors' rights system of Continental Europe.

Moral Rights Originate with the Author and Cannot be Waived

The Continental European system of authors' rights recognises as its basic concept that the author cannot waive the moral rights (the right to be named the author and the right of protection against distortion, mutilation or other modification of or other derogatory use of the work). So, even if an author signs over all his or her rights, the moral rights still apply. In most European countries this is modified within the law or in court practice so that modifications of a very limited nature that the author has agreed to by contract will be considered valid.

Economic Rights Originate with the Author and Can be Transferred

The exclusive rights (the economic rights) can be transferred from the author by contract or in the case of legal exemptions or legal licenses by law.

Employed Authors

This is also the case for authors who create their works in the course of employment. In many European countries (for example, the Nordic countries) transfer of rights from the employed author to the employer is a contractual matter. Even if the individual or collective agreement does not mention the transfer of author's rights, the rights are transferred by tacit agreement to the extent necessary in order for the employer to conduct his normal publishing or other business. This means that the remaining rights (eg, the rights of resale to third parties) remain with the employed author until he or she might license such use. In some countries the law prescribes this presumption of transfer. In the Netherlands, employed authors retain no rights unless otherwise stated by contract.

Employed Authors of Computer Programs are the Exception

Where authors of computer programs are concerned, the European Union directive on computer programs decrees that in regular employment all rights are transferred to the employer, unless otherwise stated by contract. This is a special and specific exception to the general rule, and the directive still recognises the fact that all rights originate with the author.

Employed authors of computer programs have no moral rights (unless otherwise stated by contract). This exception is a major deviation from the basic concept and has been prompted by the fact that very often many employees are involved over a long period of time in the highly technical processes that go into the creation of computer programs.

Freelances and Authors Who Work for Hire

Freelances and authors who work for hire transfer their rights by written contract or tacit agreement. The extent of the transfer is decided through legal interpretation of the agreement in question. Unless the fee is exceptionally high the court will come to the conclusion that no more rights have been transferred than those necessary for the obvious purpose of the agreement and which the court deems to have been presupposed by the contracting parties.

Are Online Uses Covered and Included?

The question of whether online use is included when, for example, a freelance journalist delivers an article to a newspaper against a normal fee for one publication in print has been decided in extensive court practice in favour of freelances. This is the case in Germany, France, the Nordic countries, Belgium, Austria, The Netherlands and several other European countries.

However, the outcome is not certain if the freelance author has sold articles or other works for publication in a newspaper or magazine that is well known to be published both in print and online. If he or she has done this for a period of time and has accepted the normal fee throughout this period, even though it was easy to ascertain that the article was also published online, such passivity in connection with tacit agreements can cause loss of rights.

Collective Licensing and Collecting Societies

Another benchmark of the Continental European system is the widespread tradition of collective licensing through collecting societies, which enables authors (and performers) to manage their rights alone or in conjunction with publishers and producers. Using such systems, very considerable sums are collected from cable retransmission, private copying, reproduction for information purposes in schools, colleges and universities, private and public companies etc.

The collecting societies distribute the collected fees to authors, performers, publishers and producers who have created or acquired rights to the works in question.

It is the aim of the collecting societies to secure foreign rights holders their fair share of the collected fees through world-wide retroactive agreements. However, setting up a fair system is difficult because of the different legal systems, particularly in the USA and in Europe.

In the USA, authors and performers typically sign over all their rights. Thus, the few collecting societies within the USA are dominated by publishers and producers. Furthermore, European authors and performers find it difficult to accept the fact that fees collected for authors and performers by European collecting societies are sent to the USA to benefit only publishers and producers.

The Rights of Performers

Performers are not authors and therefore not directly comprised by authors' rights. The rights of performers are considered to be "neighbouring rights". In many European countries performers have been given almost the same high protection as authors, moral rights included.

Publishers and Producers also have Neighbouring Rights

In order that publishers and producers may protect their investments they have been granted rights to protect against unauthorised copying of TV programmes, sound recordings, films, catalogues and databases. These rights coexist alongside and independent of the exclusive rights of authors and neighbouring rights of performers.

b) The Anglo-American Copyright System

There are quite a few differences between the USA and the UK legislation on copyright. The same holds true for other countries that basically adhere to the copyright system. The following description is an attempt at highlighting some characteristic traits.

The Rights of Authors Are Seen as Property Rights

The moral rights of authors can be fully waived by authors in the UK. If an author has done this, but has not made it a condition that he or she is named, nor stipulated that the work may only be used in a certain manner or context, then it is solely up to the

new holder of the rights to decide whether or not the author is acknowledged or how the work is used.

Work for Hire

Under the copyright system authors are, in principle, considered to be the first owners of copyright. However, when an employee in the course of his or her employment, under a contract of service or apprenticeship, creates a protected work, *the employer is the first owner* of the entire copyright in the work.

In the USA Copyright Act of 1976 a work made for hire is defined as “a work prepared by an employee within the scope of his or her employment, or a work specially ordered or commissioned for use ... if the parties expressly agree in writing that the work shall be considered a work made for hire.”

In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

The UK Copyright Act distinguishes between those who work “*under a contract of service*”, however temporary it is, and those who work “*under a contract for services (independent contractors)*”. In the first instance, the first owner of the rights is the employer. In the second instance, the first owner of the rights is the author.

The Rights of Performers

Performers have no legislative copyright protection in the USA. The USA has not ratified the Rome Convention and there are no provisions concerning performing artists in the USA Copyright Act. However, after years of hard struggle, performers in the USA have achieved a tolerable level of protection through collective agreements and contractual practices.

Publishers and Producers

Under the terms of the USA Copyright Act, publishers and producers are not granted independent protection. They own the first rights of their employees and the rights of those who otherwise work for hire. They also own the rights that they acquire from freelance authors or other rights owners.

Collecting Societies

Legislation in countries that adhere to the copyright system does not incorporate rules on collective licensing, either compulsory or non-compulsory. In these countries what is deemed “fair use” is free use (with no remuneration to rights owners). If a use is not “fair use” it must be authorised and the rights owner can claim payment in return for his or her authorisation. Due to provisions in the EU directives on lending and renting rights and cable and satellite, The United Kingdom, Ireland and the Netherlands have

been comprised by legislation that prepares the ground for collecting fees through collecting societies.

There are some collecting societies in countries that adhere to the copyright system. These societies demand payment from other collecting societies throughout the world (not least from Europe), on behalf of the rights holders that they represent, and they also administrate private collective licensing schemes. Their cash-flow is diminutive in comparison, for example, with the collecting societies of the Nordic countries and Germany.

Differences Between the Two Systems that Count

The fact that moral rights (to the extent that they are recognised at all) can be fully waived by the author, the work for hire doctrine and the principles of fair use constitute the major obstacles to harmonisation between the copyright system and the Continental European system of authors rights, both within the EU and globally.

