

Seventh Inter-college Negotiation Competition Problem  
(November 10 Version)

1. Negoland is a developed nation with a population of about 50 million. Its nominal GDP is about 950 billion US dollars or a per capita GDP of about 20 thousand US dollars. Although its economy has sustained growth of 3 to 4 percent in recent years, its citizens are increasingly dissatisfied with the growing gap between the rich and poor and the high unemployment rate among the youth. Given these circumstances, a former businessman was sworn in as the new president in 2007, and the public is placing high hopes on his abilities. The government of Negoland has long concentrated its educational efforts on teaching its national history and culture. All elementary and secondary schools across the country are required to set up curricula designed to thoroughly familiarize students with the nation's culture and history; in colleges and universities, history is one of the required courses and is incorporated into the core curriculum of every student. This and other factors have resulted in the public's extremely high degree of interest in its own culture and history. Also in recent years, the government of Negoland has focused strongly on exports of its content industry, including films and TV programs, as evidenced by the sharp growth of exports of its movies overseas, from about 500 thousand US dollars in 1995 to 25 million US dollars in 2006. The jump in the export of content, which was partially explained by the production of high-quality entertainment on the backdrop of the stable economy, was believed to owe much to the government's active assistance to the industry, which was selected by the government to serve as a core industry of Negoland's economy. These government initiatives included the formation of colleges and professional schools for fostering personnel to be engaged in the content business, proactive government-led publicity efforts overseas with involvement by overseas government branch offices, and financial assistance and tax benefits for the content industry. The official language of Negoland is Nego. Although the need for English education is called for, English speakers are quite limited among its people.
  
2. Arbitria is a developed nation with a population of about 100 million. Its nominal GDP is about 4 trillion US dollars or about 35 thousand US dollars per capita. It has maintained economic growth of 1 to 2 percent in recent years but its economy, affected by the so-called subprime problem, shows signs of faltering. Faced by the problem of deteriorating international competitiveness of its products caused by the rising cost of labor, Arbitria is placing growing hopes on its content industry. According to an official report by the government of Arbitria, the domestic content market of Arbitria is the second largest in the world; however its presence in the international arena is not always prominent and its content

exports are regarded to be in a state of decline. Moreover, the prospect of domestic growth of the industry looks bleak, which urgently calls for the launch of concrete measures aimed at the globalization of Arbitria's content industry. Specific examples of measures suggested for introduction include stronger focus on the production of content that sells in foreign markets, increased activities in the international joint production of program content and trading of remake rights, training and fostering of talented individuals, diversification of funding techniques and facilitation of funding, as well as the need to incorporate technological innovations, to name just a few. The official language of Arbitria is Arbitrian, but many of its citizens speak fluent English.

3. Negoland and Arbitria are neighbors. The two countries, which sustain close economic ties with each other, are enjoying amicable relations at present. From 1938 to 1945, Negoland and Arbitria were in a state of war with each other. Of particular note is that as a result of aggression by Arbitria, Negoland was placed under control of Arbitria from 1940 to 1945. In this period, Arbitria promoted the "Arbitrianization" of the Nego people, forcing them to adopt the language as well as the culture and social customs of Arbitria. The control by Arbitria came to an end with the defeat of Arbitria in 1945 as a result of the assistance extended to Negoland by Western European nations, and these Western European nations occupied Arbitria in the decade immediately following the defeat. The occupation by the West led Arbitria to be influenced strongly by Western culture. Negoland and Arbitria resumed diplomatic relations in 1968, and have strengthened their economic ties since then.
4. Red Corporation is a company incorporated in Negoland in 1933. Its founder, the late Masami Red, was a renowned Nego author. His work *My Teacher*, published in 1933 at the age of 33, went on to receive the most prestigious literary award of Negoland. Portraying a teacher in a junior high school, *My Teacher* became a bestseller. Masami Red founded Red Corporation, with the intention of publishing literary works and with the hope of using the proceeds he had obtained from the novel for the development of Negoland's literary circle and particularly for the creation of greater opportunities for young authors to publish their works. During the occupation by Arbitria free publication was not permitted, but in the post-war period, the company, which actively published works of promising young authors as well as of Masami Red, enjoyed healthy growth. In 1970 Masami Red published *The Bob Orange Story*. It is a full-length novel based on the life of Bob Orange, a Nego who embarked on a new company after the war and contributed to the economic development of both Arbitria and Negoland. With the death of Masami Red in 1971, the novel became his last work. In accordance with his will, all rights in relation to the works of Masami Red were to be taken over by Red

Corporation.

5. After the death of Masami Red, it was Suzanne Red, the sole daughter of Masami, who assumed the post of president at Red Corporation. Suzanne Red studied movie production while she was a student at a university in the United States. Under the leadership of Suzanne Red, Red Corporation expanded. In 1975, it stepped into the field of movie production with the film adaptation of *My Teacher*, which generated 15 million dollars in box-office revenue. Recent works included the production of *The Bob Orange Story*. Produced in 2007, the movie went unnoticed at first, but became a box office hit after a rave review by a well-known film critic, generating 20 million dollars in box-office revenue. Red Corporation is outlined in Appendix 1.
6. Blue Corporation is an Arbitrian firm established by Akira Blue in 1930. It was initially engaged in radio broadcasting. It entered the field of TV broadcasting in the post-war era, and is now one of the four major civilian TV networks in Arbitria. Since the death of Akira Blue in 1968, the company has been headed by Thomas Blue, Akira's only son. After Thomas took over the company, it made inroads into the movie business, producing a number of box office hits. Blue Corporation is outlined in Appendix 2. In accordance with the will of Akira Blue, all rights in relation to movie business were to be taken over by Blue Corporation.
7. The history of business relationships between Red Corporation and Blue Corporation goes back to 1984, when Blue Corporation purchased the right to make a movie out of Masami Red's sports novel, *Aiming at the Goal*, for a price of 100,000 US dollars. The first novel by Masami Red, *Aiming at the Goal* depicts the series of difficulties encountered and overcome by a university women's varsity field hockey team before triumphing at the national championship game. In 1984, there was a lot of enthusiasm for field hockey in Arbitria, whose national women's field hockey team played very well at the 1984 Los Angeles Olympic Games. The movie, which was released to the public as if to take advantage of the nation's field hockey fever, became a record hit producing 10 million US dollars in box-office revenue for Blue Corporation. The agreement concerning the purchase of the rights for the movie adaptation of *Aiming at the Goal* is shown in Appendix 3. (Please note that the sections other than those shown in Appendix 3 contain no information which is of relevance to the problem.)
8. In addition, Blue Corporation has purchased TV broadcast rights to several other movies produced by Red Corporation and aired them. These are: *Challenging the Future*, a science fiction adventure produced in 1990; *Impermissible Love*, a romance produced in 1995; and *Boss*,

a detective story produced in 2000. All three movies were released for public viewing in Arbitria by Purple Corporation, a film distributor in Arbitria, and were enormous hits. One of the regular TV programs of the TV channel run by Blue Corporation, "Sunday Cinema Theatre," is Blue's principal TV program that broadcasts masterpieces and recent hits of Arbitria and abroad. The viewership of the program, which constantly captures ratings of 10 to 15%, has jumped as high as 30% depending on the movie shown. The three movies described above were purchased for this program and all of them were successful at achieving high ratings of 20% or more.

