

July 16, 1993

MINUTE

On July 16, 1993, in Washington, D.C., the duly authorized representatives of the American Institute In Taiwan and the Coordination Council For North American Affairs signed the "AGREEMENT FOR THE PROTECTION OF COPYRIGHTS BETWEEN THE AMERICAN INSTITUTE IN TAIWAN AND THE COORDINATION COUNCIL FOR NORTH AMERICAN AFFAIRS." The text of that Agreement is in the English and Chinese language in duplicate copies, both texts being equally authentic.

Raymond

Chia-shung Pan

**AGREEMENT FOR THE PROTECTION OF COPYRIGHT
BETWEEN THE AMERICAN INSTITUTE IN TAIWAN AND
THE COORDINATION COUNCIL FOR
NORTH AMERICAN AFFAIRS**

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THE AMERICAN INSTITUTE IN TAIWAN AND THE COORDINATION
COUNCIL FOR NORTH AMERICAN AFFAIRS**

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

Article 1

- (1) The AIT and the CCNAA, as Parties to this Agreement, undertake to provide for and to maintain in the domestic legislation of their respective authorities and under this Agreement the adequate and effective rights of authors and other copyright proprietors in their literary and artistic works.
- (2) "Territory" shall describe the area under the jurisdiction of the authority of either Party to this Agreement as the context may require.
- (3) A "protected person" shall mean:
 - (a) An individual or juridical person who under the laws of either territory would be considered a citizen or national of that territory, and
 - (b) An individual or juridical person who first publishes his or her works in that territory.
- (4) In the territories represented by the Parties, each of the following also shall be deemed a "protected person" upon the fulfillment of the conditions set out in the proviso following paragraph (b) below:
 - (a) A person or entity identified in paragraph(3) (a) above; and
 - (b) A juridical entity wherever located which is directly, or indirectly controlled by, or where a majority of the shares or other proprietary interest is owned by, a person or entity identified in paragraph (3)(a)above.

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

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

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

- (5) Full copyright protection will be provided in the territory represented by AIT to protected persons of the territory represented by CCNAA for such exclusive rights in literary and artistic works upon the condition that such works are first published in a territory that is party to an international copyright convention to which the territory represented by AIT adheres.
- (6) Authors and other copyright owners who have their habitual residence in one of the territories represented by either Party to this Agreement shall, for the purposes of this Agreement, be assimilated to protected persons of that territory .
- (7) Notwithstanding the provisions of paragraphs (3)(b) and (6) above, if a territory not a Party to this Agreement does not protect works of protected persons of the territory represented by CCNAA first published in the non-party's territory, protection accorded to the works of such citizens, nationals, or juridical entities of that non-Party territory shall be restricted by the authorities of the territory represented by CCNAA in a corresponding manner.

Article 2

- (1) The expression "literary and artistic works" shall include every original production in the literary, scientific, and artistic domain, whatever may be the mode or form of its expression, including books, pamphlets, computer programs and other writings; lectures, addresses, sermons and

other oral works; dramatic or dramatico-musical works; choreographic works; musical works with or without words; sound recordings; motion pictures fixed in any form including videotape; pictorial works; artistic works; photographic works; maps; scientific-technological or engineering design drawings; translations; compilations; and other works. The categories of such works shall be determined by the applicable laws of each territory.

- (2) Whether all or specific categories of literary and artistic works must be fixed in some material form in order to be protected will be determined according to the laws of each territory.
- (3) Without prejudice to the copyright in the original work, and except as otherwise provided in this Agreement, translations, adaptations, arrangements of musical works and other alterations of a literary or artistic work shall be independently protected in accordance with this Agreement and the laws of each territory.
- (4) It shall be a matter for the legislation in each territory to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.
- (5) Collections of literary or artistic works or compilations of other preexisting materials which, by reason of the selection and arrangement of their contents, constitute intellectual creations such as directories, encyclopedias, and anthologies, regardless of their means of fixation and reproduction whether in print or analogous form or in electronic media, shall be independently protected; however such protection shall not affect the copyright, if any, in any works forming part of such collections or compilations.
- (6) The works mentioned in this Article shall enjoy copyright protection in each territory represented by a Party to this Agreement. This protection shall operate for the benefit of the author and his or her successors in title.