It also causes difficulties for global harmonisation and the administration of the principle of national treatment in the Berne Convention that rights in general are administrated by producers and publishers in the countries that adhere to the copyright system. In Continental Europe there is a strong tradition of collective management on behalf of authors and performers (also jointly with producers and publishers).

Another major difference is that the copyright system, which has its roots in common law countries, is based on contractual practice. The legislation on authors' rights in Continental European countries regulates many general questions, so that one only requires a detailed contract if one wishes to deviate from the general rules.

The necessity of hiring lawyers to draft a contract, to be sure of one's rights, is another factor which tips the balance in favour of the producers and publishers in the countries that adhere to the copyright system.

Harmonisation within the European Union

There is a short summary in Appendix A (below) of the classical international conventions on the rights of authors, performers and producers. (The Berne Convention, the Rome Convention, the Phonogram Convention and the two new WIPO treaties).

The following will concentrate on the more recent steps towards harmonisation at the regional and global level.

The directives on authors' rights and related rights

Five directives have been adopted by the EU, harmonising various aspects of authors' rights and neighbouring rights. These cover:

- the legal protection of computer programs;

- rental rights, lending rights and certain rights related to copyright in the field of intellectual property;
- copyright and related rights applicable to broadcasting of programmes by satellite and cable retransmission;
- the term of protection of copyright and certain related rights;
- The legal protection of databases.

A proposed directive on the harmonisation of certain aspects of copyright and related rights in the information society is close to final adoption.

These directives have highlighted the conflicting standards between the copyright system and the Continental European system. This is also underlined by the fact that EU member countries UK, Ireland and, to some extent, the Netherlands adhere to the copyright system. Additionally, EU producers and publishers want the work-for-hire concept to be recognised in EU law and are also requesting that moral rights be fully waiveable.

Furthermore, it is a declared goal of the producers and the publishers to use such added strength to acquire all present and future rights from authors and performers, thereby claiming sole administration of these rights, ensuring the end of collective licensing and (*joint*) collecting societies (where fees must be shared with authors and performers).

Battle Joined at the Onset of the Information Society

In the first half of the 1990s, when visions of the World Wide Web and the Information Society became a hot topic the world over, many people felt that copyright systems would not be able to survive, especially the Continental European system of authors' rights which was thought of as old-fashioned and out-of-date.

European publishers and producers vigorously lobbied the European Commission and claimed that Europe would be completely unable to compete with the rest of the world, and in particular the USA, if authors' rights legislation was not harmonised to the level of the copyright system.

These views found many supporters and it took years of lobbying by authors and performers, legal experts and others to shift this perception. But the European Commission and the European Parliament have acknowledged that moral rights are important for the sake of authenticity, quality, high standards and to help preserve the European cultural heritage. EU Member States have been left free to decide for themselves whether they wish to adopt statutory transfer of rights or legal presumptions of transfer where employed authors or authors who otherwise work for hire are concerned.

The politicians of the EU, both at the national and EU level, were also influenced by the report of the White House Information Infrastructure Task Force Working Group on Intellectual Property Rights. The report clearly states that what is needed is better protection – not less. The report also puts emphasis on the need to protect the rights of the creators in order to stimulate the production of high quality content.

The Continental European system survived

In this respect the EU directives, including the proposed directive on the harmonisation of certain aspects of copyright and related rights in the information society, represents a victory for the Continental European system. However, these directives have not solved the problems of the authors and performers of the UK, Ireland and the Netherlands who are left with completely inadequate protection.

Major unsolved problems

The major differences between the systems in the protection of moral rights and in creating a balance of bargaining power between authors and performers on the one side and publishers and producers on the other causes unfair competition and distorts the single market.

It is equally important to lobby within the EU for the harmonisation of legislation on which specific types of work should be protected and, if at all possible, eliminate the possibility of national legislation similar or identical to the work-for-hire doctrine.

Efforts to convince the EU Commission of the necessity of harmonising moral rights at the highest European level, have not, thus far, led to concrete results.

The TRIPS Agreement (Harmonisation at WTO level)

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement was concluded in December 1993 as part of the Uruguay Round of negotiations under the former GATT - now the World Trade Organisation (WTO).

The TRIPS Agreement is a trade agreement, but it also contains provisions on the protection of authors' rights. It provides that member countries shall comply with Articles 1 to 21 of the Berne Convention. These are the substantive provisions of the Berne Convention with one major exception: *the Agreement states that no rights of obligations are created in respect of moral rights.* (See the summary on the Berne Convention in Appendix A.)

The TRIPS Agreement requires of member states that computer programs are protected as literary works and that compilations of data shall be protected as original creations, provided that they meet the criteria of originality by reason of the selection or arrangement of their contents. The Agreement also provides a right in respect of commercial rental of copies of computer programs and audio-visual works.

The TRIPS Agreement also contains detailed provisions on the enforcement of intellectual property rights and a mechanism has been implemented in the agreement concerning the settlement of disputes among countries that are comprised by the Agreement.

The fact that the TRIPS Agreement was promulgated can be perceived as a victory for the countries which adhere to the copyright system (and producers and publishers). Authors and performers do not want the harmonisation of authors' rights to take place

within trade related fora. These questions should be dealt with by the World Intellectual Property Organisation (WIPO).

Harmonisation in the new WIPO Treaties (WCT and WPPT)

Technological and commercial developments following the last revision of the Berne Convention in 1971 led to the recognition in the 1980's that new binding international norms were required in response to the questions raised by digital technology and, particularly, the Internet.

This led to the adoption of two new treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), at a Diplomatic Conference held in December 1996.

Both treaties contain common rules for defining the exclusive rights in the digital environment and are, therefore, necessary and important additions to other international Conventions including the Berne Convention.

Neither of the new treaties contains provisions which lower the level of protection afforded by the Continental European system. Nevertheless, nor do they bridge any of the significant differences between the two systems. The USA and the UK continue to be allowed to uphold their respective legislative systems.

In the USA, the WCT and WPPT Treaties have afforded authors and performers Phonograms, a better legislative protection. The treaties were implemented in USA law through the Digital Millennium Copyright Act in October 1998.

The 1996 Diplomatic Conference was unsuccessful in reaching an agreement on a treaty on the rights of performers in the audio-visual field. This work is on-going and is mentioned below. The same situation holds for the protection of databases and rights of broadcasters.

As stated above WIPO is the proper forum for global harmonisation of authors' rights. Before the success of the December 1996 Diplomatic Conference, when the WCT and the WPPT Treaties were concluded, the TRIPS agreement under GATT (now WTO) had drawn global harmonisation towards the trade arena. Continuing along this course at the 1996 Diplomatic Conference would have favoured the copyright system that recognises copyright purely as a trade object.