9. In 2001, Blue desired the TV broadcast rights to *My Teacher* produced by Red Corporation in 1975, and initiated negotiations with Red Corporation. Thomas Blue, president of Blue Corporation, read the English version of *My Teacher* and was deeply impressed by it. Having been informed that the novel had been made into a movie by Red Corporation, he became very interested in airing it on TV. However, given the time slot for the TV program in order to air it in Arbitria, he wanted to edit the movie from its three-hour full-length original to a shorter version of approximately two and a half hours. Another difficult problem relates to where to insert commercials during the airing. Suzanne Red's emotional attachment to *My Teacher* is extremely strong, partly because it was a work that Suzanne Red herself produced and was a work that made her father, Masami Red, famous in Negoland. Suzanne Red explained that with *My Teacher* the movie produced by Red Corporation was a "perfect embodiment of the issues and questions her father and author Masami Red intended to pose" and insisted that editing of the movie "into a shorter version is not permissible;" moreover, she demanded that Red Corporation should have the right to scrutinize where commercials were to be inserted as well as the lengths of such commercials. The two parties did not agree on the price to be charged by Red Corporation for Blue Corporation's airing of the movie on TV, as Red Corporation demanded 500,000 US dollars as opposed to the approximately 100,000 US dollars Blue had in mind. The negotiations came to a deadlock in the end, and subsequently Red Corporation and Blue Corporation never did business together again until 2006.
10. In 2007, Red Corporation and Blue Corporation began negotiations for Blue's right to produce a remake of Masami Red's *My Teacher*. As mentioned earlier, *My Teacher* had been made into a movie by Red Corporation in 1975. At that time it had been a smash hit in Negoland, generating 15,000,000 US dollars in box-office revenue, but in Arbitria it was never shown in movie theatres, aired on the radio or TV, or published in the Arbitrian language. The negotiations for the remake were proposed by Ames Bolt, a common friend of Suzanne Red and Thomas Blue. Born in Negoland, Bolt was educated in Negoland up to high school and then

went to college in Arbitria. He and Thomas Blue were friends while in college. He speaks perfect Nego, Arbitrian and English. He is the president of a trading firm incorporated in Arbitria with offices in both Arbitria and Negoland, engaged in trade between the two nations. Bolt is also a member of the Management Advisory Committee of Blue Corporation. Although this Committee does not have special authority, it meets regularly and dispenses advice concerning the management of the corporation.

11. In the summer of 2006, Ames Bolt visited Thomas Blue at Thomas' summer house. Thomas told Ames that Blue Corporation was interested in making a "full-fledged movie with real impact on society" and asked Ames if he knew of any good work from which a movie could be made. Ames thought that *My Teacher* was ideal given the prevailing mood of Arbitria, where problems, including children's declining academic achievement and a growing number of so-called "monster parents" (parents who make excessive and unreasonable demands on educational institutions on behalf of their children), were surfacing, and the need for educational reform was becoming increasingly pronounced. In response to these concerns, the Educational Ministry of Arbitria set up an Educational Reform Conference to discuss the need for education geared to sound character formation, healthy communications between schools and families, elevation of academic standards from an international perspective, the marshaling of a structure for highly specialized education, the pros and cons of reducing the bureaucracy's scope of influence vis-à-vis the classroom, and increasing the discretionary power permitted to classroom teachers. Ames thought that *My Teacher* would be ideal material from which a movie could be made as it was a timely accompaniment to the growing interest in education. Bolt, who read *My Teacher* while in high school and saw the movie produced by Red Corporation several times while living in Negoland, was deeply impressed by the work.

12. When Bolt recommended *My Teacher*, Thomas Blue told Bolt the following:

"Blue Corporation negotiated with Red Corporation in 2001 for the TV broadcast rights of *My Teacher* produced by Red Corporation, but the president of Red Corporation refused to give in and negotiations fell through. Besides, *My Teacher* is an old story containing sections that may sound obsolete to modern eyes. Also, the difference in national characters and cultures between Negoland and Arbitria should not be forgotten. We would be more than glad to remake the work, but I don't think we can work out the remake deal with Red given the trouble we had to go through in the past just for the airing rights."

"Are you talking about Suzanne?" asked Bolt, "Suzanne was a good friend of mine while I was in junior high and high school, and I know her very well. I didn't know that you had a bit of friction with Suzanne in the past. If you agree, let me talk to her."

Thomas Blue had a high regard for *My Teacher* as a superb work right from the beginning and thought that he would seriously consider remaking the work if a remake would be permitted. He told Bolt, "Let me discuss this a little with our people within the company. I'll get back to you shortly on this."

13. The matter was brought to the attention of Blue Corporation and it was concluded that the majority of people there would go for the remake of *My Teacher*, if conditions concerning the details could be worked out with Red Corporation. On August 30, 2007, Thomas Blue told Bolt on the phone that Blue Corporation decided to seek a remake deal. He asked Bolt to go ahead and approach Suzanne Red, president of Red Corporation, to see how she would feel about it. "All right," said Bolt, "I will contact her."

14. On September 1, Bolt phoned Suzanne Red and said, "I have something to discuss with you. I haven't seen you in quite some time, so why don't we meet over lunch?" Suzanne Red agreed and scheduled lunch with him for September 5. During the lunch meeting on September 5, after exchanging greetings and reminiscences, Bolt told Suzanne Red that Blue Corporation was interested in remaking *My Teacher* and that Thomas Blue, the president of Blue Corporation, was "very much impressed by the work" and was "eager to disseminate the messages of Red's father to the people of Arbitria." "What do you think, Suzanne?" asked Bolt. Suzanne replied in the following: "Personally speaking *My Teacher* is a very special and precious work for me. When we made a film out of it in 1975, I personally scrutinized every word and phrase used in the script. The director and the scriptwriters truly did a great job. I don't think anyone can create a movie that'll be better than this one and for that reason, I wouldn't permit anyone to remake it."

"I believe the true intention of your father is to convey the messages embedded in *My Teacher* to as many people as possible, isn't it?" countered Bolt, "Thomas Blue is not a guy who would do a sloppy job. If you have concerns over the director or the script, you can add specific conditions in the contract." "You may be right, but I still don't know," responded Suzanne. Bolt told Suzanne, "At least let me get Thomas to call you".

