

REPUBLIC OF BURUNDI

THE PRESIDENT

ACT NO. 1/021 OF DECEMBER 30, 2005, ON THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS
IN BURUNDI

THE PRESIDENT OF THE REPUBLIC,

Given the Constitution of the Republic of Burundi;

Having reviewed Decree-Law No. 1/9 of May 4, 1978, regulating the Rights of Authors and
Intellectual Property in Burundi;

Given Act No. 1/6 of May 25, 1983, on the Protection of National Cultural Heritage;

Given the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement),
adopted on April 15, 1994, at Marrakesh;

The Council of Ministers having deliberated;

The National Assembly and the Senate having adopted;

ENACTS THIS ACT:

[Two signatures]

PART ONE: PROTECTION OF COPYRIGHT

TITLE I: GENERAL PROVISIONS AND PROTECTED WORKS

CHAPTER I: GENERAL PROVISIONS

Article 1: Definitions

The following terms and their variant forms, as used in this Act, shall mean the following:

(a) “performers” means actors, singers, musicians, dancers and other persons who deliver, sing, recite, declaim, play in or perform in any other way literary or artistic works;

(b) “competent authority” means one or several bodies, of which each one comprises one or several persons appointed by the Government to exercise the powers attributed to them by the provisions of this Act whenever any matter must be settled by such an authority;

(c) “communication to the public” means the transmission by wire or wireless means of the image, the sound, or the image and sound, of a work, a performance or a phonogram in such a way that the image, the sound, or the image and sound, may be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that, without the transmission, the image or sound would not be perceivable in that or those places, irrespective of whether the persons can receive the image or sound at the same place and time, or at different places or times decided by them individually;

(d) “copy of a phonogram” means any physical medium containing sounds taken directly or indirectly from a phonogram and incorporating all or a substantial part of the sounds fixed thereon;

(e) “distribution to the public” means offering copies of a work to the public or any section thereof, mainly through appropriate commercial channels;

(f) “disclosure” means any act through which a work is first made accessible to the public;

(g) “broadcasting” means the transmission by wireless means for public reception of sounds or of images and sounds;

(h) “expressions of folklore” means productions of characteristic elements of the traditional artistic heritage developed and perpetuated in Burundi by a community or by individuals recognized as meeting the traditional artistic expectations of such a community and includes:

- folk tales, folk poetry and riddles
- folk songs and instrumental music
- folk dancing and entertainment

- productions of folk arts such as drawings, paintings, sculptures, pottery, terracotta, carvings, mosaics, woodwork, metal ware, jewelry, textiles and costumes;

(i) "fixation" means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

(j) "rental" means transfer of the possession of the original or a copy of a work for a limited period of time for profit-making purposes;

(k) "collective work" means a work created on the initiative of a natural person or legal entity who edits, publishes and discloses it under his own direction and in his own name and in which the personal contributions of various authors who take part in the writing of it merge into the whole for which they have been designed, so that it is impossible to attribute to each of them a distinct right over the whole that is created;

(l) "composite work" means a work into which a pre-existing work or fragments of a pre-existing work are incorporated without the collaboration of the authors of such works;

(m) "work of joint authorship" means a work created by the collaboration of two or more authors;

(n) "work of the public domain" means a work other than folklore that is not protected by copyright owing to the expiry of the term of protection or the lack of an international instrument ensuring the protection of the work;

(o) "work derived from folklore" means any work composed of elements borrowed from the Burundian traditional cultural heritage;

(p) "published work" means a work of which copies have been made accessible to the public with the consent of the author, provided that, taking into account the nature of the work, the number of such published copies is enough to satisfy the market;

(q) "work first published" means a work whose first publication took place abroad and its publication in the country took place within 30 days following that first previous publication (simultaneous publication);

(r) "phonogram" means any 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 an audiovisual work;

(s) "phonogram producer" means the physical person or legal entity who, the first time, fixes the sounds of a performance or of other sounds, or of a representation of sounds;

(t) "computer program" means instructions expressed in words, codes, schemes or any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer or any electronic or similar device having information-processing capabilities to perform or achieve a particular task or result;

(u) "broadcasting" means communication of a performance or a phonogram to the public by wireless transmission;

(v) “rebroadcasting” means simultaneous broadcasting by a broadcasting organization of a broadcast of another broadcasting organization;

(w) “performance” means the act of reciting, playing, dancing or otherwise performing a work either directly or by means of any device or process. In the case of an audiovisual work, it is the showing of its images in sequence or making its accompanying sounds audible at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places and/or times, and where the performance can be perceived without the need for communication to the public;

“Broadcasting” includes broadcasting by satellite, which is broadcasting by transmitting a work to a satellite, including both ascent and descent phases of the transmission until the time that the work is communicated to the public;

(x) “Reproduction” means the making of one or more copies of a work or phonogram, or a part of both, in any manner or form, including the recording of sounds and images and permanent or temporary storage of the work or phonogram in electronic form;

(y) “reprographic reproduction” means the making of copies in facsimile of originals or of copies of the work by means other than painting, for example by photocopying. The making of reduced or enlarged copies in facsimile is also considered to be reprographic reproduction.

Article 2

Copyright is the exclusive right of the author of a literary or artistic work, or of his assignees, which shall comprise moral and economic implications, as determined by this Act.

This Act shall be applicable to literary and artistic works (hereinafter referred to as “works”) that are original intellectual creations in the literary and artistic domain, whatever may be the genre, value, purpose, mode or form of their expression.

Article 3

The authors of original literary or artistic works shall be entitled to copyright protection for their works in accordance with the provisions of this Act.

The copyright protection provided for by this Act shall not be subject to any formalities.