Campaigning for Better Legislation

a) WIPO

Protection of performers' rights in their audio-visual performances

By summer 2000 WIPO will have decided whether or not there is a basis for establishing a Diplomatic Conference by the end of the year in order to try to reach a compromise on a treaty on the rights of performers in the audio-visual field.

As mentioned before, the USA Copyright Act does not cover performers (except within the Digital Millennium Copyright Act of 1998). The USA does not want to afford moral rights to performers in the audio-visual field at the level of the WCT and WPPT.

All questions of moral and economic rights, royalties, etc., are regulated through collective agreements and contracts. Negotiations concerning a possible treaty on the rights of performers in the audio-visual field will continue to prove difficult.

The USA has also put forward proposals for transfer of rights similar to the work-for-hire doctrine which the EU and respective nations in Continental Europe have adamantly rejected. Performers in Europe would rather have no treaty than one that offers a lower level of protection of moral rights than most have already. This view also holds for any treaty that covers a transfer of rights in favour of the producers.

In order to bridge these difficulties various other solutions have been suggested. Canada has submitted a proposal that requires Treaty Members to recognise transfer of rights by operation of law and transfers by contract from other Treaty Member countries. The adoption of the proposal would mean that performers in the USA, Canada and other countries with similar legislative and contractual practises would not receive better protection. Their positions would be unaltered.

The USA has submitted a new proposal concerning the principle of national treatment in the Berne Convention, which will allow countries with collective administration of exclusive rights to refuse remuneration to non-national performers if the collecting society does not collect fees on behalf of non-nationals.

The EU has forwarded a submission in which the EU underlines that the protection of audio-visual performances should be updated and modernised and that this should be undertaken at the level of the WPPT. The EU points out that this new treaty should not introduce rules which may be alien to existing domestic and international frameworks, such as on the transfer of rights or national treatment.

The EU also states that the whole point of the treaty is to upgrade the protection of audio-visual performers – not the protection of audio-visual producers.

The EU also declares in the submission, a willingness to move ahead towards a, hopefully, successful Diplomatic Conference in December 2000. The outcome of such a conference will have considerable significance not only for performers but also for authors. Therefore, great effort should be made to support performers' organisations in their lobbying. There is also a need to keep a keen eye open for possible negative effects that compromises in connection with this treaty could have in other fields. There is a real danger of this when addressing proposals on moral rights, transfer of rights and national treatment.

Standing Committee on Copyright and Related Rights

The work of this committee should also be followed closely. As soon as the December 2000 Diplomatic Conference on performers' rights in the audio-visual field

is at an end, new attempts will be made to bridge the differences between the two major systems.

In this process it is of the utmost importance for the supporters of the Continental European system of authors' rights to be able to prove that the system works – not just for authors and performers – but also for the economy and the ability to compete world-wide.

It is also important to be able to exemplify that in practice the two systems are not that far apart, but that the remaining differences should be removed by altering the copyright system – not the Continental European system.¹

Another very important point to convey is that the authors' rights system is better suited for the development of democracy, the rights and obligations of the individual, and provides the individual with a better basis for upholding high standards of quality and ethics.

b) World Trade Organisation (TRIPS)

It is important to pay close attention to initiatives concerning the TRIPS Agreement and to be prepared to actively oppose new trade initiatives in the field of immaterial rights of authors and performers (See above).

c) European Union

Unless the system of authors' rights is actively supported by the EU and EU legislation and by the EU in WIPO, the system will not survive. As the Continental

¹ A concrete example of these views can be derived from the following court case description: On behalf of the USA film director Sidney Pollack the Danish Film Directors took legal action against the Danish Radio and Television station DR, because DR1 had shown the Sidney Pollack movie "Three Days of the Condor" in a pan-scanned version. The claim was that the pan-scanned version constituted an infringement of Sidney Pollack's right of integrity (moral rights). When Sidney Pollack signed his contract many years ago in the USA, he signed over all his rights - including the television rights. As the right of integrity as a principal rule cannot be waived under Danish law, the court had to explore two factors. Did the pan-scanning of the movie constitute an alteration (mutilation) of the work so that the television version was an infringement of Sidney Pollack's right of integrity? And if so - could the pan-scanning for television use be bracketed as "an in extent and nature limited use of the work"? The court reached the conclusion that several of the important scenes in the film were altered in such a way through the pan-scanning that they constituted a clear encroachment on the integrity of the film work and Sidney Pollack. So if Sydney Pollack had not permitted a television version the outcome of the court case would have been clearly in his favour. However, the court also found that at the time the pan-scanning was executed (early 1970s), pan scanning was the general method used when adapting wide-screen movies to television. The court therefore concluded that Sidney Pollack's consent to the television showing of his film constituted an acceptance of the pan-scanning which in this case was deemed permissible under Danish law as "an in extent and nature limited use of the work". In which case moral rights can be waived by the author according to Danish law (and that of many other Continental European countries).

European level of legislative protection of the rights of authors and performers is the highest in the world, it is in the best interests of everyone – including authors and performers outside of Europe – to focus attentive lobbying on the EU.

This is a fact of which publishers and producers world-wide are very much aware. There is no hearing or open meeting within the EU in which one does not meet many USA producers, lawyers and other international lobbyists. The entertainment and information industry spends enormous sums in order to exert continuous influence on the political and administrative processes within EU.

The fight for the work-for-hire principle and the hopes of producers and publishers that added competition will tip the balance of power in favour of a lower level of protection in the UK, Ireland and the Netherlands has by no means ended.

Besides counteracting the lobbying of the producers and publishers, authors and performers have their own agendas. At the top of their agendas is the strong wish for moral rights to be harmonised at the high Continental European level. Top priority must also be given to the harmonisation of definitions of protected works, etc. These points are essential in order to raise the level of protection, especially in the UK, Ireland and the Netherlands.

In fact, there is a real need to strive even further. Even in countries where authors' rights protection is the highest, freelance authors are finding it impossible to exert their rights because of the overwhelming monopoly global companies have in the present online environment in making news, entertainment and culture available to the public.

Thus far, authors and performers have thought it sufficient to combat proposals for presumptions of transfer of rights in favour of publishers and producers, thereby upholding the right of free negotiation.

If authors and performers are to be able to exert their rights and thereby preserve some little influence on the future uses of their work in the online environment, freelancers should be covered by a legal presumption in their *favour*. Such a rule must ensure that the rights remain with the freelance unless otherwise specified by contract. Employed authors and performers must be free to negotiate and not be hampered by rules of presumption in favour of publishers and producers who are the stronger party.

For all of these reasons it is important that the national and international organisations representing authors and performers become more sophisticated at co-ordinating their lobbying efforts and their resources.

Co-ordinating Effort and Convincing Allies

The IFJ has taken an initiative to form a Creators' Forum inviting participation by representatives of all major international organisations representing authors and performers. Two meetings have been held and another will be planned during the conference, *Authors' Rights for All - Summit 2000*.

