

BURKINA FASO

Fourth REPUBLIC  
SECOND LEGISLATURE

UNITY – PROGRESS – JUSTICE

NATIONAL ASSEMBLY

**LAW NO. 032-99/AN**  
**ON THE PROTECTION OF LITERARY AND ARTISTIC**  
**PROPERTY**  
(English version)<sup>1</sup>

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<sup>1</sup> Courtesy translation provided by WIPO.

# **THE NATIONAL ASSEMBLY**

Having regard to the Constitution;

Having regard to Resolution No 01/97/AN of June 7, 1997 on the Validation of the Mandate of Deputies;

Deliberated at its session of December 22, 1999 and adopted the Law which shall read as follows:

## **TITLE I**

### **COPYRIGHT**

#### **CHAPTER I – GENERAL PROVISIONS**

##### **Article 1:**

Copyright shall include attributes of an intellectual and moral nature as well as attributes of an economic nature, which shall be established in this Law.

Any author shall benefit from the rights in his original literary or artistic work provided for under this Law. The author shall enjoy in his work, by its mere creation, the exclusive intangible property right enforceable against any person referred to as “copyright”.

##### **Article 2:**

The provisions of this Law shall apply to:

- works whose author or any other original holder of copyright is a national of Burkina Faso or has his habitual residence or headquarters in Burkina Faso;
- audiovisual works whose producer is a national of Burkina Faso or has his habitual residence or headquarters in Burkina Faso;
- works published for the first time in Burkina Faso or published for the first time in another country and also published in Burkina Faso within 30 days;
- works of architecture erected in Burkina Faso;
- works that are entitled to protection under an international treaty to which Burkina Faso is party.

##### **Article 3:**

Protection under copyright shall include any expression except for ideas, procedures, operating methods or mathematical concepts as such.

#### **CHAPTER II – SUBJECT MATTER OF PROTECTION**

##### **Article 4:**

The protection arising from the rights provided for under Article 1, paragraph 2, hereinafter “protection”, shall start as soon as the work is created, even if it is not fixed on a material carrier. This protection shall not be subject to any formality.

The existence or conclusion of a contract for hire or of services by the author of a literary or artistic work shall not provide an exemption from the enjoyment of the right provided for in the first paragraph.

The work shall be deemed created, irrespective of any disclosure, by the mere act of production, even unfinished, of the concept of the author.

The intangible property covered in Article 1, paragraph 2, shall be independent of the ownership of the material object.

### **Article 5:**

This Law shall protect works of the mind that are original intellectual creations in literary and artistic areas, such as:

- books, pamphlets, computer programs and other literary, artistic and scientific writings;
- lectures, addresses, sermons and other spoken works;
- musical works with or without words;
- dramatic works and dramatico-musical works;
- choreographic works and pantomimes;
- audiovisual works;
- radio works;
- works of drawing, painting, sculpture, engraving, lithography and tapestry;
- works of architecture;
- photographic works;
- works of applied art;
- illustrations, geographical maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

The provisions of this Law shall protect the rights of authors of works of the mind irrespective of their kind, form of expression, merit or purpose.

### **Article 6:**

The title of the work shall be protected, in the same way as the work itself, where it is of an original nature. This title may not be used by anyone, even if the work is no longer protected under the terms of this Law, to distinguish a work of the same kind, if such use is liable to cause confusion.

### **Article 7:**

The following shall also be protected as works:

- translations, adaptations, staging, arrangements and other alterations of works and expressions of traditional cultural heritage;
- collections of works, expressions of traditional cultural heritage or simple facts or data, such as encyclopedias, anthologies and databases, whether in machine-readable or other form, which by reason of the selection, coordination or arrangement of their contents constitute intellectual creations;

The protection of works referred to in the above paragraph shall be without prejudice to the protection of pre-existing works used to make such works.

### **Article 8:**

The protection of copyright shall not cover:

- official texts of a legislative, administrative or judicial nature or their official translations;
- daily news;
- simple facts and data.

## **CHAPTER III – PROTECTED RIGHTS**

### **Section I – Moral rights**

#### **Article 9:**

The author shall enjoy the moral right in his work which shall entitle him to the following:

- the right to disclose his work, to decide the procedure and conditions of this disclosure;
- the right to claim authorship over his work;
- the right to respect for his work;
- the right to withdraw or reconsider.

The author shall retain the moral right, which is perpetual, inalienable, imprescriptible and is not subject to legal seizure. It shall be transferable to the heirs of the author on the author's death and its exercise may be conferred on a third party in accordance with the author's will.

#### **Article 10:**

After the author's death, the right to disclose his posthumous works shall be exercised during the lifetime of the executor or executors designated by the author in his will. If there are none, or after their death, and unless the author has willed otherwise, this right shall be exercised in the following order by: the descendants, the spouse, the heirs other than descendants, who inherit all or part of the estate and the universal legatees or donees of the totality of the future assets. This right may be exercised even after the economic rights have expired.

In the event of manifest abuse in the exercise or non-exercise of the right of disclosure by the deceased author's representatives, the competent court may order any appropriate measure. The same shall apply in the event of a dispute between such representatives, where there is no known successor in title, or in the event of abeyance or escheat. Such matters may be referred to the courts by the Minister of Culture.

#### **Article 11:**

The authorship right of the author in his work shall include:

- the right to have his name, titles and position displayed on the copies of his work and, to the extent possible and in the customary manner, in relation to any public use of his work;
- the right to control the use of his name, titles and forms of address;
- the right to remain anonymous or to use a pseudonym.

### **Article 12:**

The right to respect of his work shall entitle the author to oppose any distortion, mutilation or other modification of his work.

### **Article 13:**

The author may only exercise his right to withdraw or reconsider provided he compensates the assignee beforehand for the harm that such withdrawal or reconsideration may cause the assignee. Where the author decides to have his work published after exercising his right to withdraw or reconsider, he shall be required first to offer his economic rights to the assignee he originally chose and under the conditions originally established.

In derogation of the perpetual nature of the moral right, the right to withdraw or reconsider may only be exercised by the author himself, except where he expressly stated otherwise during his lifetime.

### **Article 14:**

The author(s) of the audiovisual work may only exercise the moral right in a completed work.

The audiovisual work shall be deemed completed when the final version has been established by common agreement between, on the one hand, the director or, where necessary, the co-authors, and the producer on the other hand. Destroying the master version shall be prohibited. Any modification of this version by adding, deleting or changing any element shall require the agreement of the aforementioned persons. Before any transfer of the audiovisual work onto a different type of medium with a view to a different mode of exploitation takes place the director must be consulted.

If one of the authors of an audiovisual work refuses to complete his contribution or is unable to complete his contribution for reasons of *force majeure*, he may not oppose the use of that part of the contribution already in existence for the completion of the work. He shall be deemed the author of such contribution and shall enjoy the rights deriving therefrom.

### **Article 15:**

Unless provided otherwise, the author of a computer program may not oppose its adaptation within the scope of the rights he has assigned, nor may he exercise his right to withdraw or reconsider.

## **Section II – Economic rights**

### **Article 16:**

The author of a work of the mind shall enjoy in that work exclusive economic rights which entitle him to carry out or authorize the following:

- the reproduction of his work;
- the translation of his work;
- the preparation of adaptations, arrangements or other alterations of his work;
- the distribution of copies of his work to the public by sale or other transfer of ownership, or rental or public lending;
- the public performance of his work;
- the import of copies of his work;
- the broadcasting of his work;
- the communication of the work to the public.

The rights mentioned in this Article shall hereinafter be referred to as “economic rights”.

**Article 17:**

The rental and lending rights provided for in the article above shall not apply to the rental of computer programs where the program itself is not the essential subject of the rental or loan.

**Article 18:**

The authors of graphic and three-dimensional works, notwithstanding any assignment of the original work, shall have an inalienable right to a share in the proceeds of any sale of that work by public auction or through a dealer. This right, referred to as the resale royalty, shall inure to the benefit of his heirs or legatees after the death of the author.