15. On September 6, Thomas Blue phoned Suzanne Red and told her that Blue Corporation was interested in remaking *My Teacher*. "I heard about Blue Corporation's interest from Bolt," said Suzanne, "He said we should talk directly to discuss more details." She decided to meet with Thomas Blue on September 15, 2007 in her office. Thomas Blue then called Bolt and informed him that he was able to set up an appointment with Suzanne Red regarding the remake deal. "I have time that day, so let me go with you to the meeting," suggested Bolt.

Thomas Blue said, "I'll be counting on you." Thomas Blue's secretary acted on Blue's instructions and told Suzanne Red's secretary, "Ames Bolt will come to the meeting together with Thomas Blue on September 15."

16. During the meeting on September 15, Suzanne Red explained to Thomas Blue the following: "*My Teacher* is a very precious work for me personally and any remake, if done all, must be done on the condition that the intention of the original work be given maximum respect." "I am aware of that," responded Thomas, "I personally plan to pay maximum respect to the intention of the original work." Suzanne Red then asked, "Who do you plan to use for directing and for screenwriting?" "John Canalis is my candidate," replied Thomas, "I have approached him informally and he is very much interested." John Canalis was generally regarded worldwide as one of the most outstanding directors and scriptwriters. Red Corporation had also used him in the past for the production of one of their movies. Suzanne Red had a high regard for Canalis' work. She went on to say that she would "agree to the proposal if John Canalis can be enlisted." Thomas Blue then asked for the price of the remake rights. "How about one million US dollars?" asked Suzanne. "That's too expensive," countered Thomas Blue, "We would be willing to pay half a million US dollars at the maximum." When Suzanne Red lowered the figure to nine hundred thousand (900,000) US dollars and Thomas Blue raised the figure to six hundred thousand (600,000) US dollars, Bolt, who had been quietly listening to the conversation between the two, stepped in and suggested seven hundred fifty thousand (750,000) US dollars, which was "the middle ground for the two parties," in hopes that they would "agree on this price out of respect for me." Suzanne Red accepted the offer of seven hundred fifty thousand (750,000) US dollars "on the condition that advance consent be obtained from Red Corporation for the script." Thomas Blue felt that ordinarily such advance consent is not necessary in such cases, though he knew that there had been cases in the past in which opinions had to be sought in advance. Nevertheless, he considered that there would not be any problem as long as John Canalis, who was agreed by Suzanne Red, would write the script for the movie. Therefore, Thomas Blue replied: "That's fine, as long as you do not unreasonably withhold your approval. Are there any other conditions you would like to add?" "Not in particular," replied Suzanne Red, continuing, "Would it be all right if we have my attorney and your attorney work out a contract?" Thomas agreed and added, "Please contact me or Ames if there is any matter to be discussed." The meeting then came to an end. During the meeting, all conversations among Suzanne Red, Thomas Blue and Ames Bolt were conducted in English.
17. The minutes of the September 15 meeting as prepared by Suzanne Red's secretary, who was

also present at the meeting, are given in Appendix 4. The secretary e-mailed the minutes as to Suzanne Red, Thomas Blue, the secretary of Thomas Blue, and Ames Bolt, but none of them responded. Later, Thomas Blue and Ames Bolt testified that they left the minutes intact since they found no problem after confirming only the portion describing the meeting.

18. As a result of the meeting of September 15, the attorneys representing Red Corporation and Blue Corporation drafted a contract concerning the remake of *My Teacher*, and Suzanne Red and Thomas Blue signed it on October 10. Bolt was not involved in the drafting of the contract in any way. The contract regarding the remake is shown in Appendix 5 (Please note that the portions other than those shown in Appendix 5 contains no information that should be taken into account in relation to the problem). When preparing the contract, following the request by Red Corporation, a provision relating to damages was incorporated into the contract as Article 3.2 to ensure the performance of Blue's obligation to obtain prior consent of Red Corporation regarding the script. The contract shown in Appendix 5 was prepared in English and Nego. The contract of "*Aiming at the Goal*" shown in Appendix 3 was made only in English. All negotiation for "*My Teacher*" was conducted in English, too. Therefore, the first draft of Appendix 5 was made in English. However, Red Corporation argued that it would be preferable to make the contract also in Nego, the official language of Negoland. As a result, the draft contract in Nego was made by translating English version into Nego, and final contract was made both in English and Nego.
19. John Canalis, who accepted the offer to direct and write the script, embarked on the preparation of the script. In early December, the first version of the script was completed. John Canalis visited Blue Corporation and handed the script to Thomas Blue. On that date, there was a meeting of the Management Advisory Committee, and Bolt came to Blue Corporation for the meeting. When Thomas Blue said to Bolt, "Today, Canalis will bring the script of *My Teacher*," Bolt replied, "Good. I would like to see it." Thomas Blue invited Bolt to the meeting with Canalis. At the meeting, Thomas Blue and Bolt quickly looked through the first version of the script that Canalis delivered. Thomas Blue said, "Wonderful. We were right to ask you to write the script. I will have my staff check it, and I will inform you of the result. Please note that, under the contract with Red Corporation, we need to get the consent from Red Corporation." Bolt said, "I have an appointment with the President of Red Corporation. I will bring it to her. That would be the quickest way." Thomas Blue said, "Please do so."
20. On the day after the meeting with Canalis, Bolt visited Red Corporation and met with Suzanne Red. Bolt delivered the first version of the script to Suzanne Red. Before Bolt's eyes, Suzanne



Red read it immediately, and wrote some comments to request revisions. Suzanne Red passed the script back to Bolt and said, "I wrote some comments, so please consider them." Bolt said, "I see. I will give it to Thomas." Two days after the meeting with Suzanne Red, Bolt visited Blue Corporation and handed the first version of the script with Suzanne's comments to Thomas Blue. Thomas Blue looked at the comments and said, "Thank you. I will ask Canalis to consider them." Within a week, Canalis mailed Thomas Blue a revised version of the script reflecting Suzanne Red's comments. Thomas Blue mailed the revised version to Suzanne Red with a handwritten memo in English, saying only, "Revised version enclosed. Please check it." In several days, Thomas Blue received an envelope from Suzanne Red containing the revised version with her comments. Thomas Blue mailed that revised version with Suzanne's comments to Canalis. All comments by Suzanne to the first and the revised version were handwritten by Suzanne in English.