One suggestion that has arisen at these meetings recommends that relevant organisations meet and confer before attending important international meetings at the WIPO, EU etc. Another proposes that we call meetings when matters arise on the authors' rights scene that urgently calls for action, whether they concern new legislation or contractual struggles.

The *Summit 2000* Web Site and the work in connection with following up the conference will be a significant step in this direction.

Convincing the population (and thereby consumers and, hopefully, also politicians) of one's own country is perhaps the most important step of all. In this respect it is encouraging to observe the campaigning activities of authors and performers in the USA and the UK. That the campaigns are effective is illustrated by the following citation from Gerald Dworkin (King's College, University of London) who, in his paper "The Exercise and Waiver of Moral Rights: The International State of Play" (April 1999), states:

'the concept of moral rights is now accepted widely as an integral part of the international structure of copyright law. ... Those countries (mainly common law countries) which have steadfastly resisted the express incorporation into their legislation of the moral rights of paternity and integrity, as required by Article 6bis of the Berne Convention, by maintaining that such rights are already adequately protected indirectly in the interstices of the general common law and that such matters are best left to contractual arrangement, are gradually losing ground'.

Organisations representing authors and performers must also look inwards. Authors' rights is a complicated topic and, too often, we are not effective enough at raising awareness among our own respective members about the important issues at stake, even though these are often more important than the everyday struggle for adequate wages and fees.

V. Launching the Information Campaign

The actions, both legal, professional and industrial for an international campaign have been already developed in this background paper. But to get started we have to launch a world-wide process involving authors, writers, journalists and others. Our aim is to ensure that the collective voice of creators is heard loud and clear. To succeed we need to develop an international information strategy that will provide practical and reliable tools for campaigners in defence of authors' rights.

The immediate tasks facing participants at the *Authors' Rights For All – Summit 2000* are set out below:

- **To establish** an international authors' rights campaign team;
- **To prepare** campaigning materials on key authors' rights issues;
- **To organise** and co-ordinate joint presentations to major international organisations dealing with authors' right policy;
- **To arrange** urgent meetings with top officials of the international labour movement, including the trade union group of the OECD;
- **To develop** and expand the international network of solidarity through a dedicated web site with links to all relevant trade union and authors' rights groups around the globe;
- **To strengthen** and extend the database of authors' rights information particularly regarding collective bargaining agreements, contracts, legal actions, and activities of partner organisations.

In order to identify the campaign we need a slogan, four or five words long, that captures the imagination of authors and non-authors alike. (Examples: A Fair Share for Authors; Authors Deserve A Fair Share; Celebrate Authors — Pay Them). We should commission professional help to create a slogan that will last.

We also we need a specific, detailed monthly calendar that shows each step of the campaign, country by country. Details should include which organisation(s) have committed to which goals; who is responsible and what is the deadline. This calendar should ensure appropriate representation is made to economic and cultural forum.

Building Solidarity

To do this work effectively we must reach out for the support of all – trade unions, professional associations, national and regional lobbying groups. We must form coalitions, wherever possible, with other groups in civil society that are also engaged in this debate – even if it looks as though they are not always on our side, as in the case of some consumers, for instance. Most importantly, there is a need to make

effective and high profile interventions wherever policy is being made over intellectual property protection.

Authors' and journalists groups need to co-ordinate their actions and interventions at national and international levels. We need to ensure we are seen and heard at the numerous meetings and activities related to databanks, the moral rights of authors and performers and the elaboration of international policy on trade relations and intellectual property.

In all cases, the creators' interests need to be reinforced. Clear, precise and professional presentation of material is required to emphasise the specific demands of individual creators and the sectors they represent.

A distinct profile is vital, for instance, in underlining our demands to maintain existing standards of protection, particularly over the exploitation of new information technologies and the reuse of material in on-line services and databanks.

The IFJ and a number of creators' group have, at European level, begun to establish a dialogue that may provide a key element in creating a broadly-based coalition that can take forward an effective campaign on a number of levels.²

Reaching Out for a Global Approach With The Unions

There also needs to be a widening of the campaigning net to strengthen work within the industry and outside. The regional meetings to be held in Africa, Latin America and Asia later in the year will provide the framework for drawing creators from all corners of the globe into the process.

The work of national trade unions and associations of journalists and author's also needs to be reinforced. Most unions recognize that authors' rights are of importance to freelance workers, but many do not pay adequate attention to the need to protect the work of employed authors' from unauthorised reuse. When it comes to convergence, all journalists and authors have an interest in how their work is exploited.

At the same time, much more work needs to be done to develop a wider consciousness of the importance of intellectual property rights as a trade union and labour issue. Within the international trade union movement – the European Trade Union Confederation and the International Confederation of Free Trade Unions – there is a lot of discussion on globalisation policy, but very little of this debate refers to intellectual property rights of workers.

The IFJ and a number of other international trade union groups – the Union Network International, the International Federation of Musicians and the International Federation of Actors – can work more closely together to ensure that authors' rights are brought into the mainstream of discussion of labour rights.

² The IFJ's European regional organisation the EFJ recently held a meeting with the European Writers Congress, Pyramide, GESAC, FERA to reactivate a proposal to organise a creators' forum at European level. More information from Renate Schroeder at the EFJ at: efj@ifj.org.

We also need to take the campaign for rights into the sections of civil society that are important to winning the argument for fair remuneration. In particular, there is a strong need to develop better lines of communication with consumer groups, many of which are courted by major corporate players that are trying to reduce levels of rights protection.

A new strategy must identify where work needs to be done, how this work can be effectively carried out and who will form the partnership necessary to co-ordinate and supervise the programme.

Exchanging and Sharing Information: Using the Web

Exchanging and sharing information is essential to the success of any campaign in defence of authors' rights. Although there is plenty of information about intellectual property issues, much of it is legalistic, detailed and impenetrable to many of the people who are likely to be most affected by the outcome of current policy discussions.

Our information strategy must provide an accessible service to unions, associations and authors' groups at all levels – from activists and legal professionals involved in tricky discussions of policy detail, to ordinary members and groups at national level seeking information that will help them in their bargaining and negotiations.

Information can be shared through the use of tools of information technology and the creation of a web site, a databank, e-mail lists, and discussions forums.

At the *Authors' Rights For All -- Summit 2000* we are launching the web-site and setting out the framework for a databank that will give authors' rights campaigners the facts they need – our current policy demands; details of past and current court cases; facts and figures about collective bargaining and successful negotiations carried out at national level.

This web site is a first step. It is available in English and French, but the challenge of providing information in a number of international languages has to be taken up. To be truly global, the campaign must speak effectively to authors' wherever the struggle for rights is being fought.

The aim of the campaign is not to duplicate or to replace the existing lines of actions of individual groups. Far from it. What is needed is a campaign that gives added value to the current working programme of each group.