This royalty shall be levied on the selling price of each work and on the full price with no deduction at source. The rate of this royalty shall be established by decree.

**Article 19:**

The public or ministerial officer through whom the sale is concluded must notify the author, his successors in title or the collective management organization of a specific work being put up for sale beforehand. It shall be incumbent on the officer to deduct the amount resulting from the application of the rate of the resale royalty from the sale price obtained and pay it to the collective management organization.

The dealer who sells a work must notify the author, his successors in title or the collective management organization within three days from the date of the sale. The dealer must deduct the amount corresponding to the rate of the resale royalty from the sale price and pay it to the collective management organization.

Public or ministerial officers as well as dealers must keep a register of works for sale and a register of sold works.

**Article 20:**

Whatever the matrimonial regime and subject to any clause to the contrary contained in a marriage contract being declared null and void, the copyright shall remain vested in the spouse who is the author or in the spouse to whom this right has been transferred. This right may not be acquired by the community or by a partnership of acquests.

The monetary proceeds resulting from the exploitation of a literary or artistic work or from the total or partial assignment of the right of exploitation shall be subject to the general rules

of law applicable to matrimonial regimes only if acquired during the marriage; the same shall apply to savings made on such account.

The provisions laid down in the preceding paragraph shall not apply if the marriage was contracted prior to the entry into force of this Law.

The legislative measures concerning the contribution of the spouses to the costs of the household shall apply to the monetary proceeds of exploiting the copyright.

## **CHAPTER IV – LIMITATION OF ECONOMIC RIGHTS**

### **Article 21:**

Where a work has been legally disclosed, the author may not prohibit:

- private and gratuitous performances held exclusively within the family circle;
- copies or reproductions reserved strictly for the private use of the copier and not intended for collective use, with the exception of:
  - copies of the works of art or architecture to be used for purposes identical to those for which the original work was created;
  - the total or substantial reproduction of databases;
  - the reproduction of computer programs subject to the provisions under Article 23 below;
- the import of a copy of a work by a natural person for personal ends;
- parody, pastiche or caricature subject to the laws of the genre.

### **Article 22:**

Where a work has been legally disclosed, the author may not prohibit, on condition that the author's name and the source are clearly indicated:

- analyses and short quotations justified by the critical, polemic, educational, scientific or informative nature of the work in which they are incorporated;
- press reviews;
- reproduction and dissemination, even in its entirety, through the press or by telecast as: news; news articles on politics, society, economics or religion; speeches intended for the public made in political, administrative, judicial or academic gatherings; sermons; lectures; addresses or other works of the same nature.
- the use of literary or artistic works as teaching examples by means of publication, broadcasting or audio or visual recordings, on the condition that such use is not abusive and is devoid of any commercial purpose.

### **Article 23:**

In derogation of the author's rights, the owner of a copy of a computer program may, without authorization from the author and without payment of a separate fee, produce a copy or adaptation of this program, provided that this copy or adaptation is:

- required for the use of the computer program for the purposes for which the program has been obtained;

- required for archive purposes and in order to replace the lawfully held copy in cases where the work appears to have been lost, destroyed or rendered unusable.

#### **Article 24:**

In derogation of the author's rights, a broadcasting organization may, without authorization and without payment of a separate fee, make a temporary recording, by its own means and for its own broadcasts, of a work which it has the right to broadcast. The broadcasting organization shall destroy this recording within six months of it being produced, unless an agreement on a longer period has been reached with the author of the work thus recorded. However, without such an agreement a single copy of this recording may be kept solely for archive storage purposes.

#### **Article 25:**

In derogation of the author's rights, reproducing, broadcasting or communicating to the public by cable an image of a work of architecture, a work of fine art, a photographic work or a work of applied art which is permanently located in a place open to the public shall be permitted, except where the image of the work is the main subject of such reproduction or communication and where it is used for commercial purposes.

### **CHAPTER V – OWNERSHIP OF RIGHTS**

#### **Article 26:**

The author of a work shall be the original owner of the moral and economic rights in his work.

Authorship shall belong, in the absence of proof to the contrary, to the person or persons under whose name or names the work is disclosed.

In the case of an anonymous or pseudonymous work, except where the pseudonym leaves no room for doubt as to the identity of the author, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author and, in this capacity he shall be entitled to protect and enforce the author's rights. This provision shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work.

#### **Article 27:**

The co-authors of a collaborative work shall be the original owners of the moral and economic rights in this work. They shall exercise their rights by common agreement; in the event of a dispute, the competent court shall pronounce a decision.

Where the contribution of the co-authors is of different kinds, each may, unless otherwise agreed, exploit separately his own personal contribution without, however, prejudicing the exploitation of the joint work.

#### **Article 28:**

The original owner of the moral and economic rights of a collective work shall be the natural or legal person at whose initiative and under whose responsibility the said work was created and the name under which it was published.



### **Article 29:**

The existence or conclusion of a contract for hire by the author of a work of the mind shall not provide an exemption from the enjoyment of copyright as recognized under this Law. Copyright in the work created within this context shall in the first instance belong to the author, except where a clause to the contrary in the contract exists.

However, where a three-dimensional work or a portrait is created on commission, the author shall not have the right to exploit the work by any means whatsoever without the authorization of the person who commissioned the work.

In the event of manifest abuse by the owner preventing the exercise of the right of disclosure, the court may, at the request of the author, his successors in title or the Minister of Culture, order any appropriate measures.

### **Article 30:**

Where a work created by an author on behalf of a natural or legal person (hereinafter “the employer”) within the framework of a work contract and his employment, the original owner of the moral and economic rights shall be the author, however, the economic rights in this work shall, in the absence of a clause to the contrary in the contract, be considered transferred to the employer to the extent justified by the usual activities of the employer at the time the work is created.

### **Article 31:**

Where a work is created by a civil servant of the State or one of its smaller constituent units in the course of duty, the moral and economic rights in the work shall belong to the State.

Where the work is produced by a collaborator of the administration but not linked thereto by a contract governed by public law and within the context of his duties, the provisions of this Law concerning the ownership of rights in works created during the performance of a contract for hire of services shall apply.

### **Article 32:**

Works created by students or interns of training establishments shall belong to their authors. However, economic rights resulting from the disclosure of their works may be shared in accordance with the rules of the establishment. In the event of a dispute, the competent court shall decide.

### **Article 33:**

Authorship of an audiovisual work shall belong to the natural person or persons who have carried out the intellectual creation of this work. In the absence of proof to the contrary, the following shall be presumed to be the co-authors of a collaborative audiovisual work:

- the author of the script;
- the author of the adaptation;
- the author of the dialog;
- the author of the musical compositions, with or without words, specially composed for the work;

- the director.

If an audiovisual work is adapted from a pre-existing work or script which is still protected, the authors of the original work shall be included as authors of the new work.

The original owners of the moral and economic rights in an audiovisual work shall be the co-authors of this work.

## **CHAPTER VI - TERM OF PROTECTION**

### **Article 34:**

In the absence of provisions to the contrary, economic rights in a work of the mind shall be protected during the author's lifetime and seventy (70) years after his death.

After the protection of economic rights expires, the collective management organization shall be legally authorized to enforce the author's moral rights.

### **Article 35:**

The economic rights in a collaborative work shall be protected during the lifetime of the last surviving author and for seventy (70) years after his death.

### **Article 36:**

The economic rights in a work published anonymously or under a pseudonym shall be protected until the 70-year period from the end of the calendar year when such a work was lawfully published for the first time lapses.

Where a publication has not been brought out in the seventy (70) years since the work was produced, the economic rights shall be protected for seventy (70) years from the end of the calendar year when such a work was legally made available to the public.

Where the work has not been published or made available from the time this work was produced, the economic rights shall be protected for seventy (70) years from the calendar year of such production.

If prior to the expiry of the periods established in the paragraphs above, the identity of the author is revealed or is unambiguous, the provisions of Article 35 or of this Article shall apply.

