

ANGOLA

Law on Authors' Rights

(No. 4/90 of March 10, 1990)

CHAPTER I

Subject, Definition and Protected Works

Subject and purpose

Article 1. The purpose of this Law is to protect authors' rights and stimulate the production of intellectual creations in the literary, artistic and scientific fields by promoting their use by society with a view to edifying a culture corresponding to the new social order that is being established in the People's Republic of Angola.

Limitations

Article 2. The copyright governed by this Law shall be exercised in accordance with the objectives and superior interests of the People's Republic of Angola and with the socialist principles deriving therefrom, taking into account society's need for a broad dissemination of literary, artistic and scientific productions.

Definition and scope of copyright

Article 3. (1) Copyright means the exclusive right of the authors of literary, artistic or scientific works to enjoy the benefit of those works and to use them or to authorize the use thereof, in whole or in part, within the limits and terms of this Law.

(2) Copyright comprises prerogatives of an economic nature and of a moral nature.

(3) The protection afforded by this Law shall not depend on any formality nor on the type, form of expression, content, value, purpose or mode of use of the works to which it applies.

Other definitions

Article 4. For the purposes of this Law:

(a) "published work" means a work published with the consent of its author, whatever the mode of manufacture of the copies, where,

taking into account the nature of the work, the number of copies made available to the public adequately satisfies the needs of the public;

- (b) "work published for the first time" means a work whose first publication has taken place in the People's Republic of Angola or a work whose first publication has taken place abroad, but has been followed by publication within 30 days in the People's Republic of Angola;
- (c) "work of joint authorship" means a work created by several persons, whether or not it is possible to distinguish between the individual contributions of each person;
- (d) "collective work" means a work organized at the initiative of a natural or legal person, and published under his name, in which it is possible to distinguish between the individual contributions of the various contributors;
- (e) "cinematographic work" means a sequence of images recorded on any medium whatsoever, whether translucent or not, by means of which it is possible to obtain moving images or images intended to be recorded on some other medium enabling them to be projected;
- (f) "folklore" means all literary, artistic and scientific works created on the national territory by authors presumed to originate in certain regions or ethnic communities, passed from generation to generation— anonymously or collectively or by other means—and constituting one of the basic elements of the traditional cultural heritage;
- (g) "intellectual creation" means any work bearing witness to the adequate knowledge and judgment of its author, of his choices, his contributions and his experience;
- (h) "communication to the public" means the act by which a work is made available to the public;

Source: Diário da República No. 14, of March 10, 1990.

- (i) "reproduction" means the making of one or more copies of a literary, artistic or scientific work in any material form whatsoever including any sound or visual recording;
- (j) "performance" means the public presentation, execution or recitation of a work by any means whatsoever;
- (k) "broadcasting" means the transmitting, for reception by the public, by wireless means or by wire, of sounds or of images and sounds.

Titles

Article 5. The protection afforded to literary, artistic and scientific works shall extend to their title, on condition that it is original, that it cannot be confused with that of a previously disclosed work and does not consist of a necessary or usual generic designation of the subject matter of such works or is not constituted by the names of historical, literary or mythological persons.

Original works

Article 6. For the purposes of this Law, the following, in particular, are considered original works:

- (a) books, pamphlets, newspapers, reviews and other writings;
- (b) lectures, lessons and similar works, whether written or oral;
- (c) dramatic and dramatico-musical works;
- (d) musical works, with or without words, whether or not in written form, once they are recorded;
- (e) choreographic works and pantomimes;
- (f) cinematographic works or works produced by processes analogous to cinematography;
- (g) television works and audiovisual works in general;
- (h) radiophonic works;
- (i) works of drawing, painting, sculpture, engraving, lithography, tapestry and architecture;
- (j) photographic works or works produced by processes analogous to photography;
- (k) works of applied art, whether handicraft or produced on an industrial scale;
- (l) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science;
- (m) works of folklore in accordance with the provisions of Article 8 and Article 15 of this Law;
- (n) computer programs.