Article 3

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

- (2) The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. Provided further that, the performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary and artistic works and the exhibition of a work of art shall not constitute publication.
- (3) A work shall be considered as having been first published in the territory represented by a Party to this Agreement if it has been published there within thirty days of its first publication anywhere else.

Article 4

- (1) In respect of literary and artistic works for which they are protected persons under this Agreement, authors and other copyright owners shall enjoy in the territory represented by either of the Parties to this Agreement, the rights which their respective laws do now or may hereafter grant to their protected persons consistent with the terms of this Agreement and in accordance with their respective laws.
- (2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the territory of origin of the work. The extent of protection and the means of redress afforded to such protected persons hereunder to protect their rights shall be consistent with the terms of this Agreement and governed by the laws of the territory where protection is claimed.
- (3) Upon compliance with procedural measures, if any, not precluded by (2) above, and concerned with enforcement of the rights embodied in this Agreement in each territory, the author or copyright owner and his or her assignees and exclusive licensees shall be entitled to institute in that territory infringement proceedings and to secure effective criminal or customs enforcement of the rights embodied in this Agreement and in accordance with the laws of the territories represented by the Parties to this Agreement.
- (4) Such procedural measures, if imposed, shall:
 - (a) be applied equally to all protected persons; and

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

Article 5

- (1) The term of protection shall be no less than the life of the author and fifty years after his or her death.
- (2) In the case of works not authored by a natural person, the term of protection shall expire no less than fifty years after the date of creation or first publication of the work, whichever expires first.
- (3) If, however, on the date on which this Agreement comes into effect, the legislation of the territory represented by a Party to this Agreement has established periods of protection for certain categories of works as from the day of creation or the day of first publication, they may maintain this exception and apply it to works created after the Agreement comes into effect. The period of protection for such categories of works may not be less than fifty years after the day of completion.
- (4) In the case of a work of joint authorship, the term shall be measured from the death of the surviving author.

Article 6

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

Article 7

- (1) Except as otherwise provided in this Agreement, authors of literary and artistic works protected by this Agreement shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.
- (2) Any sound or visual recording of any such work shall be considered as a reproduction for the purposes of this Agreement.

Article 8

- (1) Authors of dramatic works, dramatico-musical works, musical works, and sound recordings for which they are protected persons hereunder shall enjoy the exclusive right of authorizing:
 - (i) the public performance of their works, including such public performance by any means or process; or
 - (ii) any communication to the public of the performance of their works.
- (2) The law of the territory represented by either Party may limit or not extend rights of public performance, public communication, or broadcasting to sound recordings, notwithstanding the provisions of this Article and Article 9.
- (3) For the purpose of this Article and Articles (9) and (10) to perform or present a work in "public" shall mean:
 - (a) to perform or present it in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
 - (b) to communicate, or transmit a performance or presentation of a work in any form or by means of any device or process to a place specified in clause (a) or to the public, regardless of whether the members of the public capable of receiving such communications receive them in the same or separate places and at the same time or at different times.

Article 9

- (1) Except to the extent otherwise provided in paragraphs (2) and (3) of this Article, authors of literary and artistic works protected under this Agreement shall enjoy the exclusive right of authorizing:
 - (i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
 - (ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;
 - (iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work;
 - (iv) the exercise of the foregoing rights in the territory represented by a Party to this Agreement shall be in accordance with the legislation of that territory.
- (2) The rights of authors and copyright owners in works to authorize cable retransmission of broadcasts may be limited to a right of remuneration notwithstanding the provisions of this Article. Such limitations shall apply only in the territories where they have been prescribed, and shall be accompanied by detailed laws and regulations that provide strong safeguards, including notification of the copyright owner and effective opportunity to be heard, mechanisms to ensure prompt payment and remittance of royalties consistent with those that would be negotiated on a voluntary basis.
- (3) It shall, however, be a matter for legislation in the territory represented by each Party to this Agreement to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