CHAPTER II: PROTECTED WORKS

Article 4

Literary and artistic works shall include:

(a) books, pamphlets and other writings, including computer programs;

- (b) conferences, speeches, sermons and other similar works;
- (c) dramatic and dramatico-musical works;
- (d) musical works, with or without a written form and with or without accompanying words;
- (e) choreographic works and pantomimes;
- (f) audiovisual works;
- (g) works of drawing, painting, architecture, sculpture, engraving, lithography and tapestry;
- (h) photographic works, including works made by means similar to the photographic process;
- (i) works of applied art, whether handicraft works or works produced by industrial processes;
- (j) illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture and science.

Article 5

The following shall also be protected as original works:

- (a) translations, adaptations, musical arrangements and other transformations of a literary or artistic work;
- (b) collections of works and data in machine-readable or other form which, by reason of the selection, organization or arrangement of their contents, are original;
- (c) original works derived from folklore.

Article 6

The protection of the works referred to in Articles 4 and 5 shall be without prejudice to any protection of the pre-existing works used.

Article 7

Notwithstanding the provisions of Articles 4 and 5, copyright protection shall not apply to:

(a) acts, legal decisions and decisions of administrative bodies and the official translations of such texts, or daily news published, broadcast or communicated in public;

(b) ideas, procedures, systems, methods of operation, concepts, principles, discoveries or mere data, even if expressed, described, explained, illustrated or embodied in a work.

TITLE II: OWNERSHIP OF COPYRIGHT

Chapter I: AUTHOR AND OWNER OF COPYRIGHT

Article 8

Subject to the provisions of this Act, the author or authors that created a work shall be the original owner(s) of the copyright.

Article 9

A work shall be deemed to be created, irrespective of its disclosure, by the sole fact of the design of its creation by its author, even if it is not fully completed.

Article 10

In the absence of proof to the contrary, the person whose name or pseudonym, where it leaves no doubt as to the identity of the author, is mentioned on the work in the usual manner shall be presumed to be the author of the work.

In the case of a work created by an author for a natural person or legal entity under an employment contract and during his employment, or in the case of a work commissioned from the author by a natural person or legal entity, the first holder of the moral and economic rights shall be the author, unless otherwise provided by the contract, but the economic rights in such a work shall be deemed assigned to the employer or his representative to the extent necessary for the customary activities of the employer at the time of the creation of the work.

Article 11

A press company shall acquire the right to publish, in the newspaper, magazine or periodical for which the author or authors work, the articles, drawings, photographs and other productions provided by the employees under a contract of employment, while the authors shall retain the other rights protected under this Act.

Article 12

Neither the author nor the owner of a portrait shall have the right to reproduce or exhibit it in public without the consent of the person portrayed or of his assignees, for a period of 20 years after his death.

Article 13

The author of a pseudonymous or anonymous work shall enjoy in such work the rights afforded by this Act. However, he shall be represented in the exercise of those rights by the original editor or publisher, until such time as he reveals his identity and proves his authorship.

Heirs and other assignees of the author shall enjoy the rights afforded by this Act in posthumous works.

Chapter II: WORKS OF MORE THAN ONE AUTHOR

Article 14

The co-authors of a work shall be the original holders of the moral and economic rights in that work. However, if a work of joint authorship consists of parts that may be used separately (that is to say that the parts of the work may be reproduced, performed or otherwise used in a different manner), the co-authors may be entitled to separate rights in those parts, but in this case the author of a part shall remain one of the co-authors of the whole work.

Article 15

In the absence of proof to the contrary, a collective work shall be the property of the natural person or legal entity on whose initiative it is designed and under whose name it is disclosed. Copyright shall vest in such person.

Article 16

Copyright in a composite work shall belong to the person who created it, subject to the rights of the author of the pre-existing work.

Chapter III: AUDIOVISUAL WORKS

Article 17

The intellectual creators of an audiovisual work shall be the original owners of the copyright in that work. In the absence of proof to the contrary, the following shall be presumed to be the joint authors of an audiovisual work:

- (a) the author of the script;
- (b) the author of the adaptation;
- (c) the author of the dialog;
- (d) the author of the musical compositions, with or without words, specially composed for the work;
- (e) the director;

(f) the main designer, when it is an animated cartoon.

If an audiovisual work is adapted from a pre-existing work which is still protected, the author of the original work shall be assimilated to the authors of the new work.

Article 18

Prior to undertaking the production of an audiovisual work, the producer, who is the natural person or legal entity taking the initiative and the financial responsibility for the work, shall be required to conclude written contracts with all those persons whose works are to be used in the production.

Unless otherwise agreed, the written contracts concluded with the intellectual creators with regard to their contributions to the production of the audiovisual work shall include a presumption of assignment of the economic rights in the work to the benefit of the producer for a limited period, of which the term shall be laid down in the contracts.

The presumption provided for above shall not apply to pre-existing works used in the making of the audiovisual work, nor to musical works with or without words created for the same purpose.

Article 19

The contracts stipulated in the first paragraph of Article 18 shall provide for the following:

- (a) the right of the producer to modify the works insofar as the adaptation of the art requires;
- (b) allowing each joint-author to make free use of his personal contribution for the purpose of exploiting it in a different field, without prejudice to the exploitation of the common work;
- (c) termination of the contract if the producer refuses to complete the audiovisual work or is unable to complete it owing to circumstances beyond his control;
- (d) prohibiting a co-author who is unable to complete his contribution from opposing use of the part already in existence.

Article 20

The audiovisual work shall be considered completed by the producer when the first "standard copy" has been made by common consent between the director and the producer.

Article 21

The audiovisual producer shall be required to inscribe on the medium, in such a way that it appears at the time of viewing, his own name or company name, in addition to that of the director, the authors of the original script, the adaptation, the dialog, the music and song lyrics, and the main performers.

CHAPTER IV: MORAL RIGHTS

Article 22

The author of a literary or artistic work shall enjoy the right to respect for his name, his authorship and his work.