Derivative works

Article 7. Notwithstanding the rights of their authors, whose authorization remains necessary in all cases, the following works are protected as derivative works:

- (a) translations, adaptations, transpositions, arrangements or other transformations of literary, artistic and scientific works;
- (b) compilations of such works, such as anthologies, encyclopedias or selected passages, which, by reason of the selection and arrangement of their contents, constitute intellectual creations.

Works of folklore

Article 8. This Law also protects works of folklore together with collections, transcriptions and arrangements of such works, where they respect the authenticity of the works and show originality.

Non-protected works

Article 9. Shall not be considered to enjoy the protection afforded by this Law:

- (a) laws and decisions by judicial and administrative organs;
- (b) speeches and addresses pronounced in public, except where compiled in a collection by their authors;
- (c) the news of the day published by the press or broadcast.

Scope of the Law

Article 10. This Law shall apply to:

- (a) all literary, artistic and scientific works whose authors are Angolan nationals or persons habitually resident on the territory of the People's Republic of Angola;
- (b) works published for the first time on the territory of the People's Republic of Angola, whatever the nationality or place of residence of their authors;
- (c) works of foreign authors not residing on the territory of the People's Republic of Angola, that have been created or published after its entry into force, in accordance with the obligations deriving from the international conventions to which the People's Republic of Angola has acceded, or if it is ascertained that the works of Angolan authors enjoy reciprocal protection in the countries concerned.

CHAPTER II

Ownership of Rights*General rule*

Article 11. (1) Copyright shall belong, except where otherwise explicitly provided, to the person who has created the literary, artistic or scientific work.

(2) Unless otherwise proven, the person under whose name or pseudonym the work has been communicated to the public shall be deemed the creator of the work concerned.

Works of joint authorship

Article 12. (1) Except where otherwise explicitly agreed, copyright in a work of joint authorship shall belong jointly, as a whole, to all those persons who have participated in its creation; the inseparable contribution of each of the authors shall be considered as being of equal value.

(2) Where it is possible to distinguish the individual contribution of one of the joint authors, the person concerned may exercise the author's rights relating to his contribution where that does not prejudice use of the joint work.

Collective works

Article 13. (1) The copyright in a collective work shall vest in the natural or legal person who has organized and directed its creation and under whose name the work has been disclosed or published.

(2) However, where it is possible to distinguish within the whole of the collective work the personal production of one or more contributors, the rules regarding works of joint authorship shall apply to the rights in such personal production.

(3) Newspapers and other periodicals shall be deemed to be collective works and the copyright in such works shall belong to the respective enterprises.

Anonymous works or works of unknown authors

Article 14. Where the identity of the author has not been legally established, the copyright in a work published anonymously or in a work of an unknown author shall be exercised by the natural or

legal person who has communicated that work to the public for the first time.

Works of folklore

Article 15. (1) Copyright in works of folklore of which the author is unknown shall belong to the State which shall exercise it through the intermediary of the State Secretariat for Culture, notwithstanding the rights of those who have made collections or transcriptions or arrangements of such works, on condition that the collections, transcriptions or arrangements concerned respect the authenticity of the works and show originality.

(2) However, works of folklore may be freely used by a public person for non-lucrative purposes.

(3) Copies of works of Angolan folklore, as also copies of translations, adaptations, arrangements or other transformations of such works, made abroad without the authorization of the competent authority, may neither be imported nor distributed.

Special rules

Article 16. (1) Except where otherwise explicitly agreed, the copyright in works created either under an employment contract or service contract or in the exercise of duties, shall belong to the natural or legal person to whom the production owes its origin.

(2) Notwithstanding the above paragraph, the producer shall conserve his right to remuneration for uses of the works beyond the framework of the corresponding contract or the purpose for which they have been created.

(3) Notwithstanding the rights of each of the contributors—the director and the authors of the plot, adaptation, sequence, dialogues and music—in their individual contributions, copyright shall belong to:

- (a) the producer, in the case of a cinematographic work or a work produced by processes analogous to cinematography;
- (b) the sound or visual broadcasting organizations, in the case of sound or visual broadcasts;
- (c) the publisher, in the case of newspapers, reviews, encyclopedias or other similar publications.