Article 10

Authors of literary and artistic works for which they are protected persons hereunder shall enjoy the exclusive right of authorizing:

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

Article 11

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

Article 12

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

Article 13

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

Article 14

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

Article 15

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

Article 16

- (1) The provisions of this Agreement shall apply in each territory represented by a Party to this Agreement to all works that are protected under the copyright law of that territory on the effective date of this Agreement. The provisions of this Agreement shall not affect obligations arising under earlier agreements except as specifically provided for in this Agreement.
- (2) Works created in the twenty years prior to 1985 shall be included as works protected under this Agreement in the territory represented by CCNAA, unless the work was registered pursuant to the copyright law then in effect and the term of protection under that law expired prior to 1985.

Article 17

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

Article 18

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

Article 19

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

Article 20

- (1) The Parties to this Agreement shall consult periodically in order to review the operation and application of this Agreement so as to assure that, with the passage of time and changes in circumstances, the objectives of this Agreement may be effectively maintained.
- (2) In order to assist in the carrying out of functions referred to in the Appendix to this Agreement, the Parties shall identify and ensure effective communication between the copyright information centers established by the Parties or by rights holders or users represented by the Parties.

Article 21

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

Article 22

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

For: American Institute in Taiwan

For: Coordination Council for North
American Affairs

NAME:

TITLE:

DATE:

Arthur H. Ellwood
Chairman, AIT
July 17, 1993

NAME:

TITLE:

DATE:

Man-shih Aⁿ
Representative CCNAA
July 16, 1993

APPENDIX
Article I

- (1) To ensure an effective introduction of translation rights in the territory represented by the CCNAA, the AIT agrees that for a transitional period lasting until January 1, 2005 the authorities of the territory represented by the CCNAA may, so far as works published in printed or analogous forms of reproduction are concerned, substitute for the exclusive right of translation provided for in Article 6 of the Agreement for the Protection of Copyright Between the Coordination Council for North American Affairs and the American Institute in Taiwan (the Agreement) a system of non-exclusive and non-transferable licenses granted by the competent authority following notice of the commencement of a proceeding to the author or copyright owner under the following conditions.
- (2) A license under this Appendix may be granted only if the applicant, in accordance with the procedure of the territory represented by CCNAA, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any information center referred to in paragraph (3).
- (3) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application, submitted to the authority competent to grant the license, to the publisher whose name appears on the work and to any information center which may have been designated by the Parties to this Agreement.
- (4) The name of the author shall be indicated on all copies of the translation published under a license granted under this Appendix. The original title of the work shall appear on all the said copies.
- (5) No license granted under this Appendix shall extend to the export of copies, and any such license shall be valid only for publication of the translation in the territory represented by CCNAA.

- (6) All copies published under a license granted by virtue of this Appendix shall bear a notice in the Chinese language stating that the copies are available for distribution only in the territory represented by CCNAA.
- (7) The CCNAA shall ensure:
- (a) That a license shall be granted only following a proceeding before the designated authority at which the author or copyright owner or his designated representative:
 - (i) has the right to appear with the assistance of counsel;
 - (ii) may introduce evidence and examine applicants for licenses; and,
 - (iii) has the right to a prompt appeal from the determination to grant a license.
 - (b) That the license provides, in favor of the owner of the right of translation, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two territories concerned, and
 - (c) Payment and transmittal of the compensation; should national currency regulations intervene, the Parties to this Agreement shall make all efforts to ensure transmittal in convertible currency or its equivalent.
 - (d) That prompt and effective procedures are established to enforce the termination of a license granted under this facility where:
 - (i) the licensee has violated the terms of the license established by the competent authority, including the terms of this Appendix; or
 - (ii) where the circumstances set out in Article II(4) and (5) of this Appendix arise.