21. The third version of the script was completed before the end of December and was mailed to Blue Corporation by Canalis. Blue Corporation forwarded the script to Suzanne Red together with the attached letter as shown in Appendix 6. The letter shown in Appendix 6 was written in both English and Nego. The English version and the Nego version were respectively printed on the back and front sides. Both sides were signed by Thomas Blue and there was no indication as to which language version was the original and which version was the translation of the original version. In response to the letter shown in Appendix 6, Red Corporation sent the letter as shown in Appendix 7 to Blue Corporation. The letter shown in Appendix 7 was also written in both English and Nego and both sides were signed by Susanne Red. Blue Corporation waited until January 31 but as no response was given by Red Corporation, Blue proceeded to begin the shooting of the movie based on the third version of the script, which was viewed as the final version of the script. The shooting was expected to be completed in about six months because no stage sets of considerable size would be required for the movie and the scheduling of major actors and staff went smoothly. It should be noted that the shooting schedule etc. was never reported by Blue Corporation to Red Corporation.
22. At the time the shooting was reaching its final stages, on July 15 Red Corporation sent a letter written in English, requesting revisions of the script, as shown in Appendix 8. The revisions requested in the letter were quite substantial, and at the time the request was filed if the revisions were made a great proportion of the segments already shot would have to be re-filmed, entailing a sizable delay in the filming schedule. On top of these factors, the revisions, if made, would cause the cost of production, initially budgeted at five million US dollars, to rise to nearly seven million US dollars. In the first place, as the request for

revisions was made after the deadline for revisions, Blue Corporation sent a letter to Red Corporation, written in both English and Neco, as shown in Appendix 9. The format is identical with the letter shown in Appendix 6. In response, Red Corporation sent the letter to Blue Corporation in English as shown in Appendix 10. Inspections revealed that the deadline stated in the Neco language version of the letter shown in Appendix 6 was July 31 and not January 31. This was an error made by the typist, and it went unnoticed by Thomas Blue, who signed both the English and Neco language versions of the letter. Moreover, Thomas Blue's inquiry to Bolt also confirmed that Suzanne Red indeed told Bolt on January 25 that "a quick look at the script" suggested that "revisions were needed on some important parts" and that the matter "needs to be examined carefully by the deadline of July 31." Bolt said he did not take the trouble of contacting Thomas Blue then, assuming that Blue Corporation had been informed directly by Red Corporation on this.

23. Blue Corporation gave a notification to the effect that it would be difficult to revise the script at that point in time since it would cause an additional cost of considerable size. Blue Corporation continued with the filming, completed it and the movie went on to be shown in theaters. The Blue Corporation production of *My Teacher* became a smash hit in Arbitria, generating 30 million US dollars in box-office revenue and net profit of 10 million US dollars for Blue Corporation. According to professional consensus, the movie, had it undergone revisions as requested by Red Corporation, would not have been as successful, with box-office revenue of about 15 million US dollars at the most. The net profit of Blue Corporation, after taking into account the additional cost of revising the script, would have been two million US dollars at the most. (This point is not contested.) Also, the commentators are in consensus that "My Teacher" of Blue Corporation based on the unique view by Canalis about the original work by Masami Red, and that Red Corporation's "My Teacher" didn't influence it. Canalis himself said that, not by remaking the Red Corporation's version of "My Teacher", he did write the script and make the movie which is suitable to the modern society based on his own interpretation.
24. Red Corporation demanded that Blue Corporation pay 10 million US dollars – the amount of the profit netted by Blue Corporation – to Red Corporation in accordance with the provisions of the contract shown in Appendix 5. Blue Corporation asserted that it had not violated the contract by arguing that the request for revision by Red Corporation was not made before the deadline and that the request was unreasonable. Red Corporation presented a counterargument that the request for revision was made before the deadline set forth in the letter shown in Appendix 6, and even if one goes so far as to assume that the deadline was

indeed January 31, it cannot be inferred that Red Corporation had given its consent to the script, since it had notified Bolt, Blue Corporation's agent regarding this matter, of upcoming revisions.

25. When the above exchanges of arguments were taking place, Blue Corporation presented a letter as shown in Appendix 11. The letter, which was tucked between pages of a book kept by Akira Blue, was recently discovered in the storehouse of the Blue residence by accident. The letter came as a big surprise to Thomas Blue, who had not heard of any exchanges between Akira Blue and Red Corporation. Appraisal results confirmed that the signatures contained in the letter were that of Masami Red and Akira Blue. Subsequently, the letter revealed that Masami Red got money from Akira Blue, who was a friend of Masami Red then, when Masami Red encountered financial difficulties in the early stages of Red Corporation, and in exchange Masami Red gave a movie adaptation right. Masami Red and Akira Blue subsequently broke off relations with each other. Since Masami Red and Akira Blue severed their relations privately, the company employees of Blue Corporation and Red Corporation were not informed of this, and consequently, it seems that this course of events was not communicated to the current employees of Blue or Red.
26. Blue Corporation claims that Akira Blue and Blue Corporation hold the movie adaptation rights in relation to *My Teacher* pursuant to the letter shown in Appendix 11 and that Thomas Blue, the successor of Akira Blue, and Blue Corporation therefore have the movie adaptation rights, even in the absence of the contract shown in Appendix 5. Red Corporation, in its reply, argues that even if one goes so far as to assume that the letter shown in Appendix 11 is considered valid, Blue Corporation, which voluntarily signed the contract shown in Appendix 5 with Red Corporation, cannot use the existence of the letter shown in Appendix 11 to claim its release from obligations under the contract shown in Appendix 5. The above dispute concerning *My Teacher* will be referred to as "Case 1."
27. Around the same time, another problem arose between Red Corporation and Blue Corporation. This concerned *The Bob Orange Story*. In December 2007, Blue Corporation's TV Division decided to purchase the TV broadcasting rights of *The Bob Orange Story* for five hundred thousand (500,000) US dollars. Bob Orange is also well-known in Arbitria as a hero who contributed to the post-war recovery of Arbitria, and his story appears in school textbooks. The TV Division decided to air the story of Bob Orange, who acted as a bridge between Negoland and Arbitria, in 2008, in commemoration of the 40<sup>th</sup> anniversary of restored diplomatic relations between the two nations. The contract concerning the TV broadcasting

rights of *The Bob Orange Story* is shown in Appendix 12. Because this broadcasting is for the 40th anniversary of restored diplomatic relations, three hundred thousand (300,000) US dollars was going to be paid by Arbitrian government etc. as subsidy or donation.