### **Article 37:**

The economic rights in a collective work, audiovisual work or radio work shall be protected until the 70-year period from the end of the calendar year when such a work was lawfully published for the first time lapses.

Where a publication has not been brought out in the seventy (70) years since the work was produced, the economic rights shall be protected for seventy (70) years from the end of the calendar year when such a work was made available to the public.

Where the work has not been published or made available from the time it was produced, the economic rights shall be protected for seventy (70) years from the calendar year of such production.

**Article 38:**

The economic rights in a work of applied art shall be protected until the 30-year period from the date of the production of this work lapses.

**Article 39:**

Economic rights which belong to the State administrations shall last ten years from the date of the disclosure of the work irrespective of its form. After the period has lapsed, the author shall fully recover the exercise of the economic and moral rights in the work.

**Article 40:**

The right of training establishments to take a share of the proceeds from the exploitation of the works created within the establishment shall last five (5) years from the date of publication of such works.

After the period has lapsed, the author shall fully recover the exercise of his economic rights.

**Article 41:**

The periods provided for in this Chapter shall lapse at the end of the calendar year during which they normally expire.

**CHAPTER VII – ASSIGNMENT OF RIGHTS AND LICENSES**

**Section I – General principles**

**Article 42:**

A copyright assignment contract and license agreement for exploitation shall be concluded in writing on pain of being declared void. This shall also apply to authorizations for use free of charge.

The full assignment of rights in future works shall be null and void.

**Article 43:**

The assignment of economic rights and licenses to carry out acts covered by economic rights may be limited to certain specific rights, as well as in relation to the aims, duration, territorial scope and extent or means of exploitation.

Failure to mention the territorial scope covered by the assignment of economic rights or the license granted to carry out acts set out in the economic rights shall be considered to limit the assignment or license to the country in which the assignment or license is granted.

Failure to mention the scope or means of exploitation covered by the assignment of economic rights or the license granted to carry out acts set out in the economic rights shall be considered

to limit the assignment or license to the scope and means of exploitation necessary for the aims envisaged at the time of granting the assignment or license.

#### **Article 44:**

Assignment by the author of his rights in his work may be total or partial. Assignment shall include a proportional share of the revenue from sale or exploitation for the author.

However, the author's remuneration may be calculated as a lump sum in the following cases:

- the basis for calculating the proportional share cannot be practicably determined;
- the lack of means to ensure the proportional share is applied, or the costs of calculating and supervising operations would be out of proportion with the expected results;
- the nature or conditions of exploitation make application of the rule of proportional remuneration impossible, either because the author's contribution does not constitute one of the essential elements of the intellectual creation of the work or because the use of the work is only of an accessory nature in relation to the subject matter exploited.

#### **Article 45:**

If the exploitation right has been assigned and the author suffers a prejudice of more than seven-twelfths as a result of a burdensome contract or of insufficient advance estimate of the proceeds from the work, he may demand either the rescission of the contract or the review of the price conditions under the contract.

In the event of the review of the price, such demand may only be formulated where the work has been assigned against a lump sum remuneration.

The burdensome contract shall be assessed, taking into account the overall exploitation by the assignee of the works of the author who claims to have suffered a prejudice.

#### **Article 46:**

Linked to the author's economic rights is a general lien over the property of the debtor. The lien shall subsist in spite of bankruptcy and judicial liquidation. The lien shall be filed after the claims guaranteeing the salaries of employees.

### **Section II – Publishing contracts**

#### **Article 47:**

The personal consent in writing of the author shall be obligatory. Notwithstanding the provisions that govern contracts made by minors and adults under guardianship, consent shall be required even in the case of a legally incompetent author, except where he is physically unable to give his consent.

The provisions of the above paragraph shall not apply if the publishing contract is signed by the author's successors in title.

Assignment of audiovisual adaptation rights shall be effected by written contract in an instrument separate from the contract relating to the publication itself of the printed work. The assignee shall undertake by such contract to endeavor to exploit the assigned right in

accordance with trade practice and to pay the author, in the event of adaptation, remuneration that is proportional to the revenue obtained.

#### **Article 48:**

A clause by which the author undertakes to afford a right of preference to a publisher for the publication of his future works of clearly specified kinds shall be lawful. This right shall be limited, for each kind of work, to five new works or albums from the day on which the contract is concluded for the first work or the author's production within a five-year period from that same day.

The publisher shall exercise the right afforded to him by notifying the author in writing of his decision within three months of the date on which the author has delivered to him each final manuscript.

With regard to phonographic recording the notification period shall be one month.

If the publisher enjoying the right of preference successively refuses two new works or albums of the kind laid down in the contract submitted by the author, the author may immediately and automatically regain his freedom with respect to any future works he produces of that kind. However, if he has received advances from the first publisher against his future works, he shall first reimburse such advances.

With regard to phonographic recording, the provisions of the above paragraph shall apply if the publisher refuses two albums.

### **Section III – Obligations of parties under the publishing contract**

#### **Article 49:**

The author shall guarantee that the publisher has the undisturbed and, unless otherwise agreed, exclusive right to exercise the right assigned. He shall be required to enforce the right and to protect it from any possible violation.

The author shall put the publisher in a position to manufacture and disseminate copies of the work. He shall deliver to the publisher, within the period of time stipulated in the contract, the subject matter of publication in a form permitting normal manufacture. The subject matter of publication provided by the author shall remain the property of the author unless otherwise agreed or it is technically impossible. The publisher shall be responsible for the subject matter of publication for a period of one year after completion of manufacture.

#### **Article 50:**

The publishing contract shall state the minimum number of copies that constitute the first printing. However, this obligation shall not apply to contracts laying down minimum royalties guaranteed by the publisher.

The publisher shall be required to manufacture the work or have it manufactured under the conditions, in the form and according to the modes of expression laid down in the contract. He may not make any modification to the work without the written authorization of the author.

Unless otherwise agreed, he shall place on each of the copies the name, pseudonym or mark of the author.

Unless there is a special agreement, the publisher shall complete the publication within the term customary in the trade. In the case of a fixed-term contract, the rights of the assignee shall lapse automatically on expiry of that term without the need for any formal notice.

However, the publisher may continue to market at the normal price the remaining copies in stock for three years for literary publication and six months for phonographic recordings after expiry of the period referred to in the above paragraph. However, the author may prefer to buy the copies at a price which, in the absence of an amicable agreement, shall be fixed according to expert opinion. This faculty afforded to the first publisher shall not prevent the author from proceeding with a new edition within a period of 30 months.

#### **Article 51:**

The publisher shall be required to ensure continuous and sustained exploitation and commercial dissemination of the work, in accordance with the practices of the trade.

#### **Article 52:**

The publisher shall be required to render accounts.

In the absence of special conditions stipulated in the contract, the author may require the publisher to produce, at least once a year, a statement of the number of copies manufactured during the period in question and specifying the date and size of the print runs and the number of copies in stock. In the absence of usage or arrangements to the contrary, the statement shall also mention the number of copies that cannot be used or have been destroyed by *force majeure* or *casus fortuitous* and the amount of royalties due or paid to the author.

The publisher shall be required to furnish the author with all evidence required to establish the accuracy of his accounts. If the publisher fails to provide the necessary evidence, he shall be ordered to do so by the court.

#### **Article 53:**

Judicial rehabilitation of the publisher shall not terminate the contract. Where activities are continued by a trustee or liquidator, they must respect all the publisher's obligations towards the author.

Where the activities of the enterprise have stopped for more than three months or where judicial liquidation is declared, the author may request the termination of the contract.

The liquidator may not sell at reduced price or sell out the manufactured copies until at least 15 days after notifying the author of his intention by means of a registered letter with acknowledgment of receipt. The author shall have a right of preemption on all or part of the copies. Failing agreement, the preemption price shall be fixed by expert opinion.

Where the publishing company is assigned, the purchaser shall be held to the obligations of the seller.