Article II

- (1) (a) In the case of teaching, scholarship or research after the expiration of a period of one year commencing on the date of the first publication of the work, any protected person of the territory represented by CCNAA may apply for a license to make a translation of such work into Chinese and publish the translation in printed or an analogous form of reproduction, provided that the work has not been published in Chinese anywhere in the world except the China mainland within that one year period by the owner of the right of translation or with his authorization.
- (b) A license under the conditions provided in this Appendix may also be granted if all the editions of the translation published anywhere in the world except the China mainland are out of print.
- (2) (a) No license obtainable after one year shall be granted under this Article until a further period of nine months has elapsed
 - (i) from the date on which the applicant complies with the requirements of Article I(2) of this Appendix.
 - (ii) Where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article I(3) of this Appendix, copies of his application submitted to the authority competent to grant the license.
- (b) If, during the said period of nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under this Article shall be granted.
- (3) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.
- (4) If a translation of a work is published by the owner of the right of

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

- (5) No license shall be granted or maintained under this Article when the author has withdrawn from circulation all copies of his work.
- (6) In the event that any license granted under this Appendix is terminated in accordance with the procedure contemplated in paragraph (7)(d) of Article I of this Appendix or in circumstances described in paragraphs (4) and (5) of this Article II, all copies already made on or before the date on which the license terminates may continue to be distributed until their stock is exhausted.
- (7) (a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in the territory represented by CCNAA, upon an application made to the competent authority of that territory by the said organization, provided that all of the following conditions are met:
 - (i) the translation is made from a copy made and acquired in accordance with the laws of the said territory;
 - (ii) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;
 - (iii) the translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the said territory, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;


- (iv) all uses made of the translation are without any commercial purpose.
- (b) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in subparagraph (a) and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the territory whose competent authority granted the license in question.
- (c) Provided that all of the criteria and conditions set out in subparagraph (a) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.
- (d) Subject to subparagraphs (a) to (c), the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

會議紀錄

一九九三年七月十六日

北美事務協調委員會及美國在台協會經合法授權之代表於一九九三年七月十六日在美國華盛頓特區簽署「北美事務協調委員會與美國在台協會著作權保護協定」。該協定用中文及英文各繕兩份，兩種文字之約本同一作準。

美國在台協會代表



北美事務協調委員會代表



北美事務協調委員會與美國在台協會著作權保護協定

北美事務協調委員會與美國在台協會著作權保護協定

北美事務協調委員會與美國在台協會雙方，為增進彼此廣泛、密切，與友好之商業、文化暨其他關係，並基於無差別待遇原則，促進商業發展，茲締結本協定，俾提高著作人及其他著作權人之權益，而無損於彼等著作依前此相關之協定或其他協議得獲得之保障。

第一條

(一) 北美事務協調委員會與美國在台協會即本協定之締約雙方，同意各依其國內法暨本協定，賦予文學與藝術著作之著作人、著作權人充分及有效之權益。

(二) 「領域」係指本協定述及之締約各該方當局所管轄之地區。

(三) 「受保護人」係指：

甲、依各該領域法律認定為公民或國民之個人或法人，及
乙、於該領域內首次發行其著作之個人或法人。

(四) 以下各款對象，倘符合本段乙款以下之規定者，於本協定雙方領域內，亦視為「受保護人」：

甲、上述(三)項甲款所稱之人或法人。

乙、上述第(三)項甲款所稱之人或法人，擁有大多數股份或其他專有利益或直接、間接控制無論位於何處之法人。

第四項所規定之人或組織，在締約雙方領域內，於下開兩款條件下，經由有關各造簽訂任何書面協議取得文學或藝術著作之專有權利者，應被認為係「受保護人」：

甲、該專有權利係該著作於任一方領域參加之多邊著作權公約會員國內首次發行後一年內經由有關各造簽署協議取得者。

乙、該著作須已可在任一方領域內對公眾流通。

本項所稱之間接控制，係指透過不論位於何處之分公司或子公司加以控制之意。

(五)北美事務協調委員會代表之領域所屬「受保護人」之文學與美術著作倘係在美國在台協會所代表之領域參加之國際著作權公約會員國內首次發行，其專有權利於美國在台協會所代表之領域內將受充分之著作權保護。