28. Preparation was underway at Blue Corporation, which intended to air *The Bob Orange Story* on April 1, 2008. On March 15, 2008, the Publication Division of Red Corporation published a book entitled *The Truth of Bob Orange* simultaneously in Negoland and Arbitria. Written by a leading non-fiction writer of Negoland, *The Truth of Bob Orange* is an attempt to portray Bob Orange from an angle different than the conventional image of him as an outstanding businessman who contributed to the economies of both Negoland and Arbitria, its new view being supported by recently obtained correspondence and memos by Orange himself, and testimonials by those who directly knew him.
29. Particularly disturbing to the public was the segment describing that Bob Orange schemed to annex a part of Arbitria to Negoland after the wartime defeat of Arbitria by urging top-level officials of the Western European countries, offering them money and other consideration. The media of Arbitria all rushed to report the release of the book. Most historians who reviewed the book agreed that the portrayal containing the book was both specific and detailed and that the book was highly credible in light of the track record of the author. As a result, the image of Bob Orange was tarnished heavily in Arbitria. Given these developments, Blue Corporation concluded that its airing of *The Bob Orange Story* would prompt viewers to criticize Blue Corporation for airing a story depicting a false image of Bob Orange. Hence, Blue Corporation decided not to air *The Bob Orange Story*. This decision led to the cancellation of sponsorship agreements which were contingent on the airing of *The Bob Orange Story*, resulting in lost sponsorship revenue of three hundred thousand (300,000) US dollars for Blue Corporation. Also, the subsidy and donation for three hundred thousand (300,000) US dollars was not paid. In addition, the costs already incurred in preparation for the airing of *The Bob Orange Story*, amounting to fifty thousand (50,000) US dollars, were completely wasted. There is no revenue or expense of Blue to be considered in this Problem other than those which are expressly mentioned in the Problem. Also you don't need to consider the profit which could be gained by Blue Corporation for the broadcasting of the alternate program.
30. Blue Corporation asserts that Red Corporation should have disclosed Red's intended publication of *The Truth of Bob Orange* during the negotiation rounds of the closing of the contract shown in Appendix 12 and that Blue therefore seeks avoidance of the contract on the

grounds that Blue would not have executed the contract had Red disclosed the upcoming publication. Alternatively, Blue argues that, even in the event that the avoidance or termination of the contract is not permitted, Red is obliged to pay 550,000 US dollars as damages because the non disclosure of such information constitutes the breach of obligation of Red. Blue Corporation also asserts that, even in the event that there is no liability on Red in relation to such non-disclosure, Red Corporation's act of publishing a book concerning Bob Orange in Arbitria during the term of the contract constitutes, under the contract shown in Appendix 12, a violation thereof and hence demands to compensate for the damage incurred by Blue Corporation. Red Corporation presented its counterarguments, asserting that Red Corporation was not under any obligation to disclose the scheduled publication of *The Truth of Bob Orange*, and that even if one goes so far as to assume that such obligation truly existed, Red Corporation, which signed a confidentiality agreement with the author of *The Truth of Bob Orange* not to disclose details of the work to a third party before the date of publication, cannot be ordered to perform an act that would be in violation of that confidentiality agreement. Furthermore, Red Corporation goes on to say that its act of publishing a book concerning Bob Orange in Arbitria does not constitute a breach of the contract shown in Appendix 12. The above dispute concerning *The Bob Orange Story* will be referred to as "Case 2."

<Round A>

31. The negotiations concerning the above two cases saw little progress. Red Corporation and Blue Corporation agreed to bring the two cases to arbitration, with Red Corporation as Claimant and Blue Corporation as Respondent. The arbitrator instructed the parties to prepare for the hearing to be held on the following matters and to submit, before the designated deadline, preparatory memorandum outlining the claims made. (In the preparatory memorandum, essential matters should be considered relating to the claims made by each party that appear in this problem, regardless of which party bears the burden of proof with respect to the claims.)

<Case 1>

Whether Blue Corporation is obliged to pay 10 million US dollars to compensate Red Corporation for the damage it suffered as a result of Blue Corporation's non-performance of its obligations under the contract shown in Appendix 5? (You need not consider issues relating to Negoland's and Arbitria's laws concerning copyrights.)

<Case 2>

Is Blue Corporation permitted to avoid the contract shown in Appendix 12? (If the contract is avoided, Red has to pay five hundred fifty thousand (550,000) US dollars to Blue Corporation.)  
If avoidance of the contract is not permitted, will Red Corporation be under obligation to pay damages? If so, how much?

<Round B>

32. The disputes concerning *My Teacher* and *The Bob Orange Story* between Red Corporation and Blue Corporation were settled and the two parties reached a compromise in the end. After the reconciliation, Suzanne Red and Thomas Blue met with each other and agreed that the two corporations should build closer ties with each other, while the two disputes must be treated as a thing of the past. As a new step in the direction of building a cooperative relationship between the two companies, Red Corporation and Blue Corporation decided to examine the possibility of the joint production of a movie using the history of the two nations as the theme. In the past, this idea was discussed on a preliminary and unofficial basis by some members directly tasked with the production, who thought this might be an interesting proposition to commemorate the 40<sup>th</sup> anniversary of the restoration of the diplomatic ties, but it was never seriously discussed. With respect to this project, Suzanne Red and Thomas Blue prepared and signed an MOU, which is shown in Appendix 13.
33. After Suzanne Red and Thomas Blue concluded the MOU about the movie production, detailed negotiations began between the parties directly tasked with the projects of the two corporations. So far, the two corporations have agreed on the following issues:
- 1) The movie will be jointly produced by Red Corporation and Blue Corporation;
  - 2) A new script will be freshly prepared in line with the objectives of the project, without basing it on any existing work;
  - 3) The theme will be the relationship between the two nations after 1900;
  - 4) John Canalis will direct the movie and write the script for it;
  - 5) It will be released for public viewing simultaneously in Negoland and Arbitria. It will not be shown in any other country during the initial phrase.
  - 6) The distribution in Negoland and Arbitria will be handled by Red Corporation and Blue Corporation respectively.
  - 7) Proceeds will be prorated in proportion to the amounts of capital injected.
34. Based on the basic principles stipulated in the MOU shown in Appendix 13, a negotiation will be held on December 7th to discuss remaining key issues. If, due to various factors, no agreement is reached regarding these issues during the negotiation on December 7th, the project will have to be discontinued. The remaining issues are described below. The format shown in Appendix 14 has been prepared to state the details of their agreement. The meeting on December 7th will be attended by fully authorized representatives of the two corporations in charge of negotiation. For this negotiation, the presidents of both corporation told you, “The purpose of this negotiation is to agree on the basic policy on this project. You are not required

to discuss and analyze the details of expenses or revenues. There is no agreement between us nor any other preconditions than what have been already informed you (Note: It means the content of the Problem and Confidential Information). Please use your imagination fully in the negotiation.”

(1) Title of the movie

Neither Red Corporation nor Blue Corporation has come up with any good title for the movie at the moment.