This right, known as “moral rights”, shall attach to the author’s person. It shall be perpetual, inalienable and imprescriptible. It shall be transmitted *mortis causa* to the heirs of the author or may be conferred on another person under a will.

Moral rights shall give the author the right to:

- (a) claim authorship of his work and, in particular, to have his name mentioned when one of the acts provided for by this Act is carried out, except when the work is incidentally or accidentally included in the broadcasting of current events;
- (b) object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the same work;
- (c) make decisions on or prevent disclosure of the work;
- (d) remove the work from circulation or stop any form of previously agreed use of it, and modify it, before or after its use.

Article 23

Notwithstanding assignment of his right of exploitation, the author shall enjoy a right to reconsideration or withdrawal, even after publication of his work, with respect to the assignee. However, he may only exercise that right on the condition that he indemnifies the assignee beforehand for any prejudice the reconsideration or withdrawal may cause him.

However, the author must grant priority for any new assignment of the rights of exploitation to the assignee to whom such right had originally been granted.

CHAPTER V: ECONOMIC RIGHTS

Article 24

Subject to the limitations provided for by this Act, the author of a protected work shall have the exclusive right to carry out or to authorize the carrying out of any of the following acts for all or part of the work:

- (a) reproduce the work in any physical format;
- (b) distribute copies of the work to the public by sale or any other transfer of property, or by rental;
- (c) import copies of the work;
- (d) communicate the work to the public by wire or any other means;
- (e) perform the work in public;
- (f) translate the work or adapt, arrange or transform it in any other way;

(g) to do, through a translation, adaptation, arrangement or any other transformation of the work, any of the acts referred to in paragraphs (d) and (e), above.

The right of rental provided for in paragraph (b) shall not apply to the rental of computer programs where the program itself is not the essential object of the rental.

CHAPTER VI: DOMAINE PUBLIC PAYANT

Article 25

Works in the public domain shall be placed under the protection of the State, represented by the Ministry in charge of culture.

The public representation or performance or the direct or indirect fixation of works in the public domain and of works exclusively composed of elements borrowed from works that have fallen into the public domain, with a view to exploitation for profit, are subject to regulations on royalties under conditions that shall be determined by an order of the Ministry in charge of culture.

The revenue from the collection of royalties for the use of works in the public domain shall be devoted to social and cultural purposes.

TITLE III: LIMITATIONS

Chapter I: LIMITATIONS TO ECONOMIC RIGHTS

Section I: FREE USES

Article 26

Notwithstanding the provisions of Article 24, the following uses of a protected work, in its original language or in translation, shall be permissible without the author's consent:

1. In the case of any work that has been lawfully published:

(a) the reproduction, translation, adaptation, arrangement or other transformation of such a work exclusively for the user's own personal or private use;

However, private reproduction shall not apply to the reproduction of works of architecture taking the form of buildings or other similar constructions, reprographic reproduction of an entire book or musical work in graphic format (musical scores), reproduction of all or of major parts of databases in digital format, reproduction of computer programs, except in the cases provided for in Article 27, and reproduction of a work that would conflict with the normal uses of the work or would unreasonably prejudice the legitimate interests of the author.

(b) the inclusion of quotations from such a work in another work, including quotations from newspaper articles and periodicals in the form of press summaries, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, and the source and the name of the author of the cited work are mentioned in the work in which the quotation is included;

(c) the use of the work by way of illustration in publications, broadcasts or sound or visual recordings for teaching to the extent justified by the purpose, or communication for teaching purposes of the work broadcast or distributed by cable for use in schools, educational establishments, universities and professional training, provided that such use is compatible with fair practice and that the source and the name of the author of the work are mentioned in the publication, broadcast or recording.

2. In the case of an article published in newspapers or periodicals on current economic, political or religious topics, and in the case of the broadcast of any work of the same character:

the reproduction of such an article or such a work in the press, or the communication of it to the public, shall be subject to the source of the work being clearly indicated when used in such a manner. However, such use shall not be permissible if the article, when published, or the broadcast work, when broadcast, is accompanied by any express condition prohibiting such use.

3. For the purpose of reporting on a current event by means of photography, cinematography or communication to the public, the reproduction or making available to the public, to the extent justified by the informative purpose, of any work that can be seen or heard in the course of the said current event.

4. The reproduction of works of art or of architecture through cinematography or television and the communication of such works to the public if such works are permanently located in a place where they can be viewed by the public or are included in the film or program by way of background or as incidental to the essential matters represented.

Similarly, the reproduction of works of architecture through photography, cinematography, television or any other similar process, in addition to the publication of corresponding photographs in the press, periodicals and textbooks, shall be free and may not give rise to copyright payment.

5. The reproduction by a photographic or similar process by public libraries, non-commercial documentation centers, scientific institutions and educational establishments, of literary and artistic works which have already been lawfully made available to the public, provided that such reproduction and the number of copies made are limited to the needs of their regular activities and that such reproduction does not conflict with the normal uses of the work nor unreasonably prejudices the legitimate interests of the author.

6. The reproduction in the press or the communication to the public of:

(a) any political speech or any speech delivered during legal proceedings;

(b) any lecture, address, sermon or other work of the same nature delivered in public, provided that the use is exclusively for the purpose of current information. However, the author shall retain the right to publish a collection of such works.

Article 27

1. The reproduction, in a single copy, or the adaptation of a computer program by the lawful owner of a copy of that computer program shall be permitted without the authorization of the author and without payment of a separate remuneration, provided that the copy or adaptation is necessary:

(a) for use of the computer program for the purpose and extent for which the program was obtained; or

(b) for archival purposes and for the replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable.