(六)依本協定之宗旨，於本協定一方領域內有常居所之著作人及其他著作權人，應予視同該領域內之受保護人。

雖有上述第(三)項乙款及第(六)項之規定，倘非本協定一造之領域不保護北美事務協調委員會所代表之領域之受保護人在該非本協定一方領域首次發行之著作時，北美事務協調委員會所代表之領域得以對等之方式，對該非本協定一方領域公民、國民或法人之著作之保護，予以限制。

第二條

(一)所謂「文學及美術著作」，應包括在文學、科學及藝術範疇內不論以任何方法或形式表現之原始著作，包括書籍、小冊子、電腦程式及其他著作；講演、講道，及其他口述著作；戲劇或樂劇著作；舞蹈著作、不論是否附有歌詞之音樂著作、錄音著作；包括錄影帶之任何形式電影著作；圖形著作；美術著作；攝影著作；地圖；科技或工程設計圖形；翻譯；編輯及其他著作。該等著作之種類，依本協定各方領域內適用之法律定之。

(二)文學及藝術著作，是否其全部或特定部分種類須附著於物體上方予以保護，由本協定各該方領域內之法令定之。

(三)除本協定另有規定外，翻譯著作、改作著作、音樂著作之編曲，及其他文學或藝術著作之改變所產生之著作，在無害原著作著作權之範圍內，應依本協定及

各該方領域之法律予以獨立之保護。

(四) 立法、行政及司法性質之公文書，暨該等公文書之官方翻譯，其著作權之保護，依本協定各該方領域之法令為之。

(五) 藉文學或藝術著作或先前已存在之資料，予以選擇及配列而形成智能創作之集合著作或編輯著作，例如名錄、百科全書、文選集、其附著及重製方式，不論係以印刷或類似方法或藉電子媒介為之，俱獨立受保護，惟不得損害構成該集合著作或編輯著作之各該著作之著作權。

(六) 本條所列之著作，在本協定各該方領域內均受到保護，該保護應以維護著作人及其繼承人等之權益為宗旨。

第三條

(一) 本協定之保護，應適用於各該方領域內受保護人所創作之著作，無論其著作發行與否。

(二) 所謂「已發行之著作」，係指不論複製之方式為何，經獲得著作權人之同意而發行之著作，且發行之版本數量依該著作之性質，須已滿足公眾之合理需求。但戲劇、樂劇著作或電影著作之上演、音樂著作之演奏、文學著作之公開朗讀

、文學或美術著作之有線傳播或廣播、美術著作之展示等，均不構成發行。

(三) 著作於他處首次發行後三十日內，於締約各該方領域內發行者，視為在該領域內首次發行。

第四條

(一) 依本協定受保護之文學及藝術著作之著作人及其他著作權人享有本協定各該方領域內法令現在所賦予或將來可能賦予受保護人之權利，俾符合本協定及各領域法律之規定。

(二) 此等權利之享有與行使，無須履行任何形式要件，該享有與行使且與該等著作產生之領域內所已獲之保護無關。賦予受保護人權利保護範圍及救濟方法，應符合本協定之規定，並遵照提供保護之一方領域內法律之規定。

(三) 著作人、著作權人及其受讓人或取得其專有權利之人，在締約各方領域內符合非前項所排除之程序要件時，應有權就本協定所賦予之權利之執行，於各該領域內依該領域之法令，提起著作權侵害之訴訟程序，及獲得刑事或海關之有效執行。

(四) 前項之程序要件，如施行時，應：

甲、平等地適用於所有受保護人。

乙、印發各申請人均可方便取得之規定及指導資料憑以執行。

(五)本協定各方領域內受保護人，就其著作權利之執行，在締約一方領域內，依其國內法提起訴訟時，若其姓名或出版日期、地點，出現於該系爭著作物上時，未經反證前，該領域，應推定該人即該著作之著作人或著作權人，且該日期、地點為真實。