(2) Substance of the movie

Opinions are divided in the treatment of the three historical topics described below. For the completion of a script, basic principles need to be established for the treatment thereof. It should be noted that Blue Corporation is reluctant to include Events ① and ②, while Red shows reservations about the inclusion of Event ③. However, in-depth discussions regarding reasons for their unwillingness have not taken place thus far.

① “Arbitrianization” from 1940 to 1945

② Great massacre of the Nego people by the Arbitrian army in 1943

③ Bob Orange’s plan to annex Arbitria

(3) Total budget

Partially in reflection of the different approaches to the cast and financing, a wide gap exists between the numbers the two corporations have in mind; the total budget Red proposes is around 10 million US dollars, as opposed to some 50 million US dollars proposed by Blue Corporation.

(4) Cast

Red Corporation has proposed that the cast be selected from among young, talented actors without depending on well-known actors; Blue Corporation has proposed to use well-known actors for the major roles at least.

(5) Financing

Red Corporation has proposed to fund the movie by establishing a film fund – a technique currently in mode. Red Corporation’s scheme will call for a fund to be set up, soliciting investments from individual investors in increments of ten thousand (10,000) US dollars. For the production, Blue Corporation has proposed that the two corporations individually



seek joint partners/investors in their respective countries to reach the 25 million US dollars each corporation is responsible for, and Red Corporation, Blue Corporation and such partners/investors enter into a partnership agreement without setting up any corporation. Please note that the absence of any legal issues has been confirmed with respect to either of the proposed methods in conjunction with the relevant laws of each nation.

(6) DVDs, books, TV broadcasting, etc.

Examination needs to be made to decide on post-movie production matters relating to DVDs, book publications, TV airing rights, etc.. Thus far, there has been no opportunity to discuss these matters.

(Appendix 1)

### Outline of Red Corporation

Founded: 1933

President: Suzanne Red

Principal lines of business:

- Publication: Editing, production and sale of publications
- Film business: Production, importation, distribution of movies and sale of videos
- Information business: Editing, production and sale of TV program guides and local-oriented informational magazines

(US\$ 000s; consolidated)

	Year 2003	Year 2004	Year 2005	Year 2006	Year 2007
Net Sales	91,614	121,845	150,256	149,883	150,789
Ordinary Income	5,230	5,873	7,426	7,775	5,951
Net Income	2,304	1,329	1,323	3,898	△2,598
Net Assets	77,361	80,160	78,652	88,291	78,280
Total Assets	117,783	153,913	148,374	149,839	138,316

## Outline of Blue Corporation

Founded: 1930

President: Thomas Blue

Principal lines of business:

- Broadcasting: TV broadcasting, movie business, radio broadcasting
- Broadcast-related: Production of programs for airing, among others
- Mail-order business: Mail order sales via TV broadcasting, among others
- Film and music business: Sale of film and music DVDs and CDs, among others

(US\$ 000s; consolidated)

	Year 2003	Year 2004	Year 2005	Year 2006	Year 2007
Net Sales	455,945	476,733	593,493	582,660	575,484
Ordinary Income	45,564	44,478	50,340	45,995	27,056
Net Income	24,714	22,845	11,345	24,846	15,770
Net Assets	501,870	479,088	462,903	469,586	456,077
Total Assets	625,786	681,190	692,357	731,496	677,000

## Agreement

THIS Agreement is made and entered into as of this 1st day of January, 1984 by and between Red Corporation, a Negoland corporation (“Red”), and Blue Corporation, an Arbitria corporation (“Blue”), with respect to the literary work entitled “Aiming at the Goal” written by Masami Red (the “Work”), as follows:

### Article 1 Grant of Rights

In consideration of Blue’s payment to Red of US\$100,000 according to Article 3 of this Agreement, Red hereby grants to Blue the right

- (a) to produce or cause to be produced one or more movies (the “Production”) based upon the Work or any part thereof, using any medium or technology now or hereafter known, in any and all languages;
- (b) to effect an unlimited number of exhibitions, distributions, performances, telecasts and other transmissions and distributions of the Productions by any method, means, technology or process now or hereafter known or devised including but not limited to theatrical, non-theatrical, television, home video, internet, electronic, and satellite, whether by sale, rental, license or otherwise;

. . .

### Article 3 Compensation

Subject to Red’s full performance of all material obligations herein, Blue shall pay US\$100,000 to Red as payment in full for Red’s grant of the rights in Article 1 to Blue.

### Article 4 Representations and Warranties

1. Red hereby represents and warrants and agrees to indemnify Blue as follows:
  - (a) Red is the sole owner of all right, title, and interest in and to the Work;
  - (b) Red has not previously granted, assigned, mortgaged or hypothecated, nor will Red grant, assign, mortgage or hypothecate (other than to Blue as provided herein), any right, title or interest in and to the Work or any part thereof to any person, firm or other entity;

(c) No rights of any third party are or will be violated by Red's entering into or performing this Agreement;

(d) The Work is original and neither the Work nor any part thereof is taken from or based upon any other material.

(e) The exploitation or any other use of the right herein granted shall not violate any copyright and shall not, to the best of Red's knowledge, including that which Red should have known in the exercise of reasonable prudence, defame any person or entity nor violate any right of privacy or publicity or any other right of any person or entity; and

(f) There is no adverse claim to or against the Work by any person, firm or corporation, nor is there pending any litigation or, to the best of Red's knowledge, including that which Red should have known in the exercise of reasonable prudence, threat of litigation concerning the Work,

2. Red hereby agrees to indemnify and hold harmless Blue (and its parent, subsidiaries, subsidiaries of its parent, affiliates, associates, successors, assigns, and the directors, officers, employees, agents, and representatives of the foregoing) from and against any and all damage, loss, liability, cost, penalty or expense of any kind, including reasonable outside attorney's fees, arising out of any breach of Red's representations, warranties and agreement hereunder.

. . .

#### Article 8                      Credit

Provided that Red has not materially breached any representations, warranties or obligations, if Blue produces the Production based upon the Work, Masami Red shall be entitled to receive credit on screen and in paid advertising as determined by Blue in good faith in accordance with the applicable practice in Arbitria.

. . .

#### Article 10                      No obligation to use

Blue is not obligated to use the Work or to produce, distribute or exploit the Production or, if commenced, to continue the production, distribution, or exploitation of the Production in any territory. Regardless of whether or not Blue elects to produce, distribute, and/or to exploit the Production (or to commence same), Blue is not obligated to use the Work in whole or in part.

. . .

Article 14            Arbitration

Any dispute arising out of or under this contract shall be settled by arbitration in accordance with UNCITRAL Arbitration Rules, in the edition current at the date of this contract.