2. No copy or adaptation shall be used for any purpose other than those specified in paragraph 1, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

Article 28

The temporary reproduction of a work shall be permitted if:

(a) the reproduction is made in the process of a digital transmission of the work or an act of making a digitally stored work perceptible;

(b) the reproduction is caused by a natural person or legal entity legally authorized or authorized by the owner of the copyright to make that transmission of the work or the act making it perceptible; and

(c) the reproduction is an accessory to the transmission, it occurs during the normal operation of the equipment used and it entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those referred to in paragraphs (a) and (b).

Article 29

Notwithstanding the provisions of Article 24(c), the importation of a copy of a work by a natural person for his or her own personal purposes shall be permitted without the authorization of the author or any other owner of copyright in the work.

Article 30

Notwithstanding the provisions of Article 24(f), the author of a work of architecture may not prevent modifications that the proprietor has decided to make to it. However, he may object to being named as the author of the modification.

Article 31

Notwithstanding the provisions of Article 24, any broadcasting organization may make, for the purpose of its own broadcasts and by means of its own resources, an ephemeral recording, in one or more copies, of any work which it is authorized to broadcast. All copies of it shall be destroyed within six months of the making or within any longer term agreed to by the author. However, a copy of the recording may be preserved in official archives if it is considered to have an exceptional documentary character.

SECTION II: SPECIAL LIMITATIONS

Article 32

Notwithstanding the provisions of Article 24, the translation of a work into Kirundi, Swahili, English or French and the publication of that translation on the territory of Burundi, under a license granted by the competent authority and in accordance with the conditions specified in the regulations on translation licences annexed to this Act, shall be permitted without the authorization of the author.

Article 33

Notwithstanding the provisions of Article 24, the reproduction of a work and the publication of a particular edition of the work on the territory of Burundi, under a license granted by the competent authority and in accordance with the conditions specified in the regulations on reproduction licences annexed to this Law, shall be permitted even without the authorization of the author.

CHAPTER II: EQUITABLE REMUNERATION FOR REPRODUCTION FOR PRIVATE USE

Article 34

Notwithstanding the provisions of Article 24, the reproduction of a legally published audiovisual work or a sound recording of a work exclusively for the private use of the user shall be permitted without the authorization of the author, but with equitable remuneration.

Equitable remuneration for reproduction for private use in the cases provided for in the above paragraph shall be paid by the producers and importers of the physical media and devices used for such reproduction, and it shall be collected and distributed by a collective management organization.

In the absence of agreement between the collective management organization and the representatives of the producers and the importers, the amount of the equitable remuneration and the conditions of its payment shall be established by the Ministry in charge of culture.

The equitable remuneration to be paid to authors in accordance with this Article, and to performers and phonogram producers in accordance with Article 85, shall be distributed between these three groups of assignees in accordance with special regulations established by the Ministry in charge of culture. The physical media and devices referred to above shall be exempt from payment of equitable remuneration in the following cases:

- (a) if they are exported;
- (b) if they may not normally be used for the reproduction of works for private use (such as professional equipment and physical devices or dictaphones and cassettes used for such a purpose).

CHAPTER III: TRANSFER OF COPYRIGHT

Article 35

Copyright shall be transferred by succession to the heirs of the author.

Article 36

The economic rights of the author, as defined in Article 24, shall be assignable and transferable in full or in part.

A transfer of any of the rights referred to in Article 24 made otherwise than by operation of law must be recorded in writing.

The transfer in full or in part of any of the rights referred to in Article 24 shall not imply the transfer of any other rights.

Where a contract contains the complete transfer of one of the rights referred to in Article 24, its effect shall be limited to the means of exploitation specified in the contract.

The transfer of ownership of the only copy or of one or several copies of a work shall not imply the transfer of the copyright in the work.

Article 37

The assignment of an object of art (painting, sculpture, drawing and other works of three-dimensional art) shall not imply assignment to the acquirer of the right of reproduction or of the right of exhibiting or publishing it for profit-making purposes. The author shall retain the right of reproduction.

Notwithstanding paragraph 1, the legitimate acquirer of an original or of a copy of a work of art, unless otherwise stipulated in the contract, shall enjoy the right of presentation of such original or copy directly to the public.

The right under paragraph 2 shall not extend to persons who have obtained possession of originals or copies of a work by means of rental, public lending or any other means, without having acquired ownership of them.

Transfer of the negative or similar means of reproduction of a photograph shall imply transfer of the exclusive right referred to in this article.

Article 38

The assignment contract shall include:

- (a) the nature of the assigned rights and the domain and form of use of the work;
- (b) the time period of the use provided for the work;
- (c) the period of use of the assigned rights;
- (d) the number of performances, representations, broadcasts or number of copies, if it concerns publishing or reproduction;
- (e) the amount and means of remuneration of the author. Such remuneration may be proportional to income from sales or exploitation and, in that case, may include a guaranteed minimum, or lump sum;
- (f) provisions allowing for possible modifications of its content or execution.

Article 39

Remuneration may be calculated as a lump sum in the following cases:

- (a) whenever the conditions of exploitation of the work do not allow proportional remuneration to be accurately determined;
- (b) the use of the work in question is only as an accessory in relation to the subject matter exploited;
- (c) the work is used by a public law body for non-profit-making purposes.

Article 40

Total transfer of future works shall be null and void. However, total transfer of the right of the management of the rights in future works, granted by the author to the body responsible for the management and protection of the interests of authors, shall be permitted, as is the conclusion of a commission contract for particular works.

However, the author may reserve the right to indicate to the body responsible for the management and protection of his interests the desired means of exploiting his work. Similarly, the terms of the commission contract for particular works must be brought to the attention of and approved by the owner of the copyright.

Article 41

The author shall be entitled to institute proceedings for rescission of a contract for injury or to demand adequacy of the financial clauses of the transfer if the profit made from the exploitation of the work would be clearly disproportionate to initial agreements.

Any provision having the effect of alienating this right shall be considered null and void. Upon the death of the author, his assignees may cite the terms of this Article.