第五條

(一)保護期間不得短於著作人終身及其死亡後五十年。

(二)如著作人係非自然人，其保護期間不得短於五十年，自著作完成之日或首次發行之日起算，以先到期者為準。

(三)本協定在一方領域內生效時，該領域已有法律規定某類著作之保護期間，係從著作完成之日或首次發行之日起算者，得保留該例外之規定，並得將規定適用於本協定生效後完成之著作。但該類著作之保護期間，不得短於自完成之日起算之五十年。

(四)共同著作之保護期間，自共同著作人中最後死亡之日起算。

第六條

受本協定保護之文學及藝術著作之著作人，於其著作權保護存續期間內，除本協定及為本協定不可分割之一部份之附錄另有規定外，享有該著作翻譯及授權翻譯該著作之專有權利。

第七條

(一) 除本協定另有規定外，受本協定保護之文學、藝術著作之著作人，享有將其著作授權以任何方式重製之專有權利。

(二) 依本協定之宗旨，對任何此種著作之錄音及錄影視為重製。

第八條

(一) 受本協定保護之戲劇著作、樂劇著作、音樂著作及錄音著作之著作人，享有下列授權之專有權利：

甲、以任何方法或程序公開演出、上演或演奏其著作。

乙、其著作之演出、上演或演奏之任何公開傳播。

(二) 締約任一方領域之法律，得不受本條及第九條之規範而限制或不保護錄音著作之公開演奏權、公開傳播或廣播權。

(三) 依本條及第九條及第十條之宗旨，「公開」演出或表演一詞係指：

甲、在向公眾開放之場所或在家庭及其交際圈以外，聚集多數人之任何場所從事表演或演出者，或

乙、以任何形式或藉任何設備或程序將該著作之表演或演出，向公眾傳播或傳送至上述甲款地點者；不論得接收該傳播之公眾成員係在相同或不同之地點接收，亦不論其係在相同時間或不同時間接收。

第九條

(一) 受本協定保護之文學及藝術著作之著作人，除本條第(二)(三)項特別規定外，享有下列授權之專有權利：

甲、著作之廣播或其他以信號聲音或影像之無線電散播方式之公開傳播。

乙、由原廣播機構以外之機構，將已傳播之著作，予以轉播或有線傳播方法之公開傳播。

丙、以播音器或其他類似器具以信號、聲音或影像，將著作之廣播公開傳播。

丁、上述權利之行使，依本協定，各該方領域內之法令為之。

(二) 著作人或著作權人就廣播之有線再傳播享有之授權權利，得不受本條之規範，

限制於僅享有收取報酬之權利。惟該限制規定僅適用於已有法令限制之領域內，並應訂定詳細之法規，提供強有力之保障，包括對著作權人之通知，有效的聽聞機會，迅速付款制度與版稅之匯寄；版稅應與基於自願之基礎上協商所獲致者相當。

(三)廣播機關為自己廣播之目的，以本身之設備所為之暫時性錄製，依締約各該方領域內之法令規範之。該法令得允許具有特殊紀錄性質之上述錄製物，在官方檔案室保存。

第十條

受本協定保護之文學、藝術著作之著作人，享有下列專屬權利：

甲、將著作以任何方法或程序公開口述。

乙、將著作口述之任何公開傳播。

第十一條

受本協定保護之文學或藝術著作之著作人，享有授權改作、改編及其他改變其著作之專有權利。

第十二條

對於包括歌詞與樂曲之音樂著作，除非著作人或著作權人已授權將該著作製作錄音著作，本協定各方之領域得不受本協定第七條之規範，未經著作人或著作權人之同意，實施非自願之授權，准予製作包括音樂著作及其附帶文字之錄音著作。此非自願之授權，不得容許複製他人之錄音著作，且僅適用於法令已有非自願授權規定之締約該方領域內；亦不得損害該等著作人收取合理報酬之權利；除非另有協議。該合理報酬由主管機關定之。