#### **Article 54:**

The publisher may not transfer the benefits of the publishing contract to a third party, either for a consideration or free of charge, or as a contribution to the assets of a partnership, independent from the business, without first obtaining the authorization of the author.

In the event of transfer of the business in such a way as seriously to compromise the material or moral interests of the author, the author shall be entitled to obtain reparation even by means of termination of the contract.

Where the publishing business was run as a company or a coparcenary, the allocation of the business to one of the former partners or one of the coparceners as a result of liquidation or division shall in no case be considered an assignment.

#### **Article 55:**

In respect of trade editions, the author may receive a lump sum payment for the first edition, subject to his formally expressed agreement in the following cases:

- scientific or technical works;
- anthologies and encyclopedias;
- prefaces, annotations, introductions, forewords;
- illustrations for a work;
- limited deluxe editions;
- at the request of the translator for translations.

A lump sum payment may also be made for the assignment of rights to or by a person or enterprise established abroad.

For works of the mind published in newspapers and periodicals of any kind and by press agencies, the remuneration of the author, bound to the information enterprise by a contract for hire or of service, may also be settled with a lump sum.

#### **Article 56:**

The publishing contract shall end, independently of the cases laid down in the general rules of law or in the preceding articles, when the publisher carries out the complete destruction of the copies.

The contract shall terminate automatically if, upon formal notice by the author fixing a reasonable period of time, the publisher has not effected publication of the work or, should the work be out of print, its republication.

The work shall be deemed out of print if two orders for delivery of copies addressed to the publisher have not been met within three months.

If, in the event of the author's death, the work is incomplete, the contract shall be rescinded as regards the unfinished part of the work, except if agreed otherwise between the publisher and the author's successors in title.

### **Section IV - Performance contracts**

#### **Article 57:**

A performance contract shall be concluded for a limited period or for a specific number of performances. The validity of the exclusive rights granted by a playwright may not exceed

five years; the interruption of performances for two consecutive years shall automatically terminate the contract.

Unless exclusive rights are expressly stipulated, the performance contract shall not confer on the entertainment promoter any exploitation monopoly. The entertainment promoter may not transfer the benefit of his contract without formal consent given in writing by the author or his representative.

The entertainment promoter shall be required to notify the author or his representatives of the exact program of public performances and furnish them with a certified statement of receipts. He shall pay the author or his representatives at the agreed times the amount of royalties stipulated.

The entertainment promoter shall ensure that public performance takes place under technical conditions that guarantee respect for the author's intellectual and moral rights.

### **Article 58:**

Unless otherwise agreed:

- authorization to telecast a work by electromagnetic waves shall not include the cablecasting of such telecasts, unless made simultaneously and in full by the organization granted the authorization and without extension of the contractually stipulated geographical area;
- authorization to telecast a work shall not constitute authorization to communicate the telecast of the work in a place to which the public has access;
- authorization to telecast a work by electromagnetic waves shall not include its transmission towards a satellite enabling the work to be received through other organizations unless the authors or their successors in title have contractually authorized these organizations to communicate the work to the public; if so, the broadcasting organization shall be exempted from paying any royalties.

## **Section V - Audiovisual production contracts**

### **Article 59:**

Contracts binding the producer and the authors of an audiovisual work, other than the author of a musical composition with or without words, shall imply, unless otherwise stipulated and notwithstanding the rights afforded to the author, the assignment to the producer of the exclusive exploitation rights in the audiovisual work.

Audiovisual production contracts shall not imply the assignment to the producer of the graphic and theatrical rights in the work.

Such contracts shall lay down the list of elements which served to produce the work and are to be stored, as well as the conditions of this storage.

Unless agreed otherwise, each of the authors of an audiovisual work may freely dispose of the part of the work that constitutes his personal contribution for the purpose of exploiting it in a different field if this does not prejudice the exploitation of the joint work.

### **Article 60:**

Remuneration shall be payable to the authors for each mode of exploitation.



Subject to the provisions of Article 44, paragraph 2 above, where the public pays a price to receive communication of a given, individually identifiable audiovisual work, remuneration shall be proportional to the price, subject to any sliding scale of tariffs afforded by the distributor to the operator. Remuneration shall be paid to the authors by the producer.

The authors of musical compositions with or without words shall be entitled to collect directly from persons publicly showing the work separate remuneration for such a showing. In the absence of an agreement between the parties, the remuneration shall be fixed in accordance with the applicable Regulation.

**Article 61:**

The author shall guarantee that the producer has the undisturbed exercise of the assigned rights.

**Article 62:**

The producer shall be required to ensure that the exploitation of the audiovisual work is in accordance with the practices of the trade.

**Article 63:**

At least once a year the producer shall furnish the author and co-authors with a statement of income resulting from the exploitation of the work in respect of each mode of exploitation. At their request, he shall give them any evidence necessary for establishing the accuracy of the accounts, in particular copies of the contracts in which he assigns to third parties all or a part of the rights he holds.

**Article 64:**

Judicial rehabilitation of the producer shall not imply termination of the audiovisual production contract. Where the making or exploitation of the work is continued, the receiver, trustee or any person involved in the company's operations during its bankruptcy or judicial liquidation shall be required to respect all of the producer's obligations, in particular those towards the author or co-authors.

**Article 65:**

In the event that all or a part of the enterprise is assigned or liquidated, the receiver, debtor or liquidator, as appropriate, shall be required to establish a separate lot for each audiovisual work that may be subject to assignment or to auction. He shall be required to inform, on pain of nullity, each of the authors and co-producers of the work by registered letter one month before any decision on assignment or any sale by auction of property held *indivisum*. The acquirer shall similarly be held to the obligations of the seller.

**Article 66:**

The author and co-authors shall have a right of preemption in respect of the work unless one of the co-producers states his intention to acquire. Failing agreement, the purchase price shall be fixed by expert opinion.

**Article 67:**

Where the activities of the company have stopped for more than three months or where liquidation is declared, the author and co-authors may request the termination of the audiovisual reproduction contract.

## **Section VI - Commission contracts for advertising**

### **Article 68:**

In the case of a commissioned work used for advertising, the contract between the producer and the author shall imply, unless otherwise stipulated, assignment to the producer of the exploitation rights in the work, provided that the contract specifies the separate remuneration payable for each mode of exploitation of the work particularly in relation to the geographical area, the duration of exploitation, the size of the print run and the nature of the medium.

## **TITLE II**

### **NEIGHBORING RIGHTS**

#### **CHAPTER I – GENERAL PROVISIONS**

### **Article 69:**

For the purposes of this Law, “neighboring rights” shall be understood as the rights granted to performers, producers of phonograms and videograms and broadcasting organizations in order to protect their interests related to their activities in respect of public use of authors’ works, any artistic performance or the public communication of events, information and sounds or images.

### **Article 70:**

Neighboring rights shall include the rights of performers, producers of phonograms and videograms as well as those of broadcasting organizations.

Neighboring rights shall not infringe on the rights of authors.

### **Article 71:**

The provisions under this Title shall apply to:

- performances where:
  - the performer is a national of Burkina Faso;
  - the performance is held on the territory of Burkina Faso;
  - the performance is fixed in a phonogram or videogram which is protected under this Law;
  - the performance, which has not been fixed in a phonogram or videogram, is incorporated in a broadcast protected under this Law;
- phonograms and videograms where:
  - the producer is a national of Burkina Faso;
  - the first fixation of the sounds or images or both, or their performances was made in Burkina Faso;
- programs of broadcasting organizations where:

- the headquarters of the organization are on the territory of Burkina Faso;
- the program was broadcast from a station on the territory of Burkina Faso.

The provisions of this Law shall also apply to performances, phonograms, videograms and programs of broadcasting organizations protected under the international conventions to which Burkina Faso is party, provided that the provisions of the applicable convention impose such a requirement.