Article 42

If the assignee holding an exclusive right does not exercise that right before the expiry of the time period in which he must utilize the work, as established in the contract, or if he exercises it in an inadequate manner, and if thereby serious injury is caused to the author's legitimate interests, the author may revoke the right granted; if the work is delivered by the author later than established in the contract, the time period in which the work must be utilized shall commence from the time of delivery.

The right of revocation may be exercised only after the author has afforded the assignee, upon notifying him of the revocation, an additional period of time adequate to exercise sufficiently the right granted.

The author shall not be required to afford an additional period of time if it is obviously impossible for the holder of the right to exercise it or if he refuses to exercise it or if the affording of an additional period of time would compromise the predominant interests of the author.

CHAPTER IV: PUBLISHING CONTRACT

Article 43

A publishing contract shall be one under which the author of a work or his assignees grant to a publisher, under specified conditions, the right to make or have made a number of graphic, mechanical or other copies of the work, whereby the publisher is required to effect publication and dissemination thereof.

The contract shall be set out in writing, on pain of nullity.

Article 44

1. The form and mode of expression, the conditions for carrying out the publication and, where appropriate, the termination clauses, shall be laid down in the contract.
2. The editor may not, without the permission of the author, make any modifications to the work. Unless otherwise agreed in the contract, he shall place on each of the copies the name or pseudonym of the author.
3. Unless there is a special agreement, the publisher shall complete the publication within the term customary in the trade.

Article 45

The author shall guarantee the publisher the undisturbed and, unless otherwise agreed, exclusive exercise of the right assigned.

Article 46

The author shall put the publisher in a position to manufacture and make available to the public copies of the work.

He shall deliver to the publisher, within the period of time stipulated in the contract, the subject matter for publication in a form permitting normal manufacture.

The subject matter for publication furnished by the author shall remain the property of the author unless otherwise agreed.

Article 47

The publishing contract must state the number of copies that constitute the first printing. Unless otherwise agreed, no additional publication shall take place without further agreement by the author.

Article 48

The remuneration of the author shall consist of a percentage of the sale price of each copy of the work sold and, for publication in the original language, that percentage may not be less than 10 per cent. Further, the publishing contract may provide for an advance to be made to the author on his rights, at the time of either commissioning or accepting the manuscript.

The publisher shall be required to furnish the author with all evidence required to establish the accuracy of his accounts.

Unless otherwise agreed, the author may require the publisher to produce, at least once a year, a complete and detailed statement of:

- (a) the number of copies manufactured, specifying the date and size of the printings;
- (b) the number of copies sold and the number remaining in stock;
- (c) the number of copies that cannot be used or have been destroyed by accident or owing to unavoidable circumstances;
- (d) the amount of royalties due or, if applicable, already paid to the author.

Article 49

The publisher may not transmit the benefits of the publishing contract to a third party, for or without payment, independently of the business, without first having obtained the authorization of the author.

Article 50

In the event of bankruptcy or liquidation of the publisher, the author shall reserve the right to terminate the contract and to conclude a new contract with a different publisher.

Similarly, in the case of the transfer of the business of an insolvent publisher, the acquirer shall be obliged to meet the obligations of that publisher with regard to the author. If this condition is not met, the author shall reserve the right to terminate the contract.

Article 51

In the case of a contract of fixed duration, the rights of the assignee shall lapse automatically on expiry of that term without need of any formal notice.

However, for three years after expiry of that term, the publisher may continue to market at the normal price the copies remaining in stock, unless the author prefers to buy the copies at a price which, in the absence of an amicable agreement, shall be fixed according to expert opinion.

Article 52

Notwithstanding *the* provisions of Article 42, 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, if further editions have been stipulated in the publishing contract.

The work shall be deemed out of print if two orders for delivery of copies addressed to the publisher are not met within the maximum agreed period.

The publishing contract may be terminated by the publisher if the author, upon formal notice to him fixing a reasonable period of time, has prevented the publisher from effecting publication of the work.

Article 53

A contract “at the author’s expense” shall not constitute a publishing contract within the meaning of Article 43. Under such contract, the author or his assignees shall pay to the publisher an 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 ensures their publication and dissemination.

Such contract constitutes an employment contract governed by convention, usage and the provisions of the national code on civil and commercial obligations.

Article 54

A contract “at joint expense” shall not constitute a publishing contract within the meaning of Article 43. Under such contract, the author or his assignees shall commission a publisher to manufacture at his expense a number of copies of the work in the form and according to the modes specified in the contract and to ensure their publication and dissemination in accordance with the agreement reciprocally contracted to share the profits and losses of exploitation in the agreed proportion. Such contract shall constitute a joint undertaking.

Chapter V: Performance contracts

Article 55

A “performance contract” shall be a contract under which an author or a professional body of authors grants to a natural person or legal entity the right to perform their works or the works constituting the repertoire of such body under the conditions stipulated by the contracting parties.

A “general performance contract” shall mean a contract under which a professional body of authors grants to an entertainment promoter the right to perform, for the duration of the contract, the existing or future works constituting the repertoire of such body.

Article 56

A performance contract shall be set out in writing. It shall be concluded for a limited duration or for a specific number of communications to the public.

Exclusivity rights, the term of the first performance, the form of the performance and, if required, the termination clauses, shall be determined by the contract.

Article 57

An entertainment promoter shall be required:

- (a) to notify the author or his representatives of the exact programme of public performances;
- (b) to supply them with a documented statement of receipts;
- (c) to pay them the royalties received;
- (d) to ensure that public performance takes place under technical conditions that guarantee respect for the intellectual and moral rights of the author.

CHAPTER VI: DURATION OF COPYRIGHT

Article 58

Copyright shall subsist for the lifetime of the author and for the 50 calendar years beginning from the end of the year of his death.

Article 59

In the case of works of joint authorship, the rights referred to in Article 24 shall be protected during the lifetime of the last surviving joint author and for 50 years after his death.