CHAPTER III

Content and Transfer of Rights

Economic rights

Article 17. (1) The author of a work protected under this Law shall have the exclusive right to perform or authorize others to perform the following acts:

- (a) to publish, reproduce or communicate his work to the public by any means, including performance, publication by graphical or mechanical processes, cinematographic fixations and projection and sound or visual broadcasting;
- (b) to translate, adapt or arrange his work or transform it in any other manner.

(2) It shall be for the author to lay down the conditions of the authorization he affords to others to use his works, particularly the amount of the corresponding remuneration, notwithstanding the rules and schedules of fees established by regulation by the State Secretariat for Culture or by the body referred to in Article 39 of this Law.

Moral rights

Article 18. The author shall have the right:

- (a) to claim authorship of his work and to require that his name be mentioned each time the work is communicated to the public (except where it is included, incidentally or accidentally, in reports on current events transmitted by broadcasting);
- (b) to defend the integrity of his work by opposing any distortion, mutilation or modification to his work and, generally, any act that denatures his work and is liable to prejudice his honor and reputation;
- (c) to keep his work unpublished, to amend it before or after communication to the public, to withdraw it from circulation or to suspend any form of use previously authorized, subject, in the latter case, to compensating others for any prejudice they suffer as a result of the suspension or withdrawal from circulation.

(2) These rights shall be inalienable and imprescriptible; they shall subsist even in the event of complete transfer of the rights to others and after the death of the author.

Transfer of rights

Article 19. (1) The author may authorize the use of all or a part of his work, by any means already known or to be invented, whereby the corresponding authorization must be given in writing and must set out the applicable conditions and the authorized mode of use.

(2) The author may transfer all or a part of the economic rights afforded to him by this Law by means of a written document laying down the conditions and limits of transfer.

(3) Where the authorization and the transfer referred to in this Article concern a given mode of use of the work, they shall not prevent the author from authorizing other modes of use or from transferring the relevant rights to others, and their beneficiaries may not transfer them to others without the explicit consent of the author.

(4) Complete transfer of the economic elements of copyright shall be subject to authorization by the State Secretariat for Culture or the body referred to in Article 39 of this Law.

CHAPTER IV

Duration of Rights

General rule

Article 20. (1) The author's economic rights shall last for his lifetime and, for the benefit of his heirs under the applicable legislation, 50 years after his death or 25 years, in the case of photographic works or works of applied art, as from January 1 of the year following that of his death.

(2) In the case of a work of joint authorship, the periods laid down in the above paragraph shall begin with the death of the last surviving joint author.

Works of folklore

Article 21. The protection of works of folklore shall not be limited in time.

Moral rights

Article 22. After the death of the author, the moral rights shall be exercised by his heirs, or if the latter refrain from exercising them without good reason, by the State Secretariat for Culture.

Public domain

Article 23. (1) On expiry of the term of protection for copyright, a literary, artistic or scientific work may be freely used; it shall be compulsory to mention the name of its author, the integrity of the work must be respected and the State Secretariat for Culture must require the payment, for any use of the work for lucrative purposes, of an amount to be devoted to the promotion and development of culture.

(2) The moral rights in works in the public domain shall be exercised by the State Secretariat for Culture.

CHAPTER V

Work Utilization Contracts*General provisions*

Article 24. Contracts by which an author authorizes another person to use his work must compulsorily be in writing and must designate the contracting parties, give the title of the work, state the rights assigned, the modes of use authorized, the duration of the assignment, the form and the amount of the corresponding remuneration and the conditions of payment.

Publishing contracts

Article 25. (1) By means of a publishing contract, the author of a work authorizes the publisher to reproduce that work by a graphical or mechanical process and place it on sale; where not otherwise agreed, it shall be assumed that the authorization concerns only one edition and that the publisher undertakes to carry out its publication and diffusion.