The challenge is a simple one: to find ways of working together that will bring the priorities of authors to the table wherever discussion is taking place about the future of rights. The power of the corporations may be enormous, but we also have something to say and we have to find the most effective way of saying it.

VI. Appendices

APPENDIX A:

Existing World Conventions and Treaties

The Berne Convention (administered by WIPO) ³

The first legislation on copyright and authors' rights was promulgated in Europe and in the USA during the period between 1710 and around 1790. In some of the Latin American countries laws were passed in 1834 (Chile), 1849 (Peru), 1869 (Argentina) and 1871 (Mexico).

Around the 1850's bilateral agreements were concluded among European nations, but not all of these provide adequate protection of works outside their respective countries of origin.

The need for a uniform system of protection led to the Berne Convention for the Protection of Literary and Artistic Works adopted in Berne, Switzerland on 9 September 1886.

The Original text has been revised many times since (Berlin 1908, Rome 1928, Brussels 1948, Stockholm 1967 and Paris 1971).

In recent years many more countries have acceded to the Berne Convention due to the growing economic and cultural importance of protection of authors' rights and neighbouring rights.

The Basic Elements

There are two basic elements of protection under the Berne Convention:

- 1) National treatment, according to which works originating in one of the Member States must be protected in each of the Member States in the same way that such states protect the works of their own nationals.
- 2) Minimum rights, which means that the laws of Member States must provide the minimum levels of protection established by the Convention.

No Registration Needed

Member States are not allowed to make registration a precondition for protection, or any other such formality.

Protected Works

The Berne Convention contains an illustrative, non-exhaustive list of protected works, which include "any original production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression". Some categories of works may be excluded from protection: texts of a legislative, administrative and legal nature, works of applied art, lectures, addresses and other oral works, and states can require that works must be fixed in some material form in order to be protected.

³ The description of the Berne Convention has been written on the basis of WIPO/ACAD/A/00/3(ii) from January 2000 (Prepared by the International Bureau)

Protection for the benefit of the author

The Convention states that protection is to operate for the benefit of the author and his successors in title. For some categories of works the question of who is the author or rights holder is a matter for legislation in the country where protection is claimed. (This is the case for cinematographic works).

Eligibility for protection

Authors who are nationals or residents of a country, which is a member of the Berne Convention, are protected. The same holds for others if they first publish their works in a Berne member country, or simultaneously publish in a non-member and a member country.

Moral rights

Article 6bis provides for the minimum protection of the moral rights of the author, the right of the author to be named the author of his work and to object to any distortion, mutilation or other modification of or other derogatory action in relation to the work which would be prejudicial to his honour or reputation.

Economic rights protected

The exclusive economic rights granted to authors under the Convention are

- the right of translation
- the right of reproduction
- the right of public performance (dramatic, dramatico-musical and musical works)
- the right of broadcasting and communication to the public by wire, by re-broadcasting or by loudspeaker or any other analogous instrument of the broadcast of the work
- the right of public recitation
- the right of adaptation
- the right of making cinematographic adaptation and reproduction of works and
- the right of distribution of the works thus adapted and reproduced

The “droit de suite” (resale of original works of art and manuscripts) is optional and may be subject to reciprocity.

Limitations

The Berne Convention allows certain limitations on economic rights in order to achieve an appropriate balance between authors and users of protected works. These limitations are defined in Articles 9 (2) (reproduction in certain special cases), 10 (quotations and use of works by way of illustration for teaching purposes), 10bis (reproduction of newspaper or similar articles and use of works for the purpose of reporting current events) and 11bis(3) (ephemeral recordings for broadcasting purposes).

Non-Voluntary licenses allowed in only two cases

Member countries may implement non-voluntary licenses in respect of the right of re-broadcasting (and similar, Article 11bis(2)) and in respect of the right of sound recording of musical works (the recording of which has already been authorised) (Article 13(1)).

Duration of Protection

The minimum term of protection includes the life of the author plus 50 years after his death. For cinematographic works the term is 50 years after the work has been made available to the public or, alternatively; 50 years after the making of such a work.

For photographic works and works of applied art, the minimum term of protection is 25 years from the making. The duration of the moral rights must be for at least as long as the duration of the protection of the economic rights.

More Members of the Berne Convention: In 1970 there were only 59 member countries to the Berne Convention. In 1999 there were 142.

The Rome Convention and the Phonogram Convention

The Rome Convention concerns neighbouring rights (related rights of performers and producers). These rights are largely the result of technological development (the possibilities of fixating of performances on phonogram records, tapes etc.). The Rome Convention where the text was finally adopted took place in October 1961.

Article 1 of the Rome Convention, called the “safeguard clause”, provides that the protection granted under the Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. No provision of the Rome Convention may be interpreted as prejudicing such protection.

Like the Berne Convention the Rome Convention consists basically of the national treatment that a state grants under its domestic law to domestic performances, phonograms and broadcasts. This national treatment is, however, subject to the minimum levels of protection specifically guaranteed by the Convention, and also to the limitations provided for in the Convention.

The minimum protection

The minimum protection guaranteed by the Convention to performers is provided by “the possibility of preventing” certain acts done without their consent. Performers are to be granted the “possibility of preventing”

- broadcasting or communication to the public of a “live” performance
- recording an unfixed performance
- reproducing a fixation of the performance, provided that the original fixation was made without the consent of the performer or the reproduction is made for purposes not permitted by the Convention or the performer

Producers of phonograms are provided the right to authorise or prohibit the direct or indirect reproduction of their phonograms.

Broadcasting organisations have the right to authorise or prohibit the simultaneous rebroadcasting of their broadcasts, the fixation of their broadcasts, the reproduction of unauthorised fixations of their broadcasts or reproduction of lawful fixations for illicit purposes and the communication to the public of their television broadcasts by means of receivers in places accessible to the public against payment.

If a phonogram published for commercial purposes is used directly for broadcasting or any communication to the public, an equitable remuneration shall be paid by the user to the performers, to the producers of the phonogram or to both.

Limitations

Like the Berne Convention, the Rome Convention permits Member States to establish certain limitations on rights. Private use, use of short excerpts in connection with reporting current events, uses for the sole purpose of teaching or scientific research, ephemeral fixations for broadcasting purposes etc.

Duration of protection

The minimum term is 20 years from the year in which the fixation was made or the performance took place or the broadcast took place.
The USA has never ratified the Rome Convention.

Other international conventions for concerning neighbouring rights

Apart from the Rome Convention there are also the Phonograms Convention (Geneva, 1971), the Satellites Convention (Brussels, 1974) and the TRIPS agreement which also has provisions on related rights.

The New WIPO treaties

Below is a very short summary of the main content of the two new WIPO Treaties: The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

The main purpose of the Treaties is to establish new norms for the digital age.