## **Chapter II – RIGHTS OF PERFORMERS**

### **Article 72:**

Irrespective of the performer's economic rights, and even after these rights have been assigned, the performer shall maintain the right in respect of his sound and audiovisual performances, either live or fixed:

- to demand he is mentioned as such, except where the method of use of the performance dictates that such an omission is made;
- to oppose any distortion, destruction or other modification of his performances that harm his reputation.

A performer shall have the right to respect for his name, his title and his performance. This right shall be inalienable and imprescriptible; the performer shall retain this right.

The rights covered in the first paragraph of this Article shall be transferable to his heirs in order to protect his performance and his memory after his death. The collective rights organization shall be legally authorized to enforce the moral rights of performers upon expiry of the economic rights.

### **Article 73:**

The performer shall have the exclusive right to carry out or to authorize the following acts:

- the broadcast of his performance, except where the broadcast:
  - is part of a fixation of the performance other than a fixation made pursuant to Article 81 below;
  - is a rebroadcast authorized by the broadcasting organization which first showed the performance;
- the communication to the public of his performance, except where this communication is made from a fixation or broadcast of the performance;
- the fixation of his performance, which is not fixed;
- the reproduction of a fixation of his performance;
- the distribution of copies of a fixation or his performance through sale or any other transfer of ownership or rental;
- the making available to the public, by wire or wireless means, of his performance fixed on a phonogram or videogram, so that access is provided for all persons from the place and at the time they have chosen individually.

### **Article 74:**

In the absence of provisions to the contrary:

- the authorization to broadcast shall not imply the authorization to allow other broadcasting organizations to broadcast the performance;
- the authorization to broadcast shall not imply the authorization to fix the performance;
- the authorization to broadcast and fix the performance shall not imply the authorization to reproduce the fixation;
- the authorization to fix the performance and to reproduce this fixation shall not imply the authorization to broadcast the performance from the fixation or its reproductions;
- authorization for public lending.

**Article 75:**

The provisions of Article 20 of this Law on matrimonial regimes shall apply *mutatis mutandis* to performers.

**Article 76:**

The producer of phonograms shall have the exclusive right to carry out or authorize the following acts:

- the direct or indirect reproduction of his phonogram;
- the import of copies of his phonogram with a view to their distribution to the public;
- the distribution to the public of copies of his phonogram through sale or any other transfer of ownership or rental;
- the making available to the public, by wire or wireless means, of his performance fixed on a phonogram or videogram, so that access is provided for all persons from the place and at the time they have chosen individually.

**Article 77:**

Authorization in writing from the producer of videograms shall be required for the following:

- the direct or indirect reproduction of his videogram;
- the import of copies of his videogram with a view to public distribution;
- the distribution to the public of copies of his videogram through sale or any other form of transfer of ownership;
- rental;
- the making available to the public, by wire or wireless means, of his performance fixed on a phonogram or videogram, so that access is provided for all persons from the place and at the time they have chosen individually.

The rights afforded to the producer of a videogram under the preceding paragraph, copyright and performers' rights afforded him in the works fixed on the videogram may not be separately assigned.

**Article 78:**

The broadcasting organization shall have the exclusive right to carry out or authorize the following acts:

- the rebroadcast of its broadcasts;
- the fixation of its broadcasts;
- the reproduction of a fixation of its broadcasts;
- the communication to the public of its television broadcasts.

### **CHAPTER III – EQUITABLE REMUNERATION FOR USE OF PHONOGRAMS OR VIDEOGRAMS**

#### **Article 79:**

If a phonogram or videogram published for commercial purposes, or a reproduction of such a phonogram, is used directly for broadcasting or for communication to the public, a single and equitable payment intended for both the performers and the producer of the phonogram or videogram shall be made by the user to the management organization for performers' rights.

Of the sum received for the use of the phonogram or the videogram, after the management fees of the collective management organization have been deducted, 50 per cent shall go to the producer and 50 per cent to the performers.

Persons who use published phonograms for commercial purposes must, in meeting their obligations, furnish the collective management organization with the exact programs of the uses which the persons concerned intend to make and all documents necessary for the distribution of royalties.

### **CHAPTER IV - FREE USES**

#### **Article 80:**

Notwithstanding the provisions of Articles 73 to 78 of this Law, the following acts shall be permitted without the authorization of the successors in title referred to in those articles:

- reproductions strictly reserved for private use by the person who has made them;
- reports of current events, provided that use is made only of short fragments of a performance, phonogram, videogram or broadcast;
- the use solely for educational or scientific research purposes;
- citations, as short fragments, of a performance, phonogram, videogram or broadcast, provided that such citations are properly used and are justified by their information aim;
- all other uses that constitute exceptions in relation to copyright-protected works pursuant to this Law.

#### **Article 81:**

The authorizations required under Articles 73 to 78 to make fixations of performances or broadcasts, reproduce such fixations and reproduce phonograms published for commercial purposes shall not be required when the fixation or reproduction is made by a broadcasting organization using its own means and for its own broadcasts, provided that:

- for each broadcast of a fixation, a performance or its reproductions made in accordance with this paragraph the broadcasting organization is entitled to broadcast the performance in question;
- for each broadcast of a fixation of a broadcast, or a reproduction of such a fixation made in accordance with this paragraph the broadcasting organization is entitled to make the broadcast;
- for any fixation made in accordance with this paragraph or its reproductions, the fixation and its reproductions are destroyed within a period of the same duration as that applied to the fixations and reproductions of copyright-protected works pursuant

to Article 24 of this Law, except for a single copy which may be retained solely for archive-storage purposes.

## **CHAPTER V – REMUNERATION FOR PRIVATE COPYING**

### **Article 82:**

The authors and performers of works fixed on phonograms or videograms, as well as the producers of such phonograms or videograms, shall be entitled to remuneration for the reproduction of the said works intended strictly for personal and private use and not intended for collective use.

Remuneration for private copying shall be collected on behalf of the successors in title by the collective management organization which must, once the management fees have been deducted, allocate 50 per cent of the sums collected to a fund for the promotion of culture. The remainder shall be redistributed as follows:

- for private copying of phonograms, remuneration shall be shared as follows:
  - 50 per cent for the authors,
  - 25 per cent for the performers and,
  - 25 per cent for the producers;
- for private copying of videograms, the remuneration shall be shared equally between the authors, performers and producers.

### **Article 83:**

Remuneration for private copying shall be paid by the manufacturer or importer of recording media that may be used for the reproduction for private use of works fixed on phonograms or videograms when these media enter into circulation in Burkina Faso. However, persons or institutions, the list of which shall be drawn up by decree of the Minister of Culture, may under certain conditions be exempt from paying the remuneration for private copying in the following cases:

- where recording media are acquired for professional purposes for their own use or production;
- where recording media are acquired for the purpose of assisting persons with visual or auditory disabilities.

### **Article 84:**

The amount of remuneration shall depend on the type of medium and the recording time it offers. It shall be fixed as a lump sum.

The types of media, levels of remuneration and conditions of payment of such remuneration shall be determined by regulation, where such remuneration may not be less than 10 per cent of the price of the medium.

## **CHAPTER VI – TERM OF PROTECTION**

### **Article 85:**

The term of protection to be granted for performances under this part of the Law shall be 70 years from:

- the end of the calendar year of the fixation for performances fixed on phonograms or videograms;
- the end of the year in which the performance took place for performances that are not fixed on phonograms or videograms.

**Article 86:**

The term of protection to be granted for phonograms and videograms in accordance with this part of the Law shall be 70 years from the end of the calendar year of fixation.

**Article 87:**

The term of protection for programs of broadcasting organizations in accordance with this part of the Law shall be 30 years from the end of the calendar year in which the broadcast was transmitted.

**TITLE III**

**EXPRESSIONS OF TRADITIONAL CULTURAL HERITAGE**

**CHAPTER I – OWNERSHIP OF RIGHTS IN EXPRESSIONS OF TRADITIONAL CULTURAL HERITAGE**

**Article 88:**

For the purposes of this Law, “expressions of traditional cultural heritage” shall be understood as productions made up exclusively of characteristic elements of traditional artistic and literary heritage, which is developed and continued by a national community of Burkina Faso or by individuals who are considered to meet this community’s traditional artistic expectations, especially popular tales, popular poetry, popular songs and instrumental music, popular dance and shows and artistic expressions of rituals and productions of popular art.