Article 60

The economic rights in a work published anonymously or under a pseudonym shall be protected for a period of 50 years beginning from the end of the calendar year in which the work was lawfully published for the first time, or, failing such an event within 50 years from the making of the work, 50 years beginning from the end of the calendar year in which the work was made accessible to the public, or, failing such events within 50 years from the making of the work, 50 years beginning from the end of the calendar year of such making.

If, before the expiry of such a period, the identity of the author is revealed or is not left in any doubt, the provisions of Article 58 shall apply.

Article 61

The economic rights in a collective, audiovisual or posthumous work shall be protected for a period of 50 years beginning from the end of the calendar year in which the work was lawfully published for the first time, or, failing such an event within 50 years from the making of the work, 50 years beginning from the end of the calendar year in which the work was made accessible to the public, or, failing such events within 50 years from the making of the work, 50 years beginning from the end of the calendar year of such making.

Article 62

The economic rights in a work of applied art shall be protected for a period of 25 years beginning from the making of the work.

Article 63

In the case of a work originally belonging to a legal entity, subject to the imprescriptible right of the State with regard to folklore, the rights referred to in Article 24 shall be protected for a period of 50 years beginning from the date on which the work was lawfully made accessible to the public.

Article 64

The rights referred to in Article 24 shall be administered by a collective management body that shall be set up and whose role shall be to defend all the interests of authors and their assignees.

Article 65

The first part of this Act shall be applicable to:

(a) works whose author or any other original copyright holder is a national of Burundi or has his habitual residence or headquarters in Burundi;

(b) audiovisual works whose producer is a national of Burundi or has his habitual residence or headquarters in Burundi;

(c) works published for the first time in Burundi or published for the first time in another country and also published in Burundi within 30 days;

(d) architectural works erected in Burundi or works of fine art incorporated in a building situated in Burundi.

The provisions of this Act on the protection of copyright shall apply to works that are entitled to protection under international treaties to which Burundi is a party.

REPUBLIC OF BURUNDI

THE PRESIDENT

ACT NO. 1/021 OF DECEMBER 30, 2005, ON THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS
IN BURUNDI

THE PRESIDENT OF THE REPUBLIC,

Given the Constitution of the Republic of Burundi;

Having reviewed Decree-Law No. 1/9 of May 4, 1978, regulating the Rights of Authors and
Intellectual Property in Burundi;

Given Act No. 1/6 of May 25, 1983, on the Protection of National Cultural Heritage;

Given the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement),
adopted on April 15, 1994, at Marrakesh;

The Council of Ministers having deliberated;

The National Assembly and the Senate having adopted;

ENACTS THIS ACT:

[Two signatures]

***Part two: Protection of performers, phonogram producers and broadcasting organizations
(related rights)***

TITLE I: DEFINITIONS AND ACTS REQUIRING THE AUTHORIZATION OF PERFORMERS

Chapter I: Definitions

Article 66

The definitions provided for in Part one, Article 1, shall apply mutatis mutandis in Part Two of the Act.

Chapter II: Acts requiring the authorization of performers

Section I: Authorization request requirement

Article 67

None of the following acts may be carried out without the authorization of the performers:

(a) the broadcast of their performance, except if the broadcast is:

(i) made from a fixation of the performance other than a fixation made under Chapter V, Article 84;

(ii) a rebroadcast authorized by the broadcasting organization which broadcast the first performance.

(b) the communication to the public of their performance, except when such communication is:

(i) made using a fixation of the performance;

(ii) made using a broadcast of the performance.

(c) the fixation of their unfixed performance;

(d) the reproduction of a fixation of their performance;

(e) the distribution of copies of a fixation of their performance by sale or any other transfer of property, or by rental;

(f) the making available to the public of their fixed performance in a phonogram, by wire or wireless means, in such a way that members of the public may access them from a place or at a time individually chosen by them.

Article 68

In the absence of agreement or circumstances of employment from which the contrary would normally be inferred:

- (a) the authorization to broadcast shall not imply the authorization to other broadcasting organizations to broadcast the performance;
- (b) the authorization to broadcast shall not imply the authorization to fix the performance;
- (c) the authorization to broadcast and to fix the performance shall not imply the authorization to reproduce the fixation;
- (d) the authorization to fix the performance and to reproduce such fixation shall not imply the authorization to broadcast the performance from the fixation or its reproductions.

Article 69

At the time that the performers have authorized incorporation of their performances in a fixation of images or of images and sounds, the provisions of Articles 67 and 68 (c) and (d) shall cease to be applicable.

Article 70

Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances and performances fixed in phonograms, retain the right to claim to be identified as the performer of his performances, except where omission is dictated by the mode of use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

The provisions of Article 22, paragraph 2, of this Act shall apply *mutatis mutandis* to the moral rights of performers.

Article 71

No provision in this title shall be interpreted to deprive performers of the right to agree by contract on the conditions most favorable for them in respect of any use of their performances.

Article 72

Protection within the meaning of this title shall subsist for a period of 50 years beginning from:

- (a) the end of the year of the fixation for performances fixed in phonograms;
- (b) the end of the year in which the performance took place, for performances that are not fixed in phonograms.

Section II: Issuance of authorization for artists

Article 73

The authorizations required under Title I, Chapter II, of this part may be given by the performer or by a duly accredited representative to whom the authority to issue such authorizations has been granted in writing.

Article 74

Any authorization issued by a performer stating that he has retained the relevant rights or by a person claiming to be duly accredited as a representative of the performers shall be considered valid.

TITLE II: ACTS REQUIRING THE AUTHORIZATION OF PHONOGRAM PRODUCERS

Chapter I: AUTHORIZATION REQUEST REQUIREMENT

Article 75

None of the following acts may be carried out without the authorization of the phonogram producer:

- (a) the direct or indirect reproduction of copies of his phonogram;
- (b) the importation of such copies for their distribution to the public;
- (c) the distribution to the public of such copies by sale or any other transfer of property, or by rental;
- (d) the making available to the public of his phonogram, by wire or wireless means, in such a way that members of the public may access them from a place or at a time individually chosen by them.