(2) The contract shall state, in addition to the elements given in Article 24, the time limits laid down for submitting the work, the date on which publication of the work will begin and the date on which publication will be completed, the number of copies, the price of each copy—if remuneration consists of a percentage levied on that price—together with the right of the author to check the proofs, and must also be supplemented by the other required clauses, particularly as regards the conditions for termination.

(3) Where remuneration consists in a percentage levied on the price of each copy sold, the publisher must furnish his accounts to the author each quarter at least unless the contract stipulates a differing period.

(4) The authorization to reproduce a literary, artistic or scientific work by a mechanical process shall not imply the right to perform it in public or by means of any mechanical process.

Performance contracts

Article 26. By means of a public performance contract, the author authorizes the public performance of his dramatic, dramatico-musical or choreographic work or the public performance of his musical or literary and musical work; such authorization shall be deemed to exclude sound or visual broadcasting, recording on cinematographic film or any other form of reproduction of the performance comprising the work.

Cinematographic utilization contracts

Article 27. By means of a cinematographic contract, the producer acquires the right to use a literary, artistic or scientific work in a film, to distribute and project such film, and undertakes to remunerate the authors of the film, including the director.

Sound or visual broadcasting contracts

Article 28. (1) The authorization afforded to transmit a work by sound or visual broadcasting shall not imply the right to record that work nor to communicate it in any public place by means of loudspeakers or by any other means serving to diffuse signs, sounds or images; such right shall require a special authorization and may give rise to additional remuneration and is of an exclusive nature for broadcasts made from the Angolan national territory.

(2) Notwithstanding the provisions of the above paragraph, the ephemeral recording of sound or audiovisual works whose broadcasting has been authorized shall be lawful; where they are not of an exceptional documentary nature, such recording must be destroyed within one year, unless a longer period has been laid down by common accord with the author. Such recordings may not be transferred to others on any grounds, whether gratuitously or for payment.

CHAPTER VI

Limitations of Copyright and Exceptions*Uses lawful without authorization*

Article 29. The following uses of works already disclosed lawfully shall be permitted, without the authorization of the author and without payment of remuneration, on condition that the title and the name of the author are stated and that the work is respected:

- (a) performance, cinematographic projection and communication of recorded or broadcast works, where taking place, without payment of entrance charges and without a lucrative purpose, in private premises or for purely didactic purposes in teaching establishments;
- (b) reproduction by photographic processes or processes analogous to photography where carried out by public libraries, documentation centers other than commercial establishments, scientific institutions or teaching establishments, on condition that the number of copies thus made does not exceed the requirements to be met by those copies;
- (c) reproduction of works included in filmed or televised reporting on current events or of works shown permanently in a public place;
- (d) reproduction, translation, adaptation, arrangement or any other transformation for exclusively individual and private purposes;
- (e) quotation of short fragments of works of others, in written, sound or visual form, where justified by scientific, critical, didactic or informative purposes.

Licensing arrangements

Article 30. (1) For the purposes of teaching or scientific research exclusively, it shall also be lawful, without the consent of the author, to obtain a non-exclusive license to translate and publish in Portuguese or in one of the national languages of Angola a work already lawfully disclosed and which its author has not withdrawn from circulation or to reproduce such work in those cases where the following conditions are met:

- (a) a period of three years has elapsed since first publication or reproduction of the work and no translation has been published or copies of the reproduction concerned have been exhausted within such period;

- (b) the licensee can prove that he has requested the owner of the rights for the authorization to translate, to publish or to reproduce the work without having been able to obtain such authorization;
- (c) the work has been translated and reproduced and the copies have been distributed on the Angolan territory exclusively, except for copies that may be exported, within the strictly necessary limits and with the express prohibition of marketing them, for the intention of Angolan nationals, or of organizations of Angolan nationals, residing abroad;
- (d) fair and equitable remuneration, transferred in convertible currency, is paid to the owner of the rights of translation, publication and reproduction, in accordance with international usage.