Red Corporation

Blue Corporation

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(Appendix 4)

September 16, 2007

To: Mr. Thomas Blue  
Mr. Ames Bolt

CC: Suzanne Red, President

Dear Mr. Blue and Mr. Bolt:

Please find attached below the record of the meeting held on September 15. Should you find it necessary to correct any matter, would you please contact me promptly.

Sincerely yours,

○○○○, Secretary to Ms. Red

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Record of Meeting

Date and time: ○ to ○, September 15, 2007  
Place: Guest Reception Room of Red Corporation  
Guests: Blue Corporation: Thomas Blue, President; Mr. Ames Bolt  
Received by: President, ○○○○(Secretary to Ms. Red)

Particulars of the meeting:

Blue Corporation expressed its desire to adapt *My Teacher* into a movie. Agreement was reached on the following:

- Maximum respect will be paid to the intent of the original work;
- John Canalis will be enlisted to direct and write the script for the movie;
- The remake rights will be granted for a fee of seven hundred fifty thousand (750,000) US dollars;
- The script will be subject to advance consent of Red Corporation; and
- The respective attorneys will be caused to work out a contract.

Mr. Thomas Blue requested that Mr. Thomas Blue or Mr. Bolt be notified if there is any matter to be discussed.

END

Agreement

THIS Agreement is made and entered into as of this 1st day of October, 10, 2007 by and between Red Corporation, a Negoland corporation (“Red”), and Blue Corporation, an Arbitria corporation (“Blue”) with respect to the literary work entitled “My Teacher” written by Masami Red (the “Work”) and the motion picture entitled “My Teacher” produced by Red based on the Work (the “Picture”) as follows:

Article 1 Grant of Rights

Subject to Article 3 and in consideration of Blue’s payment to Red of US\$750,000 according to Article 5 of this Agreement, Red hereby grants to Blue the right

- (a) to produce or cause to be produced one or more movie (the “Production”) based upon the Work and/or by remaking the Picture or any part thereof, using any medium or technology now or hereafter known, in any and all languages;
- (b) to effect an unlimited number of exhibitions, distributions, performances, telecasts and other transmissions and distributions of the Productions by any method, means, technology or process now or hereafter known or devised including but not limited to theatrical, non-theatrical, television, home video, internet, electronic, and satellite, whether by sale, rental, license or otherwise;

. . .

Article 3 Creative Control

1. Blue shall obtain prior consent from Red regarding the content of the screenplay for the Production and shall not produce any movie without such consent of Red.
2. In case of any breach of the obligation under this Article, Blue shall pay to Red all net profit which Blue would have earned from the Production.

Article 5 Compensation

Subject to Red’s full performance of all material obligations herein, Blue shall pay US\$750,000 to Red as payment in full for Red’s grant of the rights in Article 1 to Blue.



Article 6                      Representations and Warranties

1. Red hereby represents and warrants and agrees to indemnify Blue as follows:
  - (a) Red is the sole owner of all right, title, and interest in and to the Work and the Picture;
  - (b) Red has not previously granted, assigned, mortgaged or hypothecated, nor will Red grant, assign, mortgage or hypothecate (other than to Blue as provided herein), any right, title or interest in and to the Work and the Picture or any part thereof to any person, firm or other entity;
  - (c) No rights of any third party are or will be violated by Red's entering into or performing this Agreement;
  - (d) The Work and the Picture are original and neither the Work nor any part thereof is taken from or based upon any other material.
  - (e) The exploitation or any other use of the right herein granted shall not violate any copyright and shall not, to the best of Red's knowledge, including that which Red should have known in the exercise of reasonable prudence, defame any person or entity nor violate any right of privacy or publicity or any other right of any person or entity; and
  - (f) There is no adverse claim to or against the Work or the Picture by any person, firm or corporation, nor is there pending any litigation or, to the best of Red's knowledge, including that which Red should have known in the exercise of reasonable prudence, threat of litigation concerning the Work and the Picture.
2. Red hereby agrees to indemnify and hold harmless Blue (and its parent, subsidiaries, subsidiaries of its parent, affiliates, associates, successors, assigns, and the directors, officers, employees, agents, and representatives of the foregoing) from and against any and all damage, loss, liability, cost, penalty or expense of any kind, including reasonable outside attorney's fees, arising out of any breach of Red's representations, warranties and agreement hereunder.

. . .

Article 8                      Credit

Provided that Red has not materially breached any representations, warranties or obligations, if Blue produces the Production based upon the Work or the Picture, Masami Red and Red shall be entitled to receive credit on screen and in paid advertising as determined by Blue in good faith in accordance with the applicable practice in Arbitria.

. . .

Article 10            No obligation to use

Blue is not obligated to use the Work or the Picture or to produce, distribute or exploit the Production or, if commenced, to continue the production, distribution, or exploitation of the Production in any territory. Regardless of whether or not Blue elects to produce, distribute, and/or to exploit the Production (or to commence same), Blue is not obligated to use the Work or the Picture in whole or in part.

. . .

Article 14            Arbitration

Any dispute arising out of or under this contract shall be settled by arbitration in accordance with UNCITRAL Arbitration Rules, in the edition current at the date of this contract.

Article 15            Governing Law

This contract shall be construed in accordance with and governed by UNIDROIT Principles of International Commercial Contracts 2004.

Red Corporation

Blue Corporation

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(Appendix 6)

[Note: The following is the English language version of the letter.]

December 26, 2007

Ms. Suzanne Red, President  
Red Corporation

Dear Suzanne,

Re: The script of *My Teacher*

Pursuant to the contract executed between Blue Corporation and your organization dated October 10, 2007 with respect to the above subject, we hereby enclose the third version of the script. Considering the schedule of the shooting, we would like to make this the final version. Should you have any opinions regarding this version of the script, please contact us before January 31, 2008. In the event of no communication from you, we will assume your consent and proceed accordingly.

Yours truly,

(signed)

Thomas Blue

President, Blue Corporation

(Appendix 7)

[Note: The following is the English language version of the letter.]

January 15, 2008

Mr. Thomas Blue  
President, Blue Corporation

Dear Mr. Blue,

Re: The script of *My Teacher*

I have received the third version of the script. I will contact you before the deadline if I have any comments. If no communication is made, it will be acceptable for you to treat the draft script as if my consent has been given.

Sincerely,

(signed)

Suzanne Red  
President, Red Corporation

(Appendix 8)

July 15, 2008

Mr. Thomas Blue  
President, Blue Corporation

Dear Thomas,

Re: The script of *My Teacher*

Regarding the script appearing in the subject line above, which was sent to me dated December 26, 2007, I would like to request revisions in accordance with the details attached herewith. Should you have any questions etc. regarding any details of these revisions, please contact me promptly.

Sincerely,

(signed)

Suzanne Red

President, Red Corporation

(Appendix 9)

[Note: The following is the English language version of the letter.]