Article 76

The term of protection afforded to phonograms under this part of the Act shall be 50 years, beginning from the end of the year in which the phonogram was published, or, failing such a publication within 50 years from the fixation of the phonogram, 50 years beginning from the end of the year of the fixation.

Chapter II: EQUITABLE REMUNERATION FOR USE OF PHONOGRAMS

Article 77

If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or other communication to the public, a single equitable remuneration for the performers and the phonogram producer shall be paid by the user to that producer.

Article 78

Remuneration for use of a phonogram shall be shared as follows: 40 per cent shall be paid to the producer and 60 per cent shall be paid to the performers. The performers shall share the amount received from the producer or shall use it in accordance with agreements between the parties.

Chapter III: NOTICE OF PROTECTION OF PHONOGRAMS

Article 79

Subject to the sanctions provided for under Article 93, all copies of phonograms subject to sale or the cases containing them shall bear a symbol (P), the letter "P" in a circle, alongside the year of the first publication, affixed in a clear manner to show that the protection is reserved.

If copies or their cases do not allow identification of the producer by means of the name of the mark or any other suitable designation, the notice should also include the name of the holder of the producer's rights.

If the copies or their cases do not allow identification of the main performers, the notice should also include the name of the person who holds the rights of such artists in the country where the fixation took place.

Chapter IV: ACTS REQUIRING THE AUTHORIZATION OF BROADCASTING ORGANIZATIONS

Article 80

None of the following acts may be carried out without the authorization of the broadcasting organization:

- (a) the rebroadcasting of its broadcasts;
- (b) the fixation of its broadcasts;
- (c) the reproduction of a fixation of its broadcasts;
- (d) subject to the provisions of Articles 83 and 84, the broadcasting organization shall have the exclusive right to communicate to the public or authorize the communication of its broadcasts to the public.

Article 81

Protection within the meaning of Article 80 above shall subsist for a period of 50 years beginning from the end of the year during which the broadcast took place.

CHAPTER V: LIMITATION TO PROTECTION

Article 82

Titles I (Section I, Chapter II), II and III of Part Two of this Act shall not be applicable when the acts regulated by these titles are for:

- (a) use for personal purposes;
- (b) reporting current events, on the condition that only short parts of a performance, a phonogram or a broadcast are used;
- (c) use solely for teaching activities or scientific research;
- (d) the reproduction, in the form of quotation, of a short part of a performance, a phonogram or a broadcast, provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose of information;
- (e) any other purposes which, under the provisions of Part One of this Law, constitute exceptions in relation to works protected by copyright.

Article 83

Authorizations required under Titles I (Chapter II), II (Chapter I) and III of Part Two of this Act to make fixations of performances and broadcasts and reproduce such fixations and to 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, on the condition that:

(a) for each broadcast of a fixation of a performance or its reproductions in accordance with the provisions of this paragraph, the broadcasting organization is authorized to broadcast the said performance;

(b) for each broadcast of a fixation of a broadcast, or of a reproduction of such a fixation, in accordance with the provisions of this paragraph, the broadcasting organization is authorized to broadcast the broadcast;

(c) for any fixation made in accordance with this paragraph or its reproductions, the fixation and its reproductions are destroyed within the same time limit as applicable to fixations and reproductions of works protected by copyright in accordance with Article 31 of this Act, except a single copy that may be kept for the exclusive purposes of conservation of archives.

CHAPTER VI: EQUITABLE REMUNERATION FOR PRIVATE REPRODUCTION

Article 84

Notwithstanding the provisions of Articles 67 and 76, it shall be permitted to reproduce a phonogram for the exclusive private use of the user without the authorization of the performer whose performance is fixed in the phonogram and without the authorization of the phonogram producer, but against payment of an equitable remuneration to the performer and producer.

Paragraphs 2 to 4 of Article 34 shall also apply with regard to the equitable remuneration referred to in the preceding paragraph.

CHAPTER VII: SCOPE OF APPLICATION OF PART TWO OF THE ACT

Article 85

Performers shall be protected under Part Two, Title I, of this Act when:

(a) the performer is a national of the Republic of Burundi; or

(b) the performance takes place on the territory of Burundi; or

(c) the performance is fixed in a phonogram protected under Article 87; or

(d) the performance, which was not fixed in a phonogram, is incorporated in a broadcast protected under article 88.

Article 86

Phonograms shall be protected under Part Two, Title II, of this Act when:

(a) the producer is a national of the Republic of Burundi;

- (b) the first fixation of the sounds was done in the Republic of Burundi;
- (c) the phonogram was published for the first time in the Republic of Burundi.

Article 87

Broadcasts shall be protected under Part Two, Title III, of this Act when:

- (a) the headquarters of the organizations are situated in the territory of the Republic of Burundi;
- (b) broadcasts are transmitted from transmitters situated in the territory of the Republic of Burundi.

Article 88

Part Two of this Act shall also apply to performances, phonograms and broadcasts protected under international conventions to which Burundi is a party.

CHAPTER VIII: ACQUIRED RIGHTS

Article 89

Part Two of this Act shall be without prejudice to the right of natural persons or legal entities to use, under the conditions stipulated above, fixations and reproductions made, in good faith, before the date of its entry into force.

Article 90

Part two of this Act shall in no way be interpreted as limiting or conflicting with the protection provided for any natural person or legal entity under Part One of this Act or under any international agreement to which the Republic of Burundi is a party.