(2) The license referred to in this Article may also be granted, for the sole purposes referred to in the preceding paragraph, to a sound or visual broadcasting organization having its headquarters in the People's Republic of Angola on condition that the translation and reproduction is effected from lawfully made copies. In addition to the work published in printed form or some other analogous form, a license may cover texts inserted or integrated into audiovisual fixations intended for teaching and scientific use, but the translation and reproduction may not be used by foreign broadcasting organizations.

(3) The State Secretariat for Culture shall have sole competence to grant the licenses referred to in paragraphs (1) and (2) of this Article.

CHAPTER VII

Infringement of Copyright*Infringement of economic rights*

Article 31. (1) Anyone who uses a literary, artistic or scientific work without the authorization of its author or who exceeds the limits of an authorization that has been granted shall be deemed to have committed the offense of usurpation.

(2) Anyone who uses, in whole or in part, as his own the literary, artistic or scientific work of another person shall be deemed to have committed the offense of infringement or plagiarism.

Sanctions

Article 32. (1) The offenses referred to in the preceding Articles shall be punishable by imprisonment together with a fine of up to 100,000 Kz.

(2) Simple negligence shall be punishable by a fine of up to 100,000 Kz.

Infringement of moral rights

Article 33. Shall be liable to the penalties laid down in the preceding Article:

- (a) anyone who fraudulently claims authorship of a literary, artistic or scientific work;
- (b) anyone who fraudulently prejudices the authenticity or integrity of a work by an act which denatures the work and which is liable to tarnish the honor or reputation of the author or of the artist.

Use of a usurped or infringing work

Article 34. Anyone who sells, puts up for sale, exports or distributes to the public by any means a usurped or infringing work shall be liable to the sanctions laid down in Article 32.

Criminal procedure

Article 35. (1) The offenses laid down in this Law shall be subject to criminal prosecution irrespective of any complaint filed by the injured party, except where the infringement consists exclusively in a violation of moral rights.

(2) In the case of works in the public domain, the complaint must be filed by the State Secretariat for Culture.

Civil liability

Article 36. Any civil liability proceedings concerning the violation of the rights laid down in this Law shall be independent of the criminal proceedings of which they are the origin; however, they may be conducted parallel to the criminal proceedings.

Repression of illegal activities

Article 37. (1) At the request of the author whose rights have been infringed or are likely to be infringed, the court will order the seizure of the copies that constitute the unlawful reproduction of the work together with suspension of the manufacture or use of the work, in any form whatsoever, where such is not authorized.

(2) The court may also order seizure of revenue from any act constituting an infringement of the provisions of this Law, together with the equipment serving to carry out the act concerned.

Proof of infringement

Article 38. The courts shall admit reports drawn up in accordance with the Code of Criminal Procedure by police officials or officials of the State Secretariat for Culture or by sworn agents of the body referred to in Article 39.

CHAPTER VIII

Final Provisions

Administration of rights

Article 39. (1) The administration of the rights referred to in Article 17 and the defense of the moral rights referred to in Article 18 may be entrusted to a body of authors which, as the representative of those authors and in their name, shall be competent to grant the necessary authorizations for the use and exploitation of the works, to collect the corresponding royalties and to distribute them between the right owners, to supervise application of the Law, to ascertain infringements of the Law and to request the courts to take appropriate measures.

(2) Special legislation shall lay down the structure, composition and operation of such body which may conclude representation contracts with corresponding foreign bodies through which the rights of their members will be exercised on the territory of the People's Republic of Angola and those of Angolan authors, in the country concerned.

Implementing rules

Article 40. The Council of Ministers will promulgate implementing rules to this Law within a period of 180 days. Up to publication of those rules, the State Secretariat for Culture shall be competent to take the decisions necessary for its proper execution.

Decisions in cases of doubt

Article 41. Where there is a doubt as to the interpretation and application of this Law, it shall be for the Council of Ministers to take a decision.

Repeal of legislation

Article 42. All legislative provisions contrary to this Law shall be repealed.