第十三條

在不與著作之正常利用相衝突，且不損害著作人或著作權人之合法權益情形下，締約各該方領域得立法對本協定第六至十一條規定之專有權利，予以有關限度之例外限制。

第十四條

(一)受本協定保護之著作，其侵害物，在該著作享有合法保護之締約任一方領域內，應予扣押。侵害物係指侵害依國內法及本協定所規定之專屬權利之任何著作版本；包括進口版本，倘該版本之進口商縱係於進口地自行製作該版本亦構成侵害著作權者。

(一) 扣押應依締約各該方領域內法令為之。

第十五條

本協定之規定，不影響締約任一方，依其法令或規定，在主管機關認為必要之情形下，對於任何著作或重製物之通行、上演，或展示，予以許可，控制或禁止之權利。

第十六條

(一) 本協定之規定，適用於本協定生效時，仍受本協定一方領域之著作權法保護之所有著作。除本協定中之特別規定外，本協定之規定，不得影響前此任何協議所產生之義務。

(二) 一九八五年以前二十年内完成之著作，除經依當時著作權法規定辦理註冊，且其著作權保護期間於一九八五年前已經屆滿者外，於北美事務協調委員會所代表之領域內，應屬受本協定保護之著作。

第十七條

本協定之規定，不排除本協定任一方賦予較本協定更高標準之保護，但該保護，應平等賦予本協定之所有受保護人。

第十八條

本協定一方領域之法人，無論是否為他方領域之主管機關所認許，應於他方領域內享有提起訴訟之完全權利。

第十九條

本協定各該方領域應採取依其國內法必要之措施，以確保本協定規定之適用。締約雙方並了解，於本協定生效時，各方領域須依其國內法使本協定之條款生效。

第二十條

(一) 本協定締約雙方，應定期磋商，檢討本協定之適用與運作，以確保在時間與情勢演變中，仍能貫徹本協定之目標。

(二) 為協助實踐本協定附錄之功能，締約雙方應確保由雙方，或雙方之權利人或利用人所建立之「著作權資訊中心」間之有效溝通。

第二十一條

本協定自正式簽署之日起生效，締約任何一方得於至少六個月之前，以書面通知他方終止本協定。

第二十二條

本協定自最後簽署之日起生效，為此，經合法授權之雙方代表爰於本協定簽字以昭信守。

美國在台協會代表

姓名：

Matthew A. Bell
Chairman, AIT

職稱：

日期：

July 16, 1993

北美事務協調委員會代表

姓名：

丁繼清
駐美代表

職稱：

日期：

一九九三年七月十七日

附錄

第一條

(一) 為確保將翻譯權有效引進北美事務協調委員會所代表之領域，美國在台協會同意，至西元二〇〇五年一月一日止之過渡期間內，北美事務協調委員會所代表領域之主管機關，得就以印刷或類似重製形式發行之著作，建立一非專有與不可移轉之授權制度，以代替美國在台協會與北美事務協調委員會著作權保護協定第六條規定之翻譯專有權利，主管機關應依下列條件，於首先通知著作人或著作權人後，始予授權。

(二) 本附錄規定之授權，僅於申請授權之人依北美事務協調委員會所代表之領域規定之程序，向權利所有人，要求為翻譯及發行其翻譯遭到拒絕或經相當努力，而無法與權利所有人取得聯繫者，始得賦予。申請人於提出上述要求之同時，並應通知第(三)項規定之資訊中心。