The purpose of the provisions of this Title shall be to protect expressions of traditional cultural heritage in terms of aspects related to literary and artistic property.

Expressions of traditional cultural heritage, the authors of which are not known but where it is reasonable to presume they are nationals of Burkina Faso, shall be part of national heritage. The same shall be true for expressions of traditional cultural heritage, the individual authors of which are known and have been dead for more than seventy (70) years.

**Article 89:**

Expressions of traditional cultural heritage by known individual authors shall belong to their authors if, in accordance with the term of copyright protection, the expressions are not yet in the public domain. Any person claiming to be the author of an expression of traditional cultural heritage must legally prove that he is the author.

The royalties to be paid by the users upon exploitation of expressions of traditional cultural heritage whose authors are known shall be shared between the rights holders and the collective management organization in accordance with the organization’s distribution rules.

## **CHAPTER II - PRINCIPLES OF PROTECTION**

### **Article 90:**

Expressions of traditional cultural heritage which are part of national heritage shall be protected under this Law against illicit exploitation and other prejudicial actions.

Any publication and communication to the public of an identifiable expression of traditional cultural heritage which is part of national heritage shall properly indicate its source either by mentioning the name of the author or by mentioning the community and/or the geographical place from where the expression originates.

The copies of expressions of traditional cultural heritage, including for copies of translations, arrangements and other alterations of these expressions, made without either authorization or declaration as required, may not be imported, exported or distributed.

The protection of expressions of traditional cultural heritage which are part of national heritage shall be guaranteed without limitation as to time.

### **Article 91:**

The following uses of expressions of traditional cultural heritage which are part of national heritage shall be subject to the authorization of the collective management organization, pursuant to the agreement of the Minister of Culture where expressions are used both with gainful intent and outside their traditional or customary context:

- any publication, reproduction and distribution of copies of expressions of traditional cultural heritage which are part of national heritage;
- any public recitation or performance, any transmission by wire or wireless means, and any other form of communication to the public of expressions of traditional cultural heritage which are part of national heritage.

### **Article 92:**

The creation of works derived from expressions of traditional cultural heritage which are part of national heritage such as adaptations, translations, transcriptions, collections with or without agreement, and other alterations shall be free of charge for the people of Burkina Faso. Such creation shall be subject to authorization from the collective management organization for foreigners. The creation, after its production, shall be declared to the collective management organization.

### **Article 93:**

The authorization of the collective management organization shall be granted subject to the agreement of the Minister of Culture against payment of a royalty, the amount of which shall be fixed in accordance with the conditions for use of protected works in the same category. The proceeds from this royalty shall, after management fees have been levied, be paid into a fund for cultural promotion.

The royalties payable by the users upon exploitation of works derived from expressions of traditional cultural heritage which are part of national heritage shall be shared between the



rights holders and the collective management organization, in accordance with the provisions to be established in the distribution rules of this organization.

### **CHAPTER III – EXCEPTIONS TO PROTECTION**

#### **Article 94:**

The exceptions to copyright provided for in this Law shall apply *mutatis mutandis* to expressions of traditional cultural heritage.

## **TITLE IV**

### **COLLECTIVE MANAGEMENT OF RIGHTS**

#### **CHAPTER I - POWERS OF THE COLLECTIVE MANAGEMENT ORGANIZATION**

#### **Article 95:**

The collective management of copyright, neighboring rights and the protection of traditional cultural heritage which is part of national heritage shall be guaranteed by the collective management organization.

The collective management organization shall manage the interests of foreign entities on national territory within the framework of agreements which it is requested to conclude with them.

#### **Article 96:**

In performing its functions, the collective management organization shall carry out the following:

- granting licenses and permits for the exploitation of works, expressions of traditional cultural heritage, performances, phonograms, videograms and broadcasting programs protected under this Law on behalf and in the interest of rights holders;
- collecting the royalties resulting from the said licenses and permits;
- sharing the royalties between the successors in title.

The provisions of paragraph 1 of Article 95 above shall not infringe on the power to exercise directly the rights conferred on the authors of works, holders of neighboring rights and their successors in title provided for in this Law.

#### **CHAPTER II: SUPERVISION OF THE COLLECTIVE MANAGEMENT ORGANIZATION**

#### **Article 97:**

The collective management organization shall be under the technical supervision of the Ministry of Culture. Its status shall be approved by the Council of Ministers at the proposal of the Minister of Culture.

## TITLE V

### PROCEDURES AND SACTIONS

#### CHAPTER I: CIVIL PROCEDURES AND SACTIONS

##### Article 98:

Any dispute regarding the application of the provisions of this Law which fall within the jurisdiction of the judiciary shall be brought before the competent courts without prejudice to the right of the injured party to bring a case before a criminal court in accordance with general law.

The collective management organization shall be entitled to take legal action to protect the interests for which it is responsible.

In addition to the reports of judicial police officers or agents, the statements of sworn agents of the collective management organization may constitute concrete proof of the existence of any infringement of the provisions of this Law.

##### Article 99:

At the request of any author of a work of the mind, any holder of a neighboring right, their successors in title or the collective management organization, the police, the gendarmerie, customs authorities or any other authorities entitled to effect seizure must:

- seize, regardless of the day and time, the copies that constitute an unlawful reproduction of a work, phonogram, videogram or programs of a broadcasting organization;
- seize, regardless of the day and time, the income from any reproduction, performance or broadcast by any means whatsoever of a work of the mind, phonogram, videogram or program which violates the rights of the copyright holders and holders of neighboring rights;
- seize, regardless of the day and time, the material which was used or was intended to be used to infringe on the rights protected under this Law;
- suspend any public performances which are underway or have been announced that infringe on the rights of copyright holders or holders of neighboring rights;
- suspend any manufacturing which is underway intended for the unlawful reproduction of a work, phonogram, videogram or programs of a broadcasting organization.

##### Article 100:

Where proceeds from exploitation payable to the author or performer of a work of the mind are the subject of a seizure order, the competent civil court may order the payment of a certain amount or of a specified proportion of the amounts seized to the author or the performer as an allowance for maintenance.

Amounts payable, on account of exploitation for gain or following the assignment of literary or artistic property rights, to all authors, composers or performers as well as their surviving spouses against whom there exists no final decision of separation or under-age children in their capacity of successors in title, shall not be liable to seizure insofar as they constitute maintenance.

The provisions of this Article shall not be obstacle to the seizure orders made under the Code on Persons and the Family in relation to maintenance claims.

#### **Article 101:**

Within 30 days of the date of the seizure report, the distrainee or garnishee may request the President of the High Court to order the lifting of the seizure or to limit the effects thereof, or also to authorize the resumption of manufacture or public performance under the authority of an administrator appointed to be the custodian, on behalf of whomsoever it may concern, of the proceeds from such manufacture or exploitation.

The President of the High Court, ruling in summary proceedings may, if he accedes to the request of the distrainee or garnishee, order the relevant party to deposit a sum to guarantee any damages that may be claimed by the rights holder.

In the event of a non-suit or discharge, the measures taken shall be lifted *ipso jure* by the court. Where the distrainor fails to refer the matter to the competent authority within 30 days of the seizure, the measures taken shall be lifted *de jure* by the president of the court to whom the request was referred. However, where seizures for the amounts payable are less than or equal to two hundred and fifty thousand francs, the collective management organization may, within 10 days from the date of the first deadline, request the High Court to confiscate copies, receipts or material seized. The proceeds of confiscation shall go to the destinations as stipulated in Articles 104 and 112 of this Law.

#### **Article 102:**

To hear cases brought in accordance with this Law the competent court may, subject to the provisions of the Code of Criminal and Civil Procedure and conditions it considers reasonable, issue an order prohibiting the commission or the cessation of the violation of any right protected under this Law.