TITLE III: MEASURES, REMEDIES AND SANCTIONS CONCERNING PIRACY AND OTHER INFRINGEMENTS

Chapter I: PROTECTIVE MEASURES

Article 91

The court competent to hear the proceedings instituted under civil law in accordance with this Act shall be empowered, subject to the relevant provisions of the codes of civil and criminal procedure, and subject to the conditions it deems reasonable, to issue an order prohibiting the commission or ordering the cessation of the infringement of any right protected under this Act.

The provisions of Article 73ff. of the Code of Civil Procedure and those under Articles 51 to 54 of the Code of Criminal Procedure shall apply *mutatis mutandis* to infringements of the rights protected under this Act.

The provisions of Articles 90 to 109 of Decree-Law No. 1/158 of November 12, 1971, amending the customs legislation, shall apply *mutatis mutandis* to the articles or equipment protected under this Act.

Chapter II: CIVIL SANCTIONS

Article 92

The holder of rights protected under this Act whose recognized rights have been infringed shall be entitled to obtain payment, by the infringer, of damages to compensate the prejudice they have suffered as a consequence of the infringement and the payment of the costs arising from the infringing act, including legal costs.

The amount of damages shall be determined in accordance with the relevant provisions of the civil code, taking into account the gravity of the material and moral prejudice suffered by the holder of the right and the size of the profit that the infringer has derived from the infringement. When the infringer did not know or did not have valid reasons for knowing that he was carrying out an activity infringing a right protected under this Act, the judicial authorities may limit the damages to the profit that the infringer made from such activities and/or payment of pre-established damages.

Where copies made in infringement of rights exist, the judicial authorities shall be empowered to order that such copies and their packaging be destroyed or that they be disposed of in some other reasonable manner, outside the commercial circuits, in order to avoid causing prejudice to the holder of the right, unless the right holder requests otherwise. This provision shall not apply to copies that a third party has acquired in good faith, nor to their packaging.

Where there is a danger of the equipment being used to commit, or to continue to commit, infringing acts, the court, wherever reasonable, shall order that it be destroyed, that it be disposed of in some other manner outside the commercial circuits in order to reduce to a minimum the risks of further infringement, or that it be handed to the holder of the right.

Where the danger exists that infringing acts will continue, the court shall expressly order the cessation of such acts. It shall also determine an amount of between 10,000 and 1,000,000 Burundi francs to be paid as a daily fine.

Chapter III: CRIMINAL PENALTIES

Article 93

Any infringement of a right protected under this Act, if committed with intent or by gross negligence and with a profit-making aim, shall be punished, in accordance with the relevant provisions of the Criminal Code and of the Code of Criminal Procedure, by imprisonment of between three months and two years or a fine of between 10,000 and 1,000,000 Burundi francs, or by both penalties.

The court may double the upper limit of the penalties decreed in the preceding paragraph if the defendant is found guilty of reoffending, as established by Articles 22 to 25 of the Criminal Code.

The court shall also apply the measures and penalties referred to in Articles 92 and 93 under criminal proceedings, save where a decision on the penalties has already been taken in civil proceedings

Chapter IV: MEASURES, DAMAGES AND PENALTIES FOR ABUSE OF TECHNICAL FACILITIES

Article 94

(a) The following acts shall be deemed unlawful and, for the purposes of Articles 92 to 94, shall be assimilated to an infringement of the rights of authors and of other owners of copyright:

(i) making or importing, for sale or rental, a device or facility specially designed or adapted to render inoperative any device or facility intended to prevent or restrict the reproduction of a work or to impair the quality of copies made (the latter device or facility is hereinafter referred to as a “device or facility for protection against copying or for regulating copying”);

(ii) making, or importing, for sale or rental, a device or facility such as to permit or facilitate the reception of an encoded programme broadcast or communicated in any other manner to the public, by persons not entitled to receive it.

For the implementation of Articles 92 to 94, a device or facility specially designed or adapted to render inoperative any device or facility for protection against copying or for regulating copying, as referred to in paragraph (i), shall be assimilated to infringing copies of works.

(b) The following acts shall be deemed unlawful and, for the purposes of Articles 92 to 94, shall be assimilated to an infringement of the rights of authors and of other holders of copyright:

(i) the removal or amendment of any electronic rights management information without authority;

(ii) the distribution or importation for distribution, broadcast, communication to the public or making available to the public, without authority, of works, performances, phonograms or broadcasts, knowing that electronic rights management information has been removed or altered without authority;

(iii) For the purposes of this Article, “rights management information” means information which identifies the author, the work, the performer, the performance, the phonogram producer, the phonogram, the broadcasting organization, the broadcast, and the holder of any right under this Act, or any other information about the terms and conditions of use of the work and other productions covered by the Act, when any of these items of information are attached to a copy of a work, a fixed performance, a copy of a phonogram or a fixed broadcast, or appear in connection with the broadcast, the communication to the public or the making available to the public of a work, a fixed performance, a phonogram or a broadcast.

(c) For the implementation of Articles 91 to 93, any copy on which rights management information has been removed or amended shall be assimilated to infringing copies of works.

CHAPTER V: FINAL PROVISIONS

Article 95

The provisions of this Act shall also apply to works that were created, performances that took place or were fixed, phonograms that were fixed and broadcasts that took place prior to the date of entry into force of this Act, on condition that such works, performances, phonograms and broadcasts have not yet fallen into the public domain by reason of the expiry of the term of protection which they enjoyed under the preceding legislation or under the legislation of their country of origin.

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

Article 96

This Act repeals and replaces Decree-Law No. 1/9 of May 4, 1978, regulating Copyright and Intellectual Property in Burundi, except the provisions on industrial protection, which remain in force.

Article 97

This Act shall enter into force on the day of its enactment.

Done at Bujumbura, December 30, 2005

Pierre NKURUNZIZA

SEEN AND BEARING THE SEAL OF THE REPUBLIC,
THE MINISTER OF JUSTICE AND KEEPER OF THE SEALS

Clotilde NIRAGIRA