(三) 申請授權之人無法與權利所有人取得聯繫時，應對著作上所顯示之發行人及本協定各該方指定之資訊中心，以航空掛號郵寄其向主管機關提出之申請書副本。

四 依本附錄賦予授權所為之翻譯版本，其發行時應於所有版本註明著作人之姓名以及原著作名稱。

五 依本附錄所賦予之授權，不得及於翻譯品之輸出，且該授權之效力僅限於北美事務協調委員會所代表領域內翻譯發行。

六 依本附錄賦予授權發行之版本，應具中文記載註明該版本僅限於北美事務協調委員會所代表之領域內發行分銷。

七 北美事務協調委員會應確保下列各項目之規定：

甲、授權之許可，須依指定機關規定之程序為之，著作人或著作權人或其指定之代表人具有下列之權利：

- (1) 有會同顧問在場協助下辦理之權，
- (2) 得提供證據及審查授權申請人，及
- (3) 對許可授權之決定，有提出立即申訴之權。

乙、為維護翻譯權人之權益，該授權應提供公平之補償，該補償額度須符合締約雙方領域人民一般經自由磋商而得之授權權利金的標準。

丙、補償金之支付及匯交，如因國家貨幣規定有所干預時，締約雙方須盡力

確保以可兌換之貨幣或其等值之物之匯付。

丁、對於下列情形，應建立迅速及有效的程序，以終止依本制度所賦予之授權：

- (1) 被授權人違反主管機關頒布之授權規定或違反本附錄之規定者。
- (2) 本附錄第二條第四、五項規定之情況發生時。

第二條

(一) 甲、如著作自首次發行之日起屆滿一年，而該著作之翻譯權所有人或其所授權之人，未於該一年內，在除中國大陸以外地區發行中文譯本，則任何北美事務協調委員會所代表領域之受保護人，俱得為教育、學術或研究之目的申請授權翻譯該著作，並將其翻譯以印刷或類似之重製方式發行之。乙、凡在中國大陸以外地區發行之所有中文譯本已絕版者亦得依本附錄規定之條件賦予授權。

(二) 甲、著作首次發行雖已屆滿一年，惟非經左列之日起屆滿九個月之後，仍不得依本條之規定賦予授權：

- (1) 申請許可之人，符合本附錄第一條第二項規定之日。

(2) 翻譯權所有人或其住所不明者，自申請授權之人依本附屬書第一條第三項規定，向主管機關陳送授權申請書副本之日。

乙、倘翻譯權所有人或其授權之人於上述九個月之期間內發行中譯本，本條規定之授權，不得賦予。

(三) 本條規定之授權，僅限於教育、學術或研究目的下為之。

(四) 經翻譯權人或得其授權之人，以在北美事務協調委員會代表之領域內，類似作品之通常合理價格發行著作之中文翻譯，且其內容與前此依本條授權發行之中譯版內容大體相同，則依本條所賦予之該項授權，應予終止。

(五) 著作人已將其著作之版本，自流通中全部收回時，不得賦予或維持本條規定之授權。

(六) 依本附錄賦予之授權，經依本附錄第一條第七項丁之規定，或依本附錄第二條第四、五項之規定，予以終止時，凡於該授權終止時或終止之日前業已完成之複製物，仍得繼續分銷至其倉存售罄為止。

(七) 甲、於北美事務協調委員會代表之領域內有主事務所之廣播機關，向該領域之主管機關申請翻譯業經以印刷或其他類似之重製方式發行之著作，

倘下列條件均符合時得賦予該廣播機關翻譯之授權：

(1) 該翻譯所依據之著作版本之製作與取得符合前述領域內之法令。

(2) 該翻譯應專門使用於教育目的之廣播或對特定行業專家傳播技術或科學研究結果。

(3) 該翻譯在該領域內，專門用於上述(2)目規定之目的，向收受廣播者為合法之廣播——包括專為該廣播目的，以錄音或錄影為媒體合法製作之廣播。

(4) 該翻譯之一切用途，不得以營利為目的。

乙、在賦予授權之主管機關所在之領域內，有主事務所之其他廣播機關，依前述甲款所規定之目的與條件，並得依本項規定獲授權之原廣播機關之同意者，亦得使用依該原廣播機關所為之翻譯的錄音或錄影。

丙、倘本項甲款所規定之標準及條件均符合時，亦得授權廣播機關翻譯，為有系統之教育活動之目的而準備及發行之視聽節目之內容。

丁、除上述甲至丙款之規定外，前述各項之規定，應適用於在本項規定下之授權之賦予與行使。