#### **Article 103:**

The measures provided for in Articles 99 to 102 above shall apply in the event of infringement of the provisions of this Law regarding the protection of expressions of traditional cultural heritage which are part of national heritage.

#### **Article 104:**

In the event of violation of one of the rights protected under this Law, the injured party shall be entitled to obtain from the offender the payment for damages as compensation for the harm suffered by the injured party as a result of the infringing act, as well as the payment of the costs incurred by the infringing act, including legal costs.

In the event of non-compliance with the provisions in respect of the resale royalty, the buyer, seller and person responsible for conducting the sale by public auction may be jointly ordered to pay damages to the beneficiaries.

#### **Article 105:**

In the event of copies produced in violation of these rights, the judicial authorities may order that these copies and their packaging are destroyed or disposed of in an alternative manner outside commercial spheres so as to avoid harm being caused to the owner of the right, except

where the owner asks for alternative arrangements to be made. This provision shall not apply to copies where ownership thereof has been acquired in good faith by a third party, nor to their packaging.

Where the danger exists that material might be used to commit or continue to commit acts constituting a violation of copyright or neighboring rights, the court may order that the material is destroyed or that alternative arrangements are made outside the commercial spheres so as to reduce to a minimum the risks of further violations, or that the material is returned to the owner of the right.

Where the danger exists that acts constituting a violation will continue, the court shall expressly order the cessation of these acts, issuing a fine if necessary.

## **CHAPTER II – CRIMINAL SANCTIONS AND PROCEDURES**

### **Article 106:**

Notwithstanding the provisions of Article 511 of the Criminal Code:

- any edition of writing, musical composition, drawing, painting or other printed or engraved production either fully or partially, in violation of the laws and regulations on the property of authors shall constitute copyright infringement;
- any reproduction, translation, adaptation, performance or broadcast by any means whatsoever of a work of the mind in violation of the author's rights, as stipulated and governed by the law, shall also constitute copyright infringement. Copyright infringement shall be punishable with a prison sentence of two months to one year and a fine of 50,000 to 300,000 francs or by only one of these sanctions;
- the export and import of counterfeit works shall be subject to the same sanctions.

### **Article 107:**

Any fixation, reproduction, communication or making available to the public, for a consideration or free of charge, or any broadcasting of a performance, phonogram, videogram or program made without authorization, when authorization is required from the performer, producer of phonograms or videograms or the broadcasting organization, shall be punishable with a prison sentence of two months to one year and a fine of 50 000 to 300 000 francs or by only one of these sanctions.

The same sanctions shall apply to any import or export of phonograms or videograms made without the authorization of the producer or performer when this authorization is required.

The same sanctions shall apply for failure to pay the remuneration due for the private copying or communication to the public and broadcasting of commercial phonograms.

### **Article 108:**

The following shall be unlawful and constitute the violation of copyright and neighboring rights:

- the manufacture or import, for sale or rental, of a device or means specially designed or adapted to render inoperable any copy-protection or copy-management device or means;

- the manufacture or import, for sale or rental, of a device or means which allows or facilitates the receipt of a coded broadcast or communication to the public or of any other kind by persons not entitled to receive these;
- the deletion or modification, without due entitlement, of any information relating to the rights regime in electronic form;
- the distribution or import for the purposes of distribution, broadcasting, public communication or the making available to the public, without due entitlement, of works, performances, phonograms, videograms or broadcasts, in the knowledge that information relating to the rights regime in electronic form has been deleted or modified without authorization.

Persons perpetrating the infringements stipulated above shall be punished in accordance with Articles 106 and 107 above.

#### **Article 109:**

Persons undertaking, on a large scale and for commercial purposes, acts punishable under Articles 106, 107 and 108 above shall have committed the crime of piracy.

Piracy shall be punishable with a prison sentence of one to three years and a fine of 500,000 to 5,000,000 francs or only one of these two penalties.

#### **Article 110:**

The penalties for offenses set out in Articles 106 to 109 above shall be doubled if it is established that the guilty party habitually undertakes the infringing acts.

In addition, the court may order the closure of the establishment operated by the convicted person either permanently or for a temporary period of not more than five (5) years.

Where the measure ordering closure is issued, the members of staff shall receive indemnification equal to their salaries plus all benefits in kind for the duration of the closure and at most for six months. If collective or individual agreements provide for a higher indemnification for redundancy this shall be due.

Any infringement of the provisions of the two paragraphs above shall be punishable with a prison sentence of one to six months and a fine of 150,000 to 1,500,000 francs or only one of these two penalties. In the event of a subsequent offense the sanctions shall be doubled.

#### **Article 111:**

In all the cases provided for in Articles 106 to 110 above, the court may order the confiscation of all or part of the revenue resulting from the infringement, and that of all counterfeit or unlawfully reproduced phonograms, videograms, objects and copies, and of the material specially installed for the commission of the offense.

The confiscated revenue shall be handed over to the injured party or his successors in title as compensation for harm to cover part of his compensation or all the compensation, if confiscation did not take place, compensation shall be settled through the regular channels.

The confiscated material and copies shall be handled in accordance with the provisions of Article 104 of this Law.

At the request of the civil party, the court may also order, at the expense of the convicted party, the posting of the conviction ruling as well as its complete or partial publication in the newspapers as determined by the court; the costs of such publication may not exceed the maximum amount of the fine incurred.

### **CHAPTER III – BORDER MEASURES**

#### **Article 112:**

Under this Law and pursuant to border measures, rights holders shall be the holders of copyright and neighboring rights, their successors in title and the collective management organization which is their legal representative.

#### **Article 113:**

In order to enable the application of the right to import and the right to remuneration for private copying, provided for in Articles 16, 82 and 84 of this Law respectively, an import visa for artistic and literary works and for blank media for the purpose of fixing these works shall be established.

The import visa shall be issued by the collective management organization in accordance with the conditions laid down by regulation.

#### **Article 114:**

In the event that there is no import visa as established under this Law, customs may, before any authorization to put the goods into circulation, inform the collective management organization which shall act in accordance with the conditions laid down by regulation.

Customs may, at its own initiative, suspend customs clearance and withhold goods which are thought to have infringed or are liable to infringe copyright or a neighboring right. Where this is the case, customs may request the rights holder to provide any information and assistance free of charge, including expert assistance and other means necessary to determine whether the suspected goods are counterfeit or pirated.

The customs authorities may at the request in writing of a holder of copyright or a neighboring right, supported by evidence, or at the request of the collective management organization, withhold as part of its controls the goods which the holder or organization claim to be an infringement of the right.

In the cases set out in the two paragraphs above, the procedures to follow and the measures to be taken by customs shall be those of the customs regulations implementing the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

#### **Article 115:**

Without prejudice to the protection of confidential information, customs or another competent authority may authorize the holder of the copyright or neighboring right to examine the goods for which customs clearance has been suspended pursuant to the previous Article, and take samples with a view to establishing by examination, test or analysis whether the goods are pirated, counterfeit or otherwise infringe on the holder's rights.

Without prejudice to the protection of confidential information, customs may provide the holder of the copyright or neighboring right with additional information which it knows shall assist in determining whether the goods are indeed counterfeit, pirated or otherwise infringe the holder's rights.

**Article 116:**

The measures provided for in Articles 113 to 115 above shall apply in the event of infringement of the provisions of this Law regarding the protection of expressions of traditional cultural heritage which are part of national heritage.

**TITLE VI**

**FINAL PROVISIONS**

**Article 117:**

The provisions of this Law shall also apply to works which have been created, performances which have taken place or have been fixed, phonograms and videograms which have been fixed and programs of broadcasting organizations that have been made prior to the entry into force of this Law, provided that these works, performances, phonograms or videograms and programs are not yet in the public domain owing to the lapse of the term of protection to which they were subject in the previous legislation or in the legislation of their country of origin.

The legal effects of the acts and contracts concluded or stipulated prior to the date of entry into force of this Law shall remain intact and unaffected.

**Article 118:**

The definitions contained in the attached glossary shall be an integral part of this Law.

**Article 119:**

The conditions for the implementation of this Law shall be laid down by decree issued by the Council of Ministers.

**Article 120:**

This law shall repeal any previous provisions to the contrary, namely Order No. 83-016/CNR/PRES of September 29, 1983 and the amendment thereto, No. 84-12/CNR/PRES of February 29, 1984 on the Protection of Copyright, and shall be executed as a Law of the State.

Thus done and deliberated in public session  
at Ouagadougou on December 22, 1999

|   |  |
|---|--|
| Secretary of the session                  | President of the National Assembly<br>Fifth Vice-President |
| (signed)<br><b><u>Siméon SAWADOGO</u></b> | (signed)<br><b><u>Charles Etienne ZAN</u></b>              |

(stamped)



# GLOSSARY

- (1) “**Author**” means the natural person who creates the work.
- (2) “**Original work**” means a work which, by its characteristic features and form, or by its form alone, allows its author to be identified.
- (3) “**Derived work**” means a work that is created based on one or more pre-existing works, such as translations, adaptations, arrangements or other alterations of an artistic or literary work.
- (4) “**Collective work**” means a work created by several authors, at the initiative and under the direction of a natural or legal person, who publishes it under his direction and name and in which the individual contributions of various authors participating in its production are integral to the work as a whole for which they were conceived, without it being possible to attribute to each author a separate right in the whole work once compiled.
- (5) “**Collaborative work**” means a work created by two or more authors. The production of such a work may arise from relative collaboration, where the individual contribution of each author can be clearly identified, or absolute collaboration, where the contribution of each author cannot be identified in the work jointly created.
- (6) “**Composite work**” means a new work in which a pre-existing work is incorporated without the collaboration of the author of that work.
- (7) “**Audiovisual work**” means a work that consists of a series of interrelated images which impart an impression of motion, with or without accompanying sounds, which can be seen and, where accompanied by sounds, can be heard.
- (8) “**Computer program**” means a set of instructions expressed in words, codes, schemes or in any other form, which may when incorporated in a machine-readable medium cause a computer or electronic process capable of data processing to perform or achieve a particular task or result.
- (9) “**Work of applied art**” means an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or by industrial means. A “**useful article**” shall be an article that meets the intrinsic utilitarian functions beyond merely portraying the appearance of the article or conveying information.
- (10) “**Radio work**” means a work created for the purpose of sound broadcasting, such as a radio play.
- (11) “**Copying**” is the result of any act of reproduction.
- (12) “**Reproduction**” means the manufacture of one or more copies of a work or part thereof, in any material form whatsoever, including sound and visual recording. The inclusion of a work or part thereof in a computer system, either in the internal computer memory unit or an external computer memory unit is also a “reproduction”.
- (13) “**Reprographic reproduction**” means the reproduction in the form of a copy on paper or assimilated medium by means of a photographic process or one producing an equivalent effect permitting direct reading.
- (14) “**Communication to the public**” means the transmission by wire or wireless means of the sound or image, or both, of a work in such a way that the aforementioned can be perceived by persons outside the family circle and its closest social acquaintances in one or more places at such a distance from the place where the transmission originates that without the transmission, the image or sound could not be perceivable from that (those) place(s), irrespective of whether the persons can receive the image or sound at the same place and time, or at different places and times individually chosen by them.
- (15) “**Public performance**” means the act of reciting, acting, dancing, performing or otherwise interpreting a work either directly or through any device or process or, in the case of an audiovisual work, of showing the images in sequence or of making the accompanying sounds audible in one or more places where persons outside the family circle and its closest social acquaintances are or may be present, irrespective of whether they are or may be present in the same place and at the same time or in

different places and at different times, where the performance may be perceived without it necessarily constituting communication to the public.

- (16) **“Communication to the public by cable”** means the communication of a work to the public by wire or any other material means.
- (17) **“Broadcasting”** means the wireless transmission of the image, sound or both or the representation thereof intended for public reception; this term also covers the wireless transmission by satellite by sending a work towards a satellite, including both the uplink and downlink of the transmission, until the work is communicated to the public. The transmissions of encrypted signals is considered to be “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent.
- (18) **“Published”** means that copies of the work have been made accessible to the public with the consent of the author by sale, rental or public lending, or by any other transfer of ownership or possession, taking into account the nature of the work and on condition that the number of such published copies has been sufficient to meet normal public demand.
- (19) **“Rental”** means the transfer of possession of the original or a copy of a work for a limited period of time for profit-making purposes.
- (20) **“Producer”** of an audiovisual work means a natural or legal person who takes the initiative and is responsible for the production of the work.
- (21) **“Performance contract”** means a contract through which the author of a work of the mind or his successors in title authorize a natural or legal person to perform the said work in accordance with the agreed conditions. A general performance contract means the contract through which a professional authors’ association grants an entertainment promoter the right to perform, for the duration of the contract, the current or future works constituting the repertoire of the said association pursuant to the conditions established by the author or his successors in title.
- (22) **“Entertainment promoter”** means any natural or legal person who occasionally or permanently performs or has a third party perform, irrespective of the means used, works protected under this Law in an establishment which admits the public.
- (23) **“Publishing contract”** means the contract through which the author of a work of the mind or his successors in title assign to the said publisher under the conditions established the right to produce or have produced a specific number of copies of the work, whereby the publisher is required to effect publication and dissemination thereof.
- (24) **“Contracts at the author’s expense”** means a contract through which the author or his successors in title shall pay a publisher agreed remuneration against which the publisher manufactures a number of copies of the work in the form and according to the modes of expression specified in the contract, and effects publication and dissemination thereof.
- (25) **“Contracts at joint expense”** means a contract through which the author or his successors in title commission the publisher to manufacture at the publisher’s expense a number of copies of the work in the form and according to the modes of expression specified in the contract, and effect publication and dissemination thereof in accordance with the reciprocal agreement to share the gains and losses of exploitation in the agreed proportion. Such a contract constitutes a contract of joint undertaking.
- (26) **“Performers”** are, except for ancillary performers considered such by professional practice, natural persons who perform, sing, recite, deliver, declaim, act, dance or otherwise perform literary or artistic works, variety, circus or puppet acts or expressions of folklore.
- (27) **“Fixation”** means the incorporation of sounds or images, or both, or of representations thereof in a medium which makes it possible to perceive, reproduce or communicate them through a device.

- (28) “**Phonogram**” means exclusively any audio fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work.
- (29) “**Copy of a phonogram**” means any material medium containing sounds directly or indirectly copied from a phonogram and which incorporates all or a substantial part of the sounds fixed on the phonogram.
- (30) “**Producer of a phonogram**” means the natural or legal person who takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds.
- (31) “**Videogram**” means the fixation of a series of interrelated images with or without sound which give the impression of motion on cassette, disk or other material media.
- (32) “**Producer of a videogram**” means the natural or legal person who takes the initiative and has the responsibility for the first fixation of a series of images with or without sound constituting a videogram.
- (33) “**Communication to the public of a fixed performance**” of a “**phonogram or videogram**” means the making available to the public of copies of the fixed performance or copies of the phonogram or videogram with the consent of the rights holder, taking into account the nature of the work, and on condition that the number of copies published has been sufficient to meet public demand.
- (34) “**Communication to the public of a performance**” of a “**phonogram or videogram**” means the transmission to the public by any means other than broadcasting of sounds and/or images of performances or of sounds, images or their representations fixed on a phonogram or videogram.
- (35) “**Rights management information**” means any information which identifies the author, work, performer, performance, producer of phonograms or videograms, phonogram, videogram, broadcasting organization, broadcast, and any rights holder provided for in this Law, or any information about the terms and conditions of use of the work and other productions covered by this Law, and any number or code that represents such information, when any of these pieces of information is related to the copy of a work, a fixed performance, a copy of a phonogram or a fixed broadcast, or appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a phonogram or a broadcast.
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