Common provisions in WIPO Copyright Treaty (WCT) and WPPT

Right of Reproduction

Both Treaties provide for the exclusive right of reproduction. The scope of the right of reproduction in the digital environment is not dealt with in the text of the Treaties themselves, but in Agreed Statements which state that the reproduction right is fully applicable to the digital environment, as are the permissible limitations and exceptions to the right. The Agreed Statements also confirm that the storage of a work in an electronic medium constitutes a reproduction.

Right of Making available (transmissions) in interactive, on-demand networks

The WCT and WPPT provide that authors, performers and producers of phonograms must be granted exclusive rights to authorise “the making available” of their works etc., by wire or wireless means, in such a way that members of the public may access those works etc., from a place and at a time individually chosen by them (that is, interactive, on-demand services).

Right of Distribution

The WCT and the WPPT grant authors and performers an exclusive right to authorise making their works available to the public and an n exclusive right of distribution.

Rental rights

The WCT provides for a right of commercial rental of computer programs, cinematographic works and, according to national law, works embodied in phonograms. The WPPT also grants certain exclusive rights of commercial rental.

Limitations and exceptions

The WCT and the WPPT both adopt the “three-step” test of the Berne Convention to determine whether or not limitations fall within the allowed scope.

Technological protection, rights management information, enforcement etc.

Both Treaties have provisions concerning the above in order to oblige Contracting Parties to provide adequate legal protection and effective remedies against the circumvention of measures used to protect the rights of authors, performers and phonogram producers.

Provisions specific to the WCT

It is confirmed that computer programs are protected as literary works and that databases are protectable as copyright works. The minimum term of protection in respect of photographs is extended to 50 years.

Provisions specific to the WPPT

For the first time at an international level, moral right are conferred upon performers.

Furthermore Article 15 of the WPPT provides to performers and producers of phonograms a right of remuneration in respect of the broadcasting and communication to the public of phonograms.

Supplementary Information

- The Berne Convention, The Rome Convention, the new WIPO treaties and many other documents can be accessed at WWW.WIPO.ORG
- For a short and easily understood overview of Applicable Copyright Law on the Internet see the article ”Internet and the Applicable Copyright Law: A Scandinavian Perspective by Peter Schønning on the Authors' Rights Summit web-site: <http://www.ifj.org>

APPENDIX B:

Summary of copyright cases involving Infringement of press ethics

The editorial freedom of journalists is essential. The public should be able to trust that journalists are not influenced by economic interests when they do consumer surveys, comment on business affairs, evaluate new cars, taste wines etc.

Journalists and photographers need moral and economic authors rights to be able to exercise influence on the use of their articles, photographs etc. especially regarding use outside the normal editorial environment.

Legal proceedings of the type dealt with below are instigated by individual journalists, photographers etc. primarily owing to the wish to protect his/her editorial integrity, and to protect his/her sources from being photographed/quoted in any circumstances other than those to which such sources agreed originally.

Legal proceedings concerning damages for non-financial claims are often combined with claims for compensation for financial infringements.

Here are some examples of legal rulings and settlements in recent years:

Legal settlement (Denmark) 1999. Case against a number of banks for using journalist article for advertisement purposes. A journalist wrote an article to a magazine called Money & Private Economy in which he criticized the pension plan offers from a German bank and insurance company. This article was copied without the authorization of the journalist and distributed by a large number of banks to their customers in order to advertise their own pension schemes. Six banks paid damages to a total amount of DKK 65,000.

The municipal court of Cologne (Germany) pronounced a decision in March 1998 which underscores this. A (German) journalist was awarded 5.000 DM to cover the damages it had caused to his reputation that a newspaper had used his name on an article that had been subjected to editorial changes to such an extent that it violated the right of integrity of the journalist.

The State Court of Mannheim, ZUM-RD 1997,405 (Germany) has established that the right of integrity can be infringed by the distribution of a distorted photography. The damages were awarded to cover the economic loss incurred by the loss of integrity.

The Local Court of Hamburg (Germany) has passed a ruling on 30th December 1997 (36a C 3007/97) that establishes the right to receive damages for the economic loss incurred by not being named the author and the consequential loss of recognition and credit.

The Swedish supreme court has in a judgement from June 11th, 1996 - in a case where the artists were credited for their performances in television but not the composers of the music - distinctly emphasized that authors, not only for moral reasons but also on economical grounds, have a right to attribution of authorship.

1996. A (Danish) journalist had allowed a film director to bring a two minute long excerpt from a televised interview in a movie. The film director did not credit the journalist in connection with bringing the excerpt in the movie. The journalist received 5.000 DKK to cover the economic damages.

1995. Case (Danish) against tabloid newspaper for unauthorized use of photographs of AIDS sick 3 year old. A press photographer was allowed to take pictures of a 3-year-old baby girl who was dying of AIDS for sole use in a serious medical magazine. A tabloid newspaper copied the photographs without authorization from the photographer (or the parent). The tabloid newspaper admitted to infringing both the moral and economic rights of the photographer and paid damages to the amount of DKK 4,750.

Legal settlement of 5th January 1995 by the Municipal Court of Copenhagen. A housing investment company had persuaded a number of customers to invest in French chateaux, by showing them an article written by a journalist for the Danish newspaper "BT" entitled "Køb fransk slot for pensionen" ("Use your pension to buy a French chateau") and an article written by another journalist for the Danish newspaper "Børsen" entitled "Frynsegoder kun for aktionærer" ("Fringe benefits for shareholders only"). The court settled the case by awarding compensation and damages to the journalists amounting to a total of DKK 16,000. The company acknowledged that the use of the articles had infringed on the rights of the journalists.

Ruling of 21st February 1992 by the Danish Eastern High Court (U92.549) A press photographer had taken a photograph of a person during a reception held to celebrate this person's appointment to a new position. Over one year later, the person was accused of sexual abuse of minors in the previous job. A tabloid newspaper published the photograph from the reception (the person was smiling broadly and having a drink) several times over the course of several days, using a large-scale, somewhat blurred enlargement. The photograph had also been cut so the original context was no longer apparent.

The municipal and high courts both agreed that there had been an infringement of the integrity of the press photographer (editorial and press photographer integrity), and awarded DKK 3,000 compensation and DKK 2,000 damages.

Ruling of 4th July 1991 by Glostrup Court (Denmark). A journalist had written an article about various offers made by banks to young people, and a cartoonist had illustrated the article. A branch of the bank offering the best terms to young people according to the article enlarged the article and drawing, changing the caption to its own advantage.

The court ruled that the enlarged article and drawing clearly constituted an advertisement for the bank concerned, thus representing an infringement of the integrity of the journalist and cartoonist (editorial integrity etc). A total of DKK 25,000 damages were awarded.

Legal settlement of 7th October 1991 by Odense Court (Denmark) A journalist who attended the Building/Cultural Committee set up by the Danish Ministry of the Environment had written an article under the headline "Forbyd plastvinduer i gamle huse" ("Plastic windows in old houses should be banned"), which was published in a national and regional Danish newspaper respectively.

A company that sold wooden windows printed the article using its own notepaper and used it in a sales catalogue, giving customers and competitors the impression that the journalist had recommended the company's products. The case was settled by the ruling of the court following payment of DKK 10,000.

Case against election brochure in 1989. (Denmark). In connection with the municipal election campaign in Aabybro, Denmark, a political party used several articles earlier published by the Danish newspapers "Aalborg Stiftstidende" and "Vendsyssel Tidende" in an election brochure.

The case was settled out of court by the payment of DKK 10,000 damages, because the political party acknowledged that this use had infringed on the integrity of the journalists (editorial integrity etc).

APPENDIX C:

Excerpts From Selected Collective Agreements

Sweden

Collective agreement between the photographers working for two daily Swedish national newspapers *Dagens Nyheter* and *Expression* and the pictorial agency “Pressens Bild”. It gives Pressens Bild the right to license rights of use of the photographs worldwide.

The enclosed agreement is in Swedish. In point 2 in the agreement it is stipulated that the third party who is licensed to use the photographs must be put under obligation to respect the moral rights of the photographer as these are expressed in the Swedish legislation on authors rights.

It means that photographs cannot be licensed for use in for example the UK unless the third party has been specifically and contractually bound to respect the above-mentioned moral rights.

As this is not practicable the actual effect is that these photographs cannot be licensed for use in the UK.

“Clause 2. The parties of this agreement declare that any third party who is given permission to reuse the photographs is obligated to make sure that articles 2 and 3 in the Swedish Act on the Protection of Photographs are observed and that the same applies regarding the journalistic reputation of the photographer (the journalist agreement clause 4 j). Pressens Bild must organize its work so that non compliance with the above cited rules of law are actively counteracted, and so that the third party users are reminded of the prescribed regard for the journalistic reputation of the photographers.”

Germany

Collective agreement between the German Union of Journalists (DJV) and MTV Zeitschriften concerning licensing of further rights of use of journalistic material produced by employees.

In point 2 of the agreement it is clearly stated, that the author retains his or her right to prohibit any use that is likely to lead to an infringement of the moral rights of the author as these are defined in the German legislation on authors rights.

France

Excerpts from six different collective agreements between the French Union of Journalists and Dernières nouvelles d’Alsace (DNA), Radio France Internationale (RFI), Le Médecin généraliste, Les Echos, L’Expansion and VNU.Fr.

The excerpts all demonstrate that the journalists make it a condition for licensing their rights of further use that the journalistic material is guaranteed the same moral rights protection as the one defined in French legislation on authors' rights.

Dernières nouvelles d'Alsace (DNA) (1998)

2. objet de l'accord et produits concernés

(...) Cette cession s'applique à une première publication dans les DNA en ligne pour le monde entier. Toute autre diffusion dans quelque autre publication ou support que ce soit sera soumise à une nouvelle autorisation de la part des auteurs concernés.

A chaque œuvre, l'auteur conserve un droit moral sur son œuvre.

Toutes les pages du site doivent comporter la mention « copyright DNA »

Radio France Internationale (RFI) (1999)

Art.5 : modalités de la cession

Les auteurs précités restent titulaires de l'ensemble des prérogatives que leur confèrent les dispositions prévues par la loi et la jurisprudence sur le droit moral dans le cadre des règles de fonctionnement normal d'une rédaction. À ce titre, il ne peut y avoir de modifications substantielles sans leur accord préalable.

Dans l'hypothèse où ces documents feraient l'objet d'une utilisation préjudiciable par un tiers, RFI saisira les tribunaux compétents afin de faire cesser ces agissements.

Les salariés visés au II du présent accord pourront, si de tels agissements sont portés à leur connaissance, en informer la direction de la société qui, à leur demande, mettra les mêmes moyens en œuvre pour faire cesser ces agissements

Le Médecin généraliste (1999)

Article 2 : objet de l'accord et produits concernés

(...)A chaque cession, l'auteur conserve un droit moral sur son œuvre ;

La page de garde du site comportera la mention « tous droits réservés »

Les Echos (1999)

Art. II.1 Autorisation d'exploitation des contributions par un tiers, personne physique ou morale.

Le journaliste autorisera la reproduction et/ou la représentation de tout ou partie d'un article par un tiers, personne physique ou morale, dans la mesure où la direction de l'entreprise de presse qui l'emploie lui aura remis au préalable un document intitulé « cession des droits d'exploitation à un tiers ».

Ce document, sous peine de nullité, précisera :

- le nom du journaliste ;
- le titre de l'article ;
- la date de parution, la rubrique et la page ;
- l'utilisation précise souhaitée et parfaitement déterminée ;
- le nom ou la raison sociale du tiers sollicitant l'exploitation dudit article ;
- ses coordonnées postales et téléphoniques.

Ce document sera obligatoirement assorti de la signature du journaliste, de la mention manuscrite : « bon pour accord » et sera datée.

Les journalistes et les directions des entreprises de presse concernées conviennent d'établir conjointement une charte déontologique précisant le cadre de ces exploitations et s'engagent à faire respecter le droit moral des journalistes et à ne

concéder ces contributions qu'en vue d'une exploitation dans des supports dont la ligne éditoriale est compatible avec celle des entreprises de presse concernées

L'Expansion (1999)

1. Déontologie

1.1 Une liste des publications (du groupe Expansion ou extérieures), autorisées à reproduire les œuvres journalistiques (articles, traductions, infographies, cartes...) moyennant paiement, sera établie chaque année par une commission composée des délégués syndicaux ou toute personne qu'ils désigneront, des présidents des sociétés de personnel, et du directeur des rédactions, qui statuera à l'unanimité.

1.2 Les rédacteurs disposent d'un droit d'alerte : ils peuvent saisir la commission à tout moment en cas de changement en cours d'année dans l'actionnariat ou l'orientation éditoriale d'un titre figurant dans la liste. La commission veillera au respect de la déontologie et pourra, dans ce cas, s'opposer à une revente d'un commun accord. Elle pourra également se réunir en cours d'année pour ajouter un titre à la liste.

1.3 La gratuité de la cession de toute œuvre ou partie d'œuvre, qu'elle soit présente dans cette liste ou non, est subordonnée à l'accord de l'auteur.

1.4 Si la cession concerne une publication absente de cette liste, elle ne pourra intervenir qu'après examen par le journaliste concerné qui pourra la refuser.

1.5 Une charte, annexée à l'accord, énumère les conditions déontologiques à respecter pour la nouvelle publication. L'auteur sera informé à chaque revente d'une de ses œuvres. (...)

VNU. Fr (1999)

Article 4 : obligations de VNU

(...) 2. Droit moral des journalistes et auteurs

VNU respectera le droit moral des journalistes et des auteurs sur leurs œuvres exploitées en vertu de la présente convention, notamment chaque œuvre devra être accompagnée de la mention du nom ou du pseudonyme du journaliste et de l'auteur, dans les mêmes termes que ceux de la publication sur support papier, ainsi que du nom du magazine dans lequel l'œuvre a fait l'objet d'une première publication.

Les œuvres devront être reproduites et communiquées intégralement et sans modification, toute coupure ou modification éventuellement envisagée devant être soumise à l'accord préalable et écrit du journaliste ou de l'auteur.

3 Exécution de bonne foi

D'une manière générale, VNU s'engage à prendre toutes les mesures nécessaires pour éviter une quelconque infraction par un tiers au droit des journalistes ou des auteurs sur leurs œuvres.

Denmark

Excerpts from collective agreements between the Danish Union of Journalists and various media or media organisations.

An example of the type of Internet agreement entered into on behalf of freelance journalists and 12 different magazines, trade union papers and newspapers.

Thereafter the overall collective reuse agreement with the Danish Newspaper Publishers Association, the daily newspaper Politiken, the daily newspaper Berlingske Tidende, the daily newspaper Jyllands-Posten, TV 2 and the Danish Radio- and Television (DR 1 and 2).

All the excerpts include clauses on moral rights. For further details on royalty and other conditions please access the documents (not all are available) on the IFJ web site.

The model agreement that has been entered into by 12 periodicals, magazines, trade union papers, weeklies etc.

- “1. All editorial material covered by this agreement may be used (no matter when it was produced) in both the weekly magazine “.....” and the Internet version of “.....”.
2. The Internet version of “.....” is subject to the same editorial management as the weekly magazine “.....”. In all respects it must be ensured that editorial material is dealt with in correct journalistic fashion and with due regard for section 3 of the Danish Authors’ right Act.
3. will inform everyone gaining access to the article database in the Internet version of “.....” of the authors’ right restrictions applying to the use of the editorial material as follows:

“The articles are made available for display/reading purposes. Copying in electronic/digital form is not permitted (cf. section 12 of the Danish Authors’ right Act). Hard copies may be taken for private use. Further use of the articles is subject to the permission of the journalists concerned. Contact to these journalists can be arranged via”
4. From 1st January 1997 onwards a bonus of 12.5 per cent of the fee per article will be paid for any article supplied to the weekly magazine “.....” which is also used in the Internet version of “.....”.

Articles published in the weekly magazine “.....” before 1st January 1997 may be included in the article database in the Internet version of “.....” in return for payment of 7 per cent of the fee paid originally per article.
5. Freelancers who are members of the Danish Union of Journalists must be informed of (and given a copy of) this agreement before entering into agreements concerning fees.”

Excerpt from the agreement with the Danish Newspaper Publishers:

“§9. The use of the material, that a third party is given license to according to this agreement shall respect the moral rights of the author as stated in the (Danish) legislation on authors’ rights.

In all agreements between the newspaper and third parties it must be secured that the final use of the material will take place according to proper journalistic standards and in accordance with *droit moral*.

In specific cases an employee has the right to tell the editor in chief that a certain article or other piece of editorial material cannot be licensed for further use because of promises to sources or similar circumstances.”

Excerpt from the agreement with the daily newspaper Politiken:

“§ 4. In connection with the further use of the editorial material it is the duty of the parties involved to avoid any use of the material that is likely to be detrimental to the integrity of either the journalist involved or *Politiken*, in which respect reference is made to general clauses concerning press ethics, media liability, authors’ rights and good marketing.

A/S Dagbladet Politiken must in every contract with a third party stipulate that every use of the material must be in accordance with § 3 in the Danish law on authors’ rights. It must also be clear that the authors’ rights remain with the author (except from the specific uses that have been licensed).

In specific cases an employee has the right to tell the editor in chief that a certain article or other piece of editorial material cannot be licensed for further use because of promises to sources or similar circumstances.”

Excerpt from the agreement with the daily newspaper Berlingske Tidende:

“Apart from the limitations for use of the material due to the framework agreement with the Danish Newspaper Association and the Danish law on authors’ rights, especially the clauses on moral rights, the following is agreed:

1. The final use of the material in the electronic/digital media must be done in respect of the ethical and qualitative guidelines that exist for the editorial material in *Berlingske Tidende*.
2. The editing of the material must be conducted by the editorial staff of *Berlingske On-line* or *Berlingske*’s other editorial units. This is also the case where the material is to be published by one of the co-partners of *Berlingske*.
3. The name of the author (journalist/photographer etc.) must be visible and it must be made clear that the material was first published in *Berlingske*, and when (date).
4. *Berlingske Tidende* has the duty to inform all its co-partners and third party users of this agreement and the stipulations in it and to see to it that the agreement is respected.”

Excerpt from the agreement with the daily newspaper Jyllands-Posten:

“§ 3. The buyer of the rights of use must respect article 3 of the Danish Act on Authors rights.

Stk. 2. The parties agree that written articles, photographs and drawings cannot be used in connection with advertisement. Though, foreign users may use written articles to market the agreement with *Jyllands-Posten*.

Stk. 4. The parties also agree that in order to observe article 3 in the Danish Act on Authors' Rights it is the duty of third party users to name the journalist, photographer, cartoonist etc. in connection with every publication. It must also be visible that the material was produced for *Jyllands-Posten*.

Stk. 5. Copies must be made in extenso, including headlines and illustrations. The agreement on reuse must not give the customer the possibility of using the material in a manner that is apt to violate the journalistic integrity of neither the journalist in question or *Jyllands-Posten*.

Stk. 6. Far reaching agreements on reuse that give the customer a general right to reuse written articles from *Jyllands-Posten* can only be entered into with customers who in their employment have qualified journalists who can guarantee a proper journalistic handling of the material.

Stk. 7. It must be clear in every agreement with a customer that the authors' rights remain with the original author and that *Jyllands-Posten* only handles the material on behalf of the authors and the resale and reuse without the involvement of *Jyllands-Posten* is not allowed.

Stk. 8. In specific cases an employee has the right to tell the editor in chief that a certain article or other piece of editorial material cannot be licensed for further use due to his or her editorial or artistic integrity and conscience or because of promises to sources or similar circumstances.”

1 Excerpt from the collective agreement with the Danish Radio- and Television Company DR and TV 2/DENMARK (two different agreements, but clause 2 is identical)

“Clause 2. In all contracts with third parties concerning sale of reuse rights it must be clearly stated what specific rights of use the third party acquires and that the third party does not acquire any further rights. It must also be clearly stated that any use by the third party must be in accordance with the clauses in the Danish Act on Authors' right concerning moral rights, including the right to be named the author (crediting). TV 2 is obligated to produce the necessary information and standard contracts concerning this.

Authors' Rights For All Summit 2000



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