July 17, 2008

Ms. Suzanne Red, President  
Red Corporation

Dear Suzanne,

I have received your letter dated July 15 regarding the proposed revisions.

In the letter issued by us dated December 26, 2007, we stated that communication would have to be made by January 31 in the event of any revisions, and in your letter dated January 15, 2008 you communicated to us that we may treat the script as if your consent has been given in the event of no communication by January 31.

Since we did not receive any communication from you by January 31, Blue Corporation, assuming that the script had been given your consent, already went ahead and started shooting, which is in progress now. It would be extremely difficult to revise the script, since it would entail a substantial delay in the filming schedule, in addition to an extra cost of over two million US dollars to be incurred if we are to start revising the script at this time. Please accept our regrets.

Yours truly,

(signed)

Thomas Blue  
President, Blue Corporation

(Appendix 10)

July 20, 2008

Mr. Thomas Blue  
President, Blue Corporation

Dear Mr. Blue:

This is in response to your letter dated July 17, 2008.

The letter received on December 28, 2007 stated in the Neco language that communication would have to be made by July 31, 2008. In addition, I informed Mr. Ames Bolt on January 25, 2008 that the script needed to be revised and that I planned to examine it carefully by the deadline of July 31.

I hope you will confirm the above and I hereby request that the script be revised pursuant to the contract dated October 10, 2007.

Sincerely,

(signed)

Suzanne Red  
President, Red Corporation

(Appendix 11)

March 31, 1934

Agreement

1. Masami Red shall grant to Akira Blue and Blue Corporation the right to movies out of *Aiming at the Goal* and *My Teacher*, works authored by Masami Red. However, nothing in this agreement shall preclude Masami Red from making the two works into movies himself.
2. Akira Blue, in exchange for the above movie adaptation rights, shall pay Masami Red 50 thousand US dollars.

Masami Red (signature)

Akira Blue (signature)



## Agreement

THIS Agreement is made and entered into as of this 1st day of December 1, 2007 by and between Red Corporation, a Negoland corporation (“Red”), and Blue Corporation, an Arbitria corporation (“Blue”) with respect to the work entitled “The Bob Orange Story” produced by Red (the “Work”), as follows:

### Article 1 Grant of Rights

1. Red hereby grants to Blue the exclusive right to broadcast the Work through the television networks (the “Networks”) as set forth in Table 1 in Arbitria in such manner as stipulated in this Agreement.
2. The right under Article 1.1 continues to survive from January 1, 2008 to June 30, 2008 (the “Granted Period”). Blue may broadcast the Work during the Granted Period and Blue may decide when and how many times the Work is broadcast in its sole discretion.
3. During the Granted Period, Blue may make, publish, distribute and sell such printed materials about the Work as are necessary to promote Blue’s broadcasting of the Work.

. . .

### Article 3 Compensation

Subject to Red’s full performance of all material obligations herein, Blue shall pay US\$500,000 to Red as payment in full for Red’s grant of the rights in Article 1 to Blue.

### Article 4 Representation and Warranties

1. Red hereby represents and warrants and agrees to indemnify Blue as follows:
  - (a) Red is the sole owner of all right, title, and interest in and to the Work;
  - (b) Red has not previously granted, assigned, mortgaged or hypothecated any right, title or interest in and to the Work or any part thereof to any person;
  - (c) No rights of any third party are or will be violated by Red’s entering into or performing this Agreement;
  - (d) The Work is original and neither the Work nor any part thereof is taken from or based upon any

other material;

(e) The exploitation or any other use of the right herein granted shall not violate any copyright and shall not, to the best of Red's knowledge, including that which Red should have known in the exercise of reasonable prudence, defame any person or entity nor violate any right of privacy or publicity or any other right of any person or entity; and

(f) There is no adverse claim to or against the Work by any person, firm or corporation, nor is there pending any litigation or, to the best of Red's knowledge, including that which Red should have known in the exercise of reasonable prudence, threat of litigation concerning the Work.

2. Red hereby agrees to indemnify and hold harmless Blue (and its parent, subsidiaries, subsidiaries of its parent, affiliates, associates, successors, assigns, and the directors, officers, employees, agents, and representatives of the foregoing) from and against any and all damage, loss, liability, cost, penalty or expense of any kind, including reasonable outside attorney's fees, arising out of any breach of Red's representations, warranties and agreement hereunder.

. . .

#### Article 7                   Obligation of Red

1. Red shall not grant, assign, mortgage or hypothecate (other than to Blue as provided herein), any right, title or interest in and to the Work or any part thereof to any person, firm or other entity during the Granted Period.

2. Red shall not use, perform, produce the Work in whole or in part in Arbitria through any means, including but not limited to theatrical, non-theatrical, television, home video, internet, electronic, and satellite, whether by sale, rental, license or otherwise.

3. During the Granted Period, Red acknowledges that only Blue has the right to make, publish, distribute and sell such printed materials about the Work, and Red shall not publish any such materials in Arbitria.

#### Article 8                   No obligation to use

Blue is not obligated to use or broadcast the Work.

. . .

#### Article 10                 Arbitration

Any dispute arising out of or under this contract shall be settled by arbitration in accordance with

UNCITRAL Arbitration Rules, in the edition current at the date of this contract.

Article 11            Governing Law

This contract shall be construed in accordance with and governed by UNIDROIT Principles of International Commercial Contracts 2004.

Red Corporation

Blue Corporation

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Memorandum

Red Corporation and Blue Corporation hereby agree as follows:

- We will undertake a concrete study about the joint production of a movie dealing with the relations between Negoland and Arbitria.
- This joint project aims to contribute to building a more healthy and friendly relationship for the future between Negoland and Arbitria, which recently celebrated the 40th anniversary of the restoration of their diplomatic relations.
- While providing accurate information about the history and the relations of both countries to the generation of high school and university students as well as those in their 20s and 30s, who will bear responsibility for the future bilateral relations, the movie will aim at providing them with a good opportunity to consider how their future friendly relationship should be.
- In implementation of this joint project, suitable risk management is important.
- Study about concrete contents will be completed by the beginning of December, and we will agree on the contents of the plan by December 7. If agreement cannot be reached about the contents of the plan by December 7, this joint project will be discontinued.

Red Corporation

Blue Corporation

Suzanne Red

Thomas Blue

Plan

1. Title:
2. Contents:
3. Director and Screenplay Writer: John Canalis
4. Release: Release at the same time in Negoland and Arbitria
5. Distribution: Red Corporation will be in charge of distribution in Negoland and Blue Corporation will handle distribution in Arbitria respectively
6. Total budget:
7. Financing method:
8. Distribution of income: To be divided proportionally according to the amount of investment.
9. Cast:
10. DVD, books, television, etc.:
11. Other matters: