

**LAW NO. 2005-30 OF APRIL 5, 2006, ON PROTECTION OF  
COPYRIGHT AND NEIGHBORING RIGHTS IN THE REPUBLIC OF BENIN**

Source: Beninese Copyright Office (BUBEDRA)

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The National Assembly deliberated on and adopted, at its session of August 9, 2005, and subsequently at its session of January 12, 2006, in accordance with Constitutional Court Decision DCC 05-143 of November 29, 2005, on conformity with the Constitution,

In accordance with Constitutional Court Decision DCC 06-06-038 of April 4, 2006, on conformity with the Constitution,

The President of the Republic hereby promulgates the following Law:

**TITLE I  
DEFINITIONS**

ARTICLE 1 The following terms as used in this Law shall be defined as follows:

- "performers" means actors, singers, musicians, dancers and other persons who act, sing, recite, declaim, play in or in any way perform literary or artistic works or expressions of folklore;
- "author" means the natural person who created the work; any reference in this Law to the economic rights of authors, where the original holder of those rights is a natural or legal person other than the author, means the rights of this other original rightsholder;
- "communication to the public" means the transmission by wire or wireless means of the images, the sounds, or the images and sounds, of a work, a performance or a phonogram in such a way that they may be perceived by persons outside the family circle or the immediate circle of friends in one or more places sufficiently distant from the place of origin of the transmission that, without such transmission, the images or the sounds cannot be perceived in such place, irrespective of whether those persons may perceive the images or the sounds in the same place and at the same time, or in different places and at different times individually chosen by them;
- "copy" means the outcome of any act of reproduction;
- "phonogram" means any exclusively aural fixation of the sounds of a performance or other sounds or a representation of sounds, other than in the form of a fixation incorporated in an audiovisual work;

- "copy of a phonogram" means any medium containing sounds reproduced directly from a phonogram and which incorporates all or a substantial part of the sounds fixed in such phonogram;
- "expressions of folklore" means the production of characteristic elements of the traditional artistic heritage developed and perpetuated on the territory of the Republic of Benin by a community or by individuals recognized as meeting the traditional artistic expectations of such community, and includes:
  - folk tales, folk poetry and mysteries;
  - folk songs and instrumental music;
  - folk dancing and entertainments;
  - products of folk art, such as drawings, paintings, sculptures, pottery, terracotta, carvings, mosaics, woodwork, metal objects, jewelry, textiles and costumes;
- "fixation" means the incorporation of sounds and/or images or the representation or performance thereof in a medium that allows them to be perceived, reproduced or communicated through a device;
- "rental" means the transfer of possession of the original or of a copy of a work or of a phonogram for a limited period of time, for profit-making purposes;
- "work" means any original intellectual creation of a literary or artistic nature within the meaning of Article 8 of the present Law;
- "original work" means a work that, by its characteristics and by its form alone, allows its author to be identified;
- "audiovisual work" means a work consisting of a series of related images giving an impression of movement, accompanied by sounds and capable of being heard;
- "collective work" means a work created by a number of authors at the initiative and under the authority of a natural or legal person who or which publishes the work in his name and in which the contributions of the authors who participated in its creation merge in the whole work so that it is impossible to identify the various contributions and their authors;
- "composite work" means a new work in which a pre-existing work is incorporated without the collaboration of the author thereof;
- "work of applied art" means an artistic creation having a utilitarian function or embodied in a utilitarian article, whether a work of handicraft or a work produced by industrial processes;
- "work of joint authorship" means a work that is the product of collaboration between two or more authors, irrespective of whether the work constitutes an indivisible whole or consists of autonomously created parts;

- "photographic work" means the recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, whatever the nature of the technology (chemical, electronic or other) through which the recording is made. An extract from a work means a part taken from the work, whether or not the source is mentioned. An extract shall not be deemed a work, whatever the mode of extraction used;
- "posthumous work" means a work made accessible to the public after the death of the author;
- "producer of an audiovisual work" means the natural or legal person who or which takes the initiative and the responsibility of creating such work;
- "phonogram producer" means the natural or legal person who or which takes the initiative and assumes the responsibility for the first fixation of the sounds of a performance or other sounds, or representations of sounds;
- "computer program" means a set of instructions expressed in words, codes, schemes or any other form capable, once incorporated in a machine-readable medium, of having a task carried out or a particular result achieved by a computer or by an electronic process capable of processing information;
- "published" refers to a work or a phonogram, copies of which have been made accessible to the public, with the consent of the author in the case of a work, or with the consent of the producer in the case of a phonogram, for sale, rental or public lending or for any other transfer of ownership, in sufficient numbers to meet the normal needs of the public;
- "broadcasting" means the communication of a work, a performance or a phonogram to the public by wireless transmission, including transmission by satellite;
- "public performance" means the fact of reciting, playing, dancing or otherwise performing a work, either directly or through any device or process or, in the case of an audiovisual work, of showing the images thereof in sequence or of making the accompanying sounds audible in one or more places where persons outside the family circle or the immediate circle of friends 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 there necessarily being communication to the public within the meaning of the present Article;
- "to perform" a work means to recite it, play it, dance it or perform it, either directly or by any device or process or, in the case of an audiovisual work, to show the images thereof in any sequence whatsoever or to make the sounds accompanying it audible;

- "reproduction" means the making of one or more copies of a work or phonogram or of a part of a work or phonogram in any form whatsoever, including aural and visual recordings, and the permanent or temporary storage of a work or phonogram in electronic form;
- "reprographic reproduction" of a work means the making of facsimile copies of originals or copies of a work by means other than painting, for instance by photocopying. The making of facsimile copies that are reduced or enlarged shall also be deemed "reprographic reproduction";
- "rebroadcasting" means the simultaneous broadcasting by one broadcasting organization of a broadcast of another broadcasting organization.

TITLE II  
**SUBJECT MATTER AND SCOPE OF COPYRIGHT; AUTHORS AND  
PROTECTED WORKS**

CHAPTER I  
**SUBJECT MATTER OF COPYRIGHT**

ARTICLE 2 The author of any original literary or artistic work of the mind shall enjoy, by the mere fact of its creation, an exclusive incorporeal property right in the work which shall be enforceable against all persons.

ARTICLE 3 The existence or conclusion of a contract for hire or service by the author of a work of the mind shall not entail any derogation from the enjoyment of copyright afforded by Article 2 of the present Law.

CHAPTER II  
**SCOPE OF COPYRIGHT**

ARTICLE 4 Copyright shall include attributes of a moral nature as well as attributes of an economic nature.

1. Independently of his economic rights and even after assignment of such rights, the author of a work shall have the right to:
  - claim authorship of his work, in particular the right to have his name affixed to copies of his work and, wherever possible and in the usual manner, in relation to any public use of his work;
  - remain anonymous or use a pseudonym;
  - oppose any distortion, mutilation or other modification of his work or any other action derogatory to it where such action might be prejudicial to his honor or reputation;
  - decide whether or not to disclose his work.

The rights afforded to the author under the preceding paragraph shall be perpetual, inalienable and imprescriptible.

Notwithstanding assignment of his economic rights, an author shall enjoy a right of withdrawal, even after publication of his work, with respect to the assignee. However, he may exercise such right only on condition that he indemnify the assignee in advance for any prejudice which the withdrawal may cause him.

Where the author decides to have his work published after having exercised his right of withdrawal, he shall be required to offer his rights of exploitation in the first instance to the assignee whom he originally chose.

The right to disclose posthumous works shall be exercised, during their lifetimes, by the executor or executors appointed by the author. 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; by a spouse in respect of whom there is no final judgment of separation or who has not remarried; by heirs other than descendants who inherit all or part of the estate; and by the universal legatees or donees of the totality of the future assets.

This right may be exercised even after the exclusive right of exploitation pursuant to title VIII of this Law has expired.

In the event of manifest abuse in the exercise or non-exercise of the right of disclosure by the representatives of the deceased author referred to above, the civil court may order any appropriate measure. The same shall apply where there is a dispute between said representatives, where there are no known successors in title or in the event of abeyance or escheat.

**2.** An author shall enjoy the exclusive right to exploit his work in any form whatsoever and to derive monetary profit therefrom.

He shall enjoy, in particular, the exclusive right to perform or authorize the performance of any of the following acts:

- the reproduction of his work;
- the translation of his work;
- the preparation of adaptations, arrangements or other transformations of his work;
- the rental or authorization of the rental or any other transfer of possession of the original or copies of his work, irrespective of the ownership of the original or copy being rented;
- the distribution or authorization of the distribution of the original or copies of his work to the public by means of sale or any other transfer of ownership;
- the performance of his work in public;
- the import of copies of his work;
- the broadcast of his work;

- the communication of his work to the public by cable or by any other means.

The rental right shall not apply to the rental of computer programs in those cases where the program itself is not the essential subject of the rental.

Authors of graphic or three-dimensional works shall, notwithstanding any assignment of the original work, have an inalienable right to a share in the profit from any sale of such work by public auction or through a dealer.

After the death of the author, this resale royalty right shall subsist for the benefit of his heirs.

The royalty shall consist of a percentage of the proceeds from the sale collected for the author or his heirs.

The percentage referred to in the preceding paragraph shall be laid down in regulations.

Under the present Article, "the work" means the work both in its original form and in a form derived from the original.

### CHAPTER III AUTHORS AND PROTECTED WORKS

#### SECTION 1 AUTHORS OF WORKS

ARTICLE 5 The author of a work shall be the natural person who created it.

A work shall be deemed created, irrespective of any public disclosure, by virtue of the mere fact of its conception or realization, even if incomplete, by the author.

Authorship shall belong, unless proved otherwise, to the person or persons under whose name(s) the work is disclosed.

Where a work is created by an author on behalf of a natural or legal person, hereinafter referred to as "employer", under a work contract for the author's employment, unless otherwise provided in the contract, the original holder of the moral and economic rights shall be the author, but the economic rights in the work shall be deemed to have been transferred to the employer to the extent justified by the habitual activities of the employer at the time of creation of the work.

The joint authors of a work of joint authorship shall be the joint holders of the moral and economic rights in that work. However, if a work of joint authorship may be divided into independent parts, that is to say if the parts of such work may be reproduced, performed or otherwise used separately, the joint authors may enjoy independent rights in those parts, while remaining joint holders of the rights in the work of joint authorship considered as a whole.

The holder of the moral and economic rights in a collective work shall be the natural or legal person on whose initiative and under whose responsibility the work was created and who publishes it under his name.

ARTICLE 6 The authors of pseudonymous and anonymous works shall enjoy in such works the rights afforded by Article 4 of the present Law.

They shall be represented in the exercise of those rights by the original editor or publisher, until such time as they declare their identity and prove their authorship.

ARTICLE 7 The declaration referred to in the preceding paragraph may be made by testament.

However, any rights previously acquired by third parties shall be retained.

The provisions of the second paragraph of the preceding Article and those of the above paragraph shall not apply where the pseudonym adopted by the author leaves no doubt as to his identity.

## SECTION II PROTECTED WORKS

ARTICLE 8 The following shall constitute works of the mind protected by the present Law:

- books, brochures and other works expressed in writing, including computer programs;
- lectures, addresses, sermons, pleadings and other works of that nature;
- works created for the stage or for broadcast (aural or visual), including dramatic and dramatico-musical works as well as choreographic and mimed works, the realization of which is fixed in writing or in another form;
- musical compositions with or without words;
- lithographic and pictorial works, drawings, etchings, woodcuts and other works of that kind;
- sculptures, bas-reliefs and mosaics of all kinds;
- works of architecture, including drawings and models as well as the construction itself;
- tapestries and objects created through handicraft and applied art, including sketches or models as well as the work itself;
- maps and illustrations and also graphic and three-dimensional drawings and reproductions of an artistic or scientific nature;
- radio or audiovisual works;
- photographic works of an artistic or documentary nature, to which, for the purposes of the present Law, works expressed by a process analogous to photography are assimilated;

- expressions of folklore and works derived from folklore, subject to such particular provisions as may be established in a special law on protection of the national heritage.

The following shall also be protected as works:

- translations, adaptations, arrangements and other transformations of works and of expressions of folklore;
- collections of works, of expressions of folklore or of simple facts or data, such as encyclopedias, anthologies and databases, whether reproduced in a machine-readable medium or in any other form, which, by reason of the selection, coordination or arrangement of their contents, constitute intellectual creations.

The protection of the works referred to in the preceding paragraph shall not affect the protection of pre-existing works used in the making of such works.

Protection shall be independent of the mode or form of expression, of the quality and of the purpose of the work.

ARTICLE 9 The protection afforded by the present Law shall not extend to:

- official texts of a legislative, administrative or judicial nature or to the official translations thereof;
- the news of the day;
- ideas, processes, systems, methods of operation, concepts, principles, discoveries or simple data, even if they are set out, described, explained, illustrated or incorporated in a work.

ARTICLE 10 The title of a work, provided that it is original, shall be protected in the same way as the work itself. Even where the work is no longer protected, no one may use such title to identify a work in the same genre in circumstances likely to cause confusion.

ARTICLE 11 Folklore shall belong by its origin to the national heritage.

"Work derived from folklore" means any work composed of elements borrowed from the Beninese traditional cultural heritage.

### TITLE III NATIONAL BODY FOR THE PROTECTION OF COPYRIGHT AND NEIGHBORING RIGHTS

ARTICLE 12 A public cultural institution with legal personality and financial autonomy is hereby created.

This institution shall be responsible for the collective management and defense of the rights set out in the present Law.



It shall have capacity to manage, on the territory of the Republic of Benin, the economic rights of authors and of the holders of neighboring rights as set out in the present Law, to issue authorizations for exploitation and to collect the related royalties.

The provisions of the preceding paragraph shall in no circumstances prejudice the capacity enjoyed by the authors of works and their successors in title, and by the holders of neighboring rights, to exercise the rights afforded them by the present Law.

The statutes of the institution and the terms for the collection and distribution of royalties shall be approved by a decree adopted by the Council of Ministers on the basis of a proposal of the Minister of Culture.

#### TITLE IV LIMITATIONS ON COPYRIGHT

ARTICLE 13 Where a work has been lawfully made accessible to the public, the author may not prohibit private performances thereof given exclusively within the family circle that do not generate any form of revenue, or given free of charge in a teaching establishment for strictly educational or academic purposes, for the benefit of staff, students and their families.

ARTICLE 14 Where a work has been lawfully published, the author may not prohibit reproductions, translations or adaptations thereof intended for strictly personal and private use.

The preceding paragraph shall not apply to:

- the reproduction of works of architecture in the form of buildings or other similar constructions;
- the reprographic reproduction of an entire book or of a musical work in graphical form (scores);
- the reproduction of the whole or of significant parts of databases in digital form;
- the reproduction of computer programs, except in the cases provided for in Article 20 of the present Law;
- any other reproduction of a work that would prejudice the normal exploitation of the work or would cause any prejudice to the legitimate interests of the author.

ARTICLE 15 On condition that the title of the work and the name of its author are mentioned, analyses and short quotations from a work already lawfully made accessible to the public shall be lawful, provided that they are compatible with fair practice and insofar as they are justified by the intended scientific, critical, polemic, educational or informatory purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

Such quotations and analyses may be used in the original version or in translation.

ARTICLE 16 On condition that the author's name and the source are mentioned, and provided that the right of reproduction has not been expressly reserved, the following may be reproduced in the press, through broadcasting or television or by other means, for information purposes:

- articles of a political, economic or sociocultural nature, published in the original version or in translation;
- speeches intended for the public made at political, judicial, administrative or religious gatherings, or at public meetings of a political nature or official ceremonies.

ARTICLE 17 For the purpose of reporting of a current event by means of photography or cinematography or through aural or visual broadcasting, the recording, reproduction and public communication of literary or artistic works that may be seen or heard during such event shall be lawful, to the extent justified by the intended informatory purpose.

ARTICLE 18 Reproduction for the purposes of cinematography, broadcast and public communication of works of art and architecture that are permanently located in a public place or whose inclusion in a film or broadcast is merely secondary or incidental to the main subject matter shall be lawful.

ARTICLE 19 Notwithstanding the provisions of Article 4.2 of the present Law, a library or archive service whose activities are not directly or indirectly profit-making may, without the consent of the author or of any other holder of copyright, make individual copies of a work by means of reprographic reproduction:

- where the work reproduced is an article or a short work or a short extract from a written work other than a computer program, with or without illustration, published in a collection of works or in an issue of a newspaper or periodical, and where the purpose of reproduction is to fulfill the request of a natural person;
- where the making of such copy is for the purpose of preserving and, if necessary, replacing it in the event that it is lost, destroyed or rendered unusable, or for the purpose of replacing a copy that has been lost, destroyed or rendered unusable in a permanent collection of another library or archive service.

ARTICLE 20 Notwithstanding the provisions of Article 4.2 of the present Law, the lawful owner of a copy of a computer program may, without the consent of the author and without payment of separate remuneration, make a copy or an adaptation of the program, provided that such copy or adaptation is:

- necessary for the use of the computer program for the purposes for which the program was obtained;
- necessary for the purpose of archiving and in order to replace a lawfully held copy, where such copy has been lost, destroyed or rendered unusable.

No copy or adaptation may be made for purposes other than those expressly provided for, and any copy or adaptation shall be destroyed if the prolonged possession of the copy of the computer program ceases to be lawful.

ARTICLE 21 Notwithstanding the provisions of Article 4.2 of the present Law, it shall be permitted, without the consent of the author but subject to the requirement of indicating the source and the name of the author if such name is given in the source:

- to use a lawfully published work as an illustration in publications, broadcasts or sound or visual recordings intended for teaching;
- to reproduce, by reprographic means, for teaching or for examinations within teaching establishments whose activities are not directly or indirectly profit-making, and to the extent justified by the intended purpose, individual articles lawfully published in a newspaper or periodical, and short extracts from a lawfully published work or a lawfully published short work.

ARTICLE 22 The import of a copy of a work by a natural person for personal purposes shall be permitted without the consent of the author or of any other holder of copyright in the work.

ARTICLE 23 Notwithstanding the provisions of Article 4.2 of the present Law, a broadcasting organization may, without the consent of the author and without payment of separate remuneration, make an ephemeral recording, by means of its own facilities and for the purposes of its own broadcasts, of a work that it is authorized to broadcast.

The broadcasting organization shall destroy such recording within six months of its having been made, unless a longer period has been agreed with the author of the work thus recorded. However, without such agreement, a single copy of such recording may be kept for the exclusive purpose of conservation of archives.

## TITLE V TRANSFER OF COPYRIGHT

ARTICLE 24 Economic rights shall be assignable by transfer *intra vivos* and by testament or by the effect of law by reason of death.

Moral rights shall not be assignable *intra vivos* but may be assigned by testament or by the effect of law by reason of death.

ARTICLE 25 The author of a work may grant licenses to other persons to carry out the acts covered by his economic rights. Such licenses may be non-exclusive or exclusive.

A non-exclusive license shall entitle its holder to perform, in the manner authorized to him, the acts that it concerns at the same time as the author and other holders of non-exclusive licenses.

An exclusive license shall entitle its holder, to the exclusion of any other person, including the author, to carry out, in the manner authorized to him, the acts that it concerns.

No license may be deemed an exclusive license unless expressly stipulated in the contract between the author and the license holder.

ARTICLE 26 Unless otherwise provided, contracts for assignment of economic rights or licenses to carry out the acts covered by the economic rights shall be concluded in writing.

ARTICLE 27 The assignment of economic rights and licenses to carry out the acts covered by the economic rights may be limited to certain specific rights or limited with respect to aims, duration, territorial applicability, scope of means of exploitation.

Failure to mention the territorial applicability for which the economic rights are assigned or the license is granted to carry out acts covered by the economic rights shall be deemed to limit the assignment or the license to the country in which the assignment is made or the license granted.

Failure to mention the scope or the means of exploitation for which the economic rights are assigned or the license is granted to carry out acts covered by the economic rights shall be deemed to limit the assignment or the license to the scope and means of exploitation necessary for the aims referred to when the assignment was made or the license granted.

ARTICLE 28 The assignment by the author of his economic rights shall include a proportional share of the revenue from sale or exploitation for the benefit of the author. The author's remuneration may, however, be a lump sum in cases where:

- it is impossible in practice to determine the basis for calculating a share;
- the monitoring costs would be disproportionate to the desired results;
- the use of the work is merely incidental to the subject of the exploitation.

ARTICLE 29 An author who transfers an original or a copy of his work by sale shall be deemed, unless otherwise stipulated in the contract, to have assigned none of his economic rights nor to have granted a license for carrying out the acts covered by the economic rights.

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

## TITLE VI AUDIOVISUAL AND RADIO WORKS

### CHAPTER I AUDIOVISUAL WORKS

ARTICLE 30 In the case of an audiovisual work, the first holders of the moral and economic rights shall be the joint authors of the work, such as the director, the

scriptwriter, the author of the adaptation and the composer of the music. The authors of pre-existing works adapted or used for audiovisual works shall be deemed to be assimilated to such joint authors.

ARTICLE 31 Except as otherwise provided, the contract concluded between the producer of an audiovisual work and the joint authors of such work, other than the authors of musical works included therein, with respect to the contributions of the joint authors to the realization of the work, shall imply assignment to the producer of the economic rights of the joint authors in their contributions.

ARTICLE 32 However, the joint authors shall maintain, unless otherwise stipulated in the contract, their economic rights in other uses of their contributions to the extent that such contributions may be used separately from the audiovisual work and do not prejudice the normal exploitation of the work.

ARTICLE 33 An audiovisual work shall be deemed completed when the first "master copy" has been established by mutual agreement between the director or, where appropriate, the joint authors, on the one hand, and the producer, on the other.

Destruction of the master copy version shall be prohibited.

Any alteration to such version through the addition, removal or change of any element thereof shall require the agreement of the persons referred to in the first paragraph.

ARTICLE 34 Where one of the intellectual creators of an audiovisual work refuses to complete his contribution to such work or is unable to complete it owing to *force majeure*, he may not object to the use of that part of his contribution already in existence for the purpose of completion of the work.

## CHAPTER II RADIO WORKS

ARTICLE 35 The natural person or persons responsible for the intellectual creation of a radio work shall be regarded as the author or authors of that work.

ARTICLE 36 Where a radio work is based on a pre-existing work, the authors of the original work shall be deemed joint authors of the new work.

## TITLE VII AUTHORS' CONTRACTS

### CHAPTER I PRINCIPLES

ARTICLE 37 Contracts under which the author or his successors in title authorize the performance or publication of their works shall be concluded in writing, on pain of invalidity. The same shall apply to performance authorizations granted free of charge.

Such contracts shall mention the mode of exploitation and the mode of remuneration determined by the author or his successors in title. They shall be subject to the laws and regulations in force.

Where special circumstances demand, contracts may be validly entered into by various means of communication, confirmed in writing in good and due form, provided that the sphere of exploitation of the rights assigned is established in accordance with Article 27 of the present Law.

## CHAPTER II PUBLISHING CONTRACTS

ARTICLE 38 Any publication or production of literary or artistic works shall be the subject of a publishing contract duly signed by the publisher or the producer and the author or his successors in title.

ARTICLE 39 A publishing contract shall be a contract under which the author of a work or his successors in title assign to a publisher, under specified conditions, the right to make or have made sufficient graphic, mechanical or other copies of the work, whereby the publisher is required to publish and disseminate such copies.

The form and mode of expression, the conditions for carrying out the publication and the termination clauses shall be laid down in the contract.

ARTICLE 40 A publishing contract must indicate the minimum number of copies constituting the first print run.

It shall provide for remuneration proportional to the proceeds of exploitation, except in the event of remuneration in a lump sum in accordance with Article 28 of the present Law.

ARTICLE 41 The publisher may not transfer the enjoyment of the publishing contract to a third party, either free of charge or against payment or as a contribution to the assets of a partnership, without first having obtained the author's consent.

In the event of the disposal of the publishing business in such a way as seriously to compromise the author's material or moral interests, the author shall be entitled to obtain reparation even in the form of termination of the contract.

Where the publishing business was operated as a partnership or a joint enterprise, the award of the business to one of the former partners or one of the co-owners as a result of liquidation or division shall in no circumstances be considered assignment.

ARTICLE 42 In the case of a fixed-term contract, the rights of the assignee shall lapse automatically on expiry of the term in question without the need for formal notice.

In the three years after such expiry the publisher may, however, sell off, at the normal price, the copies remaining in stock, unless the author prefers to buy such copies at a price that shall be determined in accordance with expert opinion, in the absence of an amicable agreement. This option, open to the first publisher, shall not prevent the author from proceeding with a new edition within a period of 30 months.

ARTICLE 43 The publisher shall be required to furnish the author with all evidence necessary to establish the accuracy of his accounts.

In the absence of special terms laid down in the contract, the author may require the publisher to produce, at least once a year, a statement indicating the number of copies made during the financial year and specifying the date and size of the print runs, the number of copies in stock, the number of copies sold by the publisher, the number of copies used for advertising, the number of copies used or destroyed by accident or owing to *force majeure*, and the amount of royalties owed or, where applicable, paid to the author.

Any contrary provision shall be deemed void.

Neither the bankruptcy nor the court-ordered liquidation of the publisher shall entail the termination of the contract.

The receiver may not undertake the remaindering or other disposal of copies that have been made until at least fifteen (15) days after notifying the author of his intention by registered letter with a request for acknowledgment of receipt.

The author shall have a right of pre-emption in respect of all or some of the copies. In the absence of agreement, the buyback price shall be determined in accordance with expert opinion.

ARTICLE 44 A publishing contract shall come to an end, irrespective of the situations provided for in ordinary law or in the preceding Articles, when the publisher destroys all the copies.

The contract shall be terminated automatically where, when the author has formally notified the publisher of an appropriate deadline, the publisher has not published the work or, where it is out of print, republished it.

A publication shall be deemed out of print where two requests for delivery of copies addressed to the publisher have not been fulfilled within three (3) months.

Where, in the event of the author's death, a work is incomplete, the contract shall be terminated in respect of the unfinished part of the work, except as otherwise agreed between the publisher and the author's successors in title.

ARTICLE 45 The author shall deliver to the publisher, within the period stipulated in the contract, the work to be published in a form permitting manufacture.

ARTICLE 46 A contract known as a contract "at the author's expense" shall not constitute a publishing contract within the meaning of Article 39.

Under such contract, the author or his successors in title shall pay to the publisher an agreed remuneration against which the publisher shall make a sufficient number of copies of the work in the form and in accordance with the modes of expression specified in the contract, and shall publish and disseminate such copies.

Such contract shall constitute a contract for services governed by convention, usage and the laws and regulations in force.

ARTICLE 47 A contract known as a contract "at joint expense" shall not constitute a publishing contract within the meaning of Article 39.

Under such contract, the author or his successors in title shall commission a publisher to make, at his expense, a sufficient number of copies of the work in the form and in accordance with the modes of expression specified in the contract, and to publish and disseminate such copies in accordance with the agreement reciprocally contracted to share the profits and losses of exploitation in the proportion agreed in the contract.

Such contract shall constitute a joint undertaking.

### CHAPTER III PERFORMANCE CONTRACTS

ARTICLE 48 A performance contract shall be a contract under which the author of a work of the mind, his successors in title or the collective management organization provided for in the present Law authorize(s) a natural or legal person to perform said work under conditions that they stipulate.

A contract under which the author or the collective management organization provided for in Article 12 of the present Law affords to an entertainment promoter the capacity to perform, during the term of the contract, the author's works or the works that constitute the repertoire of said collective management organization under the conditions specified shall be known as a general performance contract.

ARTICLE 49 A performance contract shall be concluded for a specified period or for a limited number of communications to the public.



Unless exclusive rights are expressly provided for, no monopoly on exploitation shall be conferred on the entertainment promoter .

An entertainment promoter may not transfer the enjoyment of his contract without formal consent given in writing by the author or his representative or the collective management organization provided for in the present Law.

The period of validity of the exclusive rights afforded by a playwright may not exceed five years; the suspension of performances for two consecutive years shall automatically put an end to it.

ARTICLE 50 "Entertainment promoter" means any natural or legal person who or which, occasionally or on a permanent basis, performs or arranges for the performance of works protected under the present Law, in an establishment open to the public and by any means whatsoever.

Any author, artist or group of artists that occasionally or on a permanent basis performs its own repertoire shall also be deemed an entertainment promoter.

ARTICLE 51 An entertainment promoter shall be required to:

- obtain prior consent from the author or the collective management organization provided for in the present Law;
- inform the author or his successors in title or the collective management organization provided for in the present Law of the exact program of public performances and of works performed;
- furnish the author or his successors in title or the collective management organization with a certified statement of his takings;
- pay the author or his successors in title or the collective management organization the stipulated amount of royalties;
- ensure that the technical conditions are such as to safeguard the intellectual and moral rights of the author.

## TITLE VIII TERM OF PROTECTION

ARTICLE 52 Copyright shall last for the author's lifetime and for seventy (70) calendar years as from the end of the year of his death.

ARTICLE 53 The economic rights in a work of joint authorship shall be protected for the lifetime of the last surviving author and for seventy (70) years as from the end of the year of his death.

ARTICLE 54 The economic rights in a work published anonymously, posthumously or under a pseudonym shall be protected until the expiry of a period of seventy (70) years as from the end of the calendar year in which such work was lawfully published for the first time or, failing such event occurring during the seventy (70) years following the making

of the work, seventy (70) years as from the end of the calendar year in which such work was made accessible to the public or, failing such event occurring during the seventy (70) years following the making of the work, seventy (70) years as from the end of the calendar year of its making.

Where, prior to the expiry of such period, the identity of the author is disclosed or leaves no doubt, the provisions of Article 52 shall apply.

ARTICLE 55 The economic rights in a collective work or in an audiovisual work shall be protected until the expiry of a period of seventy (70) years as from the end of the calendar year in which such work was lawfully published for the first time or, failing such event occurring during the seventy (70) years following the making of the work, seventy (70) years as from the end of the calendar year in which such work was made accessible to the public or, failing such event occurring during the seventy (70) years following the making of the work, seventy (70) years as from the end of the calendar year of its making.

ARTICLE 56 The economic rights in a work of applied art shall be protected until the expiry of a period of twenty-five (25) years following the making of such work.

#### TITLE IX ***DOMAINE PUBLIC PAYANT***

ARTICLE 57 Upon expiry of the periods of protection referred to in Articles 52 to 56, during which an exclusive right is afforded to and held by the authors or their heirs or successors in title, the author's works shall fall into the public domain.

ARTICLE 58 The performance of works in the public domain shall be subject to:

- respect for moral rights;
- a prior declaration to the collective management organization;
- the payment of a royalty to the collective management organization, which shall be used for cultural and welfare purposes for the benefit of the authors.

The right to perform works in the public domain shall be administered by the collective management organization.

The amount of the royalty shall be laid down in regulations.

#### TITLE X **NEIGHBORING RIGHTS TO COPYRIGHT**

ARTICLE 59 The rights of performers, producers of phonograms and broadcasting organizations, known as neighboring rights, shall in no circumstances prejudice copyright.

Consequently, no provision in the present Title shall be interpreted in such a way as to limit the exercise of copyright by the holders thereof.

ARTICLE 60 Subject to the provisions of Articles 69 to 71 of the present Law, a performer shall have the exclusive right to prohibit or authorize the following acts:

- the broadcasting of his performance, except where the broadcast is made by means of a fixation of the performance other than a fixation made under Article 70 of the present Law or where it is a retransmission authorized by the broadcasting organization that was the first to transmit the performance;
- the communication to the public of his performance, except where such communication is made by means of a fixation of the performance or a broadcast of the performance;
- the fixation of his unfixed performance;
- the reproduction of a fixation of his performance;
- the first distribution to the public of a fixation of his performance by sale or by any other act whereby ownership is transferred, sale not in itself being a transfer of ownership;
- the rental to the public or public lending of a fixation of his performance;
- the making available to the public, by wire or wireless means, of his performance fixed in a phonogram in such a way that members of the public may access it from a place and at a time individually chosen by them.

ARTICLE 61 Authorization to broadcast a performance of a work shall not imply authorization to permit other broadcasting organizations to broadcast the performance or authorization to fix said performance.

ARTICLE 62 Authorization to broadcast and fix the performance shall not imply authorization to reproduce the fixation.

ARTICLE 63 Authorization to fix the performance and to reproduce the fixation shall not imply authorization to broadcast the performance by means of the fixation or of reproductions thereof.

ARTICLE 64 Independently of a performer's economic rights, and even after the assignment of those rights, the performer shall, as regards his live sound performances or performances fixed in phonograms, have the right to demand to be identified as the performer of his performances, except where omission of such is dictated by the manner of the 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 moral rights of the performer shall be without limit in time. They shall be imprescriptible, inalienable and transferable by reason of death to his heirs or conferred on a third party by testament. They shall not be assignable *intra vivos* but may be assigned by testament or by the effect of law by reason of death.

ARTICLE 65 Subject to the provisions of Articles 69 to 71 of the present Law, a phonogram producer 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 the distribution thereof to the public;
- the first distribution to the public of copies of his phonogram by sale or by any other act whereby ownership is transferred, sale not in itself being a transfer of ownership;
- the rental to the public or public lending of copies of his phonogram;
- the making available to the public, by wire or wireless means, of his phonogram in such a way that members of the public may access it from a place and at a time individually chosen by them.

ARTICLE 66 Subject to the provisions of Articles 69 to 71 of the present Law, a broadcasting organization shall have the exclusive right to carry out or authorize the following acts:

- the retransmission of its broadcast programs;
- the fixation of its broadcast programs;
- the reproduction of a fixation of its broadcast programs;
- the communication to the public of its television programs.

ARTICLE 67 The rights afforded to producers and broadcasting organizations under Articles 64 and 65 of the present Law shall in no circumstances affect the rights of authors or performers.

#### TITLE XI

### **EQUITABLE REMUNERATION FOR THE USE OF PHONOGRAMS**

ARTICLE 68 Where a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or communication to the public, a single equitable remuneration, intended both for the performers and for the producer of the phonogram, shall be paid by the user to the organization responsible for collective management provided for in Article 12 of the present Law.

The amount collected from the user of a phonogram shall be shared; 50 per cent shall go to the producer and 50 per cent to the performers.

The performers shall share the amount received from the producer or shall use it in accordance with the agreements that exist between them.

#### TITLE XII

### **FREE USES**

ARTICLE 69 Notwithstanding the provisions of Articles 60 to 66 of the present Law, the following acts shall be permitted without the consent of the entitled persons referred to in those Articles:

- private use;
- reporting on current events, on condition that use is made only of short fragments of a performance, a phonogram or a broadcast program;
- use solely for purposes of teaching or scientific research;
- quotation, in the form of short fragments, from a performance, a phonogram or a broadcast program, on condition that such quotations are compatible with fair practice and are justified by their informatory purpose;
- all other uses that constitute exceptions with respect to works protected by copyright under the present Law.

ARTICLE 70 Once performers have authorized the incorporation of their performances in fixations of images or images and sounds, the provisions of Article 61 of the present Law shall cease to apply.

ARTICLE 71 The authorizations required under Articles 60 to 66 of the present Law for making fixations of performances and of broadcast programs and for reproducing such fixations and reproducing phonograms published for commercial purposes shall not be required where the fixation or the reproduction has been made by a broadcasting organization using its own facilities and for its own programs, provided that:

- for each broadcast of a fixation of a performance or of reproductions thereof made under this Article, the broadcasting organization is entitled to broadcast the performance concerned;
- for each broadcast of a fixation of a program or of a reproduction of such fixation made under the first paragraph, the broadcasting organization is entitled to broadcast the program;
- for any fixation made under the first paragraph or reproductions thereof, the fixation and the reproductions thereof are destroyed within a period of the same duration as that applying to fixations and reproductions of protected works made as part of an ephemeral recording, with the exception of a single copy which may be kept for exclusive purpose of archive conservation.

### TITLE XIII

#### **TERM OF PROTECTION OF NEIGHBORING RIGHTS**

ARTICLE 72 The term of protection afforded to performances under the present Law shall be fifty (50) years as from:

- the end of the year of fixation for performances fixed in phonograms;
- the end of the year in which the performance took place for performances not fixed in phonograms.

The term of protection afforded to phonograms under the present Law shall be fifty (50) years as from the end of the year in which the phonogram was published, or where no

such publication takes place within fifty (50) years of fixation of the phonogram, fifty (50) years as from the end of the year of fixation.

ARTICLE 73 The term of protection afforded to broadcasts under the present Law shall be twenty-five (25) years as from the end of the year in which the broadcast took place.

#### TITLE XIV **PRIVATE COPYING**

ARTICLE 74 The authors of literary and artistic works, performers in respect of their performances fixed in phonograms, and phonogram producers shall be entitled to remuneration for the reproduction of such works, performances and phonograms intended for strictly personal and private use and made in accordance with the provisions of Articles 14 and 69 of the present Law.

ARTICLE 75 Equitable remuneration for reproduction intended for private purposes in the cases provided for in Article 74 above shall be paid by the manufacturers and importers of physical media used for such reproduction; it shall be collected and distributed by the collective management organization provided for in the present Law.

ARTICLE 76 The procedures for collection and the amounts of such remuneration shall be laid down in regulations.

ARTICLE 77 The equitable remuneration payable to authors, performers and producers of phonograms under Articles 74 and 75 of the present Law shall be distributed among these three categories of entitled persons.

ARTICLE 78 The physical media referred to in Article 75 of the present Law shall be exempt from payment of equitable remuneration where they are exported or where they cannot be used normally for the reproduction of works intended for private purposes.

ARTICLE 79 Where the reproduction referred to in Article 74 of the present Law is effected by photocopying and where apparatuses intended for making such copies are made available to the public in schools, teaching establishments, research institutions, public libraries or establishments that make such apparatuses available against payment, the author shall also be entitled to remuneration, which shall be paid to the collective management organization by the user of the apparatus.

#### TITLE XV **PROTECTION OF EXPRESSIONS OF FOLKLORE**

ARTICLE 80 Expressions of folklore shall be protected against reproduction, communication to the public by means of performance, broadcast, distribution by cable or other means, adaptation, translation or any other transformation, where such uses are carried out for commercial purposes or outside their traditional or customary context.

ARTICLE 81 The acts covered by the preceding Article shall be subject to the prior authorization of the collective management organization provided for in Article 12 of the present Law, against payment of a royalty, the amount of which shall be determined in accordance with the customary terms in each of the categories of creation considered.

ARTICLE 82 The rights conferred under the present Title shall not apply where the acts in question concern:

- use by a natural person exclusively for personal purposes;
- the use of short extracts for the purpose of reporting of current events, to the extent justified by the subject of the report;
- use solely for purposes of teaching or scientific research;
- cases in which a work may be used without the consent of the author or of another copyright holder.

ARTICLE 83 In all printed publications, and in connection with any communication to the public of an identifiable expression of folklore, the source of such expression of folklore must be indicated in a manner that is appropriate and compatible with fair practice, by mentioning the community and the geographical place of origin of the expression of folklore used.

ARTICLE 84 The royalties collected under the present Title shall be used for cultural development activities.

ARTICLE 85 The use, without the prior authorization of the collective management organization, of an expression of folklore in a manner not permitted under the present Law shall constitute an offense of infringement and shall be subject to the penalties provided for under the present Law.

## TITLE XVI PROCEEDINGS AND PENALTIES

### CHAPTER I PROCEEDINGS

ARTICLE 86 Any dispute arising from the enforcement of contracts for reproduction, publication or public performance of literary and artistic works and creations protected by neighboring rights shall be referred to the collective management organization for attempted conciliation.

ARTICLE 87 In the event of failure of such conciliation, the parties shall have the right to refer the case to the competent court, either directly or through the collective management organization.

ARTICLE 88 The collective management organization shall have capacity to institute legal proceedings in defense of the rights relating to the literary and artistic works and the creations protected by neighboring rights that constitute its repertoire and that of the

collective management organizations of other States that it represents on the territory of the Republic of Benin.

ARTICLE 89 Infringements of the laws and regulations relating to copyright and neighboring rights may be recorded by a sworn agent of the collective management organization or any other agent authorized for that purpose.

Where necessary, such agents shall be assisted by the police.

ARTICLE 90 In the event of an infringement of the rights provided for in the present Law, the persons referred to in Article 89 may, on the basis of a decision of the collective management organization or a decision of the competent court:

- carry out the infringement seizure of all illegal copies and objects used in the commission of the infringement that are subject to confiscation;
- retain any document relating to the seized objects;
- carry out preventive seizure of objects that may be used as security for penalties;
- seize copies of works or aural recordings suspected of having been made or imported without the consent of the protected rightholder, and also the packaging of such copies and the tools used to make them.

They shall prepare a report on the above.

ARTICLE 91 Depending on the nature and seriousness of the recorded infringements, the seizure report shall give rise to:

- monetary settlements with the collective management organization; or
- judicial proceedings.

ARTICLE 92 The settlement amount shall be determined and the infringers notified thereof by the collective management organization. It shall be collected within fifteen (15) days of the date of notification.

ARTICLE 93 In the event of non-payment of the settlement amount within the period specified above, the case shall be referred to the Public Prosecutor with territorial jurisdiction, who shall initiate *flagrante delicto* public proceedings.

ARTICLE 94 The report referred to in Article 91 of the present Law shall set out in particular:

- the place and date of the infringement seizure and the reason therefor;
- the names, statuses and addresses of the officers who carried out the operation;
- the nature and number of objects seized;
- the presence of the presumed respondent or his summons to attend;
- all information on the place of custody of the seized objects;
- the place where the report was prepared and the time of its closure;
- the signature of the author and, where appropriate, that of the respondent or his representative.



ARTICLE 95 Police detectives and criminal investigation officers shall be required, at the time of the first requisitioning, to assist in the recording of copyright infringements.

They shall act *ex officio* or at the request of the author or his successors in title or at the request of the collective management organization or on the basis of a judicial decision, and shall carry out the infringement seizure of all illegal copies and of objects used in the commission of the infringement in violation of the present Law and subsequent instruments.

Through appropriate channels, the police detective or criminal investigation officer required to do so shall inform the Public Prosecutor within twenty-four (24) hours of the end of the operation.

Where the seizure is deemed unfounded on the basis of a judicial decision, only the person who requested the operation shall be held liable.

ARTICLE 96 The official report on the operation, together with all items necessary for an understanding thereof and the objects seized, shall be transmitted to the Public Prosecutor by the police detective or criminal investigation officer who carried out the seizure within five working days thereof, on request as referred to in Article 95 of the present Law.

ARTICLE 97 Where the desired effect of the seizure referred to in Article 90 of the present Law is to delay or suspend public performances that are in progress or have already been announced, special authorization must be obtained from the President of the court of first instance by an order issued on request. The President of the court of first instance may also, in the same manner, order:

- the suspension of any manufacturing or public performance in progress or announced that constitutes an infringement or an act preparatory to infringement;
- the seizure, even outside the times specified in the Code of Civil Procedure, of copies constituting an unlawful reproduction of a work that has been or is being made, of the revenue obtained, and of equipment used for that purpose;
- the seizure of the revenue from any reproduction, performance or broadcast, by any means whatsoever, of a work of the mind, effected in infringement of copyright as set out in the present Law.

In the orders referred to above, the President of the court may order the distrainer to deposit an appropriate sum first.

The provisions of the present Article shall also apply in the event of improper exploitation of folklore or of the right of performance of a work that has fallen into the public domain.

ARTICLE 98 Within 30 days of the date of the seizure report referred to in Article 90 of the present Law or of the date of the order referred to in Article 97 of the present Law,

the distrainee or the garnishee may request the President of the court to order the release of the seizure, to limit its effects or to authorize the resumption of manufacture or of public performances, under the authority of an administrator appointed custodian of the proceeds of such manufacture or exploitation.

Where the President of the court allows the request of the distrainee or the garnishee, he may, hearing the case in chambers, order the applicant to deposit a sum as security against any damages to which the author or any other holder of copyright or neighboring rights may be entitled.

ARTICLE 99 Measures ordered pursuant to Article 96 of the present Law shall be lifted automatically in the event of a non-suit or discharge.

ARTICLE 100 Where the distrainer fails to refer the matter to the competent court within 30 days of the seizure, the release of the seizure may be ordered at the request of the distrainee or the garnishee by the President of the court, hearing the case in chambers.

ARTICLE 101 Where the proceeds of exploitation owed to the author of a work of the mind or a performer have been garnished, the President of the court may, where appropriate, order payment to the author or the performer of a sum or a specified proportion of the sums garnished.

ARTICLE 102 Objects that are confiscated, seized or forfeited shall be disposed of by the collective management organization, where the judgment of confiscation or seizure has become *res judicata*, or, in the event of a default judgment, where provisional execution has been ordered by judgment of confiscation or seizure or after confirmation of forfeiture agreed by settlement.

ARTICLE 103 Proceedings resulting from an infringement of copyright or of neighboring rights recorded in a seizure report or infringement seizure report shall be brought before the court within whose jurisdiction the infringement was recorded.

ARTICLE 104 The provisions of ordinary law relating to *flagrante delicto* proceedings before the criminal courts shall be applied to infringements of copyright, related infringements and matters raised as a defense.

ARTICLE 105 Reports relating to infringements of copyright and neighboring rights prepared by the persons designated in Articles 89 and 90 of the present Law, with the exception of senior police detectives and criminal investigation officers, shall be authoritative unless the material facts that they contain are contested. They shall be authoritative only where the accuracy and sincerity of the admissions and statements that they report are not disproved.

ARTICLE 106 Reports prepared by senior police detectives and criminal investigation officers shall be authoritative unless proved otherwise.

ARTICLE 107 Reports on seizures, infringement seizures and settlements with regard to copyright and neighboring rights shall be exempt from stamp duty and registration formalities.

## CHAPTER II PENALTIES

ARTICLE 108 Any publication, reproduction, performance or broadcast for commercial purposes on the territory of the Republic of Benin of a protected work or performance in infringement of copyright and neighboring rights shall constitute an offense of infringement of a work of the mind, as set out in and punished in accordance with the provisions of the present Law.

ARTICLE 109 The reproduction of literary and artistic works without the prior consent of the holders of copyright and neighboring rights and of the collective management organization provided for in Article 12 shall constitute piracy of literary and artistic works.

Piracy of literary and artistic works shall be an offense. It shall be an infringement punishable by the provisions of the present Law.

ARTICLE 110 The infringement, on Beninese territory, of works published in the Republic of Benin or abroad, shall be punished with imprisonment for a term of three months to two years and/or a fine of five hundred thousand (500,000) to ten million (10,000,000) francs, without prejudice to the payment of damages to the victims.

The offenses of exporting and importing infringing works shall be punished with the same penalties.

ARTICLE 111 Any reproduction, performance or broadcast, by any means whatsoever, of a work of the mind or a creation that is protected by neighboring rights, without the consent referred to in Article 4.2 of the present Law, shall be punished with the penalties provided for in Article 110 of the present Law.

ARTICLE 112 Any fixation, reproduction, communication, making available to the public either against payment or free of charge, or any broadcast of a performance or program in infringement of the moral and economic rights afforded to authors or performers shall also be punished with the penalties provided for in Article 110 of the present Law.

ARTICLE 113 The marketing on the territory of the Republic of Benin of graphic and three-dimensional works in infringement of the resale royalty right provided for in Article 4.2 of the present Law shall be punished with the penalties provided for in Article 110 of the present Law.

ARTICLE 114 In the event of a repeat offense, the penalties incurred shall be doubled.

In addition, the court may order the closure, either temporary – for a period not exceeding five (05) years – or permanent, of the establishment operated by the offender.

Where such closure has been ordered, the staff shall receive compensation equal to their salary, supplemented by all benefits in kind, during the period of the closure, up to a maximum of six months.

Where collective or individual agreements provide for a higher amount of compensation after redundancy, that is the sum that shall be payable.

Any infringement of the provisions of the first two paragraphs of the present Article shall be punished by imprisonment for a term of one (01) to six (06) months and/or a fine of five hundred thousand (500,000) to one million (1,000,000) francs.

In the event of a repeat offense, the penalties shall be doubled.

ARTICLE 115 In the cases provided for in Articles 110 to 114 of the present Law, the court may order the confiscation of all or part of the revenue obtained as a result of the infringement, and also the confiscation and destruction of all infringing or unlawfully reproduced copies, and of equipment installed for the purpose of committing the offense.

It may also order the display of the judgment pronouncing the conviction and the publication thereof in full or in the form of extracts in the newspapers, at the offender's expense.

ARTICLE 116 In the cases provided for in Articles 110 to 115 of the present Law, the equipment, infringing objects and revenue that have been confiscated shall be handed over to the collective management organization in order to compensate the creators of works of the mind for the damage done to them.

ARTICLE 117 Any natural or legal person shall be considered liable for unlawful reproduction or communication to the public punishable under Article 112 of the present Law, where he has allowed the reproduction or communication to the public, in his establishment or in facilities under his responsibility, of works of the mind protected under the present Law, without first having sought and received communication of authorization from the collective management organization.

Any person who contributed materially to the commission of the infringement, whether acting on instructions or not, shall be considered an accomplice.

ARTICLE 118 Anyone who exploits a work of folklore or the right to perform a work that has fallen into the public domain and who fails to declare this in advance to the collective management organization in accordance with Article 57 of the present Law shall be punished with a fine equal to double the amount of revenue usually due.

In all such cases, the amount of the fine shall be at least ten thousand (10,000) francs.

ARTICLE 119 Factual evidence of infringements of the regulations relating to the protection of copyright and neighboring rights may be constituted by the statements of sworn officials of the collective management organization pursuant to the Code of Penal Procedure or the statements of police detectives.

ARTICLE 120 In the event of an infringement of the provisions of Article 4.2 of the present Law, the purchaser and ministerial officials may be ordered, jointly and severally, to pay damages to the beneficiaries of the resale royalty right.

ARTICLE 121 Authorities of all kinds, and in particular the police and the gendarmerie, shall be required, at the request of representatives of the collective management organization, to give their assistance and, where appropriate, their protection.

The competent authorities shall not grant entertainment promoters any license or other permit before such promoters have produced the authorization issued by the collective management organization.

ARTICLE 122 The performance, use, exploitation, broadcast, reproduction, publication or marketing of any literary or artistic work shall be subject to ongoing monitoring by the collective management organization.

During the course of such monitoring, the persons carrying out the activities referred to in the paragraph above shall communicate to the sworn officials of the collective management organization all the documents and information that they deem necessary for the proper accomplishment of their task.

ARTICLE 123 Any obstruction of the proper conduct of the monitoring referred to in Article 122 of the present Law shall be punished with the penalties provided for in Article 110 of the present Law.

ARTICLE 124 The following acts shall be deemed unlawful and shall be assimilated to an infringement of the rights of authors and of other holders of copyright:

- the making or import, for sale or rental, of 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 impair the quality of the copies made;
- the making or import, for sale or rental, of a device or facility such as to permit or facilitate the reception of an encoded program broadcast or communicated in any other manner to the public by persons not entitled to receive it;
- the removal or alteration of any electronic rights management information without authority;
- the distribution or import for distribution, broadcast, communication to the public or making available to the public, without authority, of works, performances, phonograms or broadcast programs, in the knowledge that

electronic rights management information has been removed or altered without authority.

ARTICLE 125 Under the present Law, "rights management information" means information which identifies the author, the work, the artist, the performer, the performance, the producer of the phonogram, the phonogram, the broadcasting organization, the broadcast program, and any rightholder pursuant to this Law, or any information about the terms and conditions of use of the work and other productions covered by the present Law, and any numbers or codes that represent such information, where any of these items of information is attached to a copy of a work, a fixed performance, a phonogram or a fixed broadcast program, or appears 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 program.

Any device or facility referred to in this Article and any copy on which rights management information has been removed or altered shall be assimilated to infringing copies of works.

## TITLE XVII MISCELLANEOUS AND FINAL PROVISIONS

ARTICLE 126 The provisions of the present Law relating to the protection of literary and artistic works shall apply to:

- works of which the author or any other original holder of copyright is a national of the Republic of Benin or has his habitual residence or headquarters in the Republic of Benin;
- audiovisual works of which the producer is a national of the Republic of Benin or has his habitual residence or his headquarters in the Republic of Benin;
- works published for the first time in the Republic of Benin or published for the first time in another country and also published in the Republic of Benin within a period of thirty (30) days;
- works of architecture erected in the Republic of Benin or works of fine art incorporated in a building located in the Republic of Benin.

ARTICLE 127 The provisions of the present Law relating to the protection of literary and artistic works shall apply to works that are entitled to protection pursuant to an international treaty to which the Republic of Benin is a party.

ARTICLE 128 The provisions of the present Law relating to the protection of performers shall apply to performances where:

- the performer is a national of the Republic of Benin;
- the performance takes place on the territory of the Republic of Benin;
- a performance that has not been fixed in a phonogram is incorporated in a broadcast program that is protected under the present Law.

ARTICLE 129 The provisions of the present Law relating to the protection of phonogram producers shall apply to phonograms where:

- the producer is a national of the Republic of Benin;
- the first fixation of the sounds was done in the Republic of Benin;
- the phonogram was published for the first time in the Republic of Benin.

ARTICLE 130 The provisions of the present Law relating to the protection of broadcasting organizations shall apply to broadcast programs where:

- the headquarters of the organization is located on the territory of the Republic of Benin;
- the broadcast program was transmitted from a station located on the territory of the Republic of Benin.

ARTICLE 131 The provisions of the present Law shall also apply to performances, phonograms and broadcast programs that are protected pursuant to the international agreements to which the Republic of Benin is a party.

ARTICLE 132 The provisions of the present Law shall also apply to works that were created, to performances that took place or were fixed, to phonograms that were fixed and to broadcasts that took place prior to the date of entry into force of the present Law, provided 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 the present Law shall remain unaffected.

ARTICLE 133 All disputes relating to the implementation of the present Law shall be brought before the competent courts.

ARTICLE 134 The time periods provided for in the present Law shall be clear days.

ARTICLE 135 All earlier provisions that conflict with the present Law, in particular those of Law No. 84-008 of March 15, 1984, on Copyright Protection in the Republic of Benin, are hereby repealed.

ARTICLE 136 The present Law shall be enforced as the law of the land.

Done at Cotonou, April 5, 2006

By the President of the Republic, Head of State, Head of the Government

*(signed)*

**Dr Boni YAYI**

The Minister of Development, Economy and Finance

*(signed)*

**Pascal Irénée KOUPAKI**

The Acting Minister of Justice, responsible for relations with institutions, Government spokesperson

*(signed)*

**Venance GNIGLA**

The Minister of Culture, Sport and Leisure

*(signed)*

**Théophile MONTCHO**

The Minister of Public Security and Local Communities

*(signed)*

**Edgard Charlemagne ALIA**

The Minister of National Defense

*(signed)*

**Issifou Kogui N'DOURO**

The Minister responsible for the Budget under the Minister of Development, Economy and Finance

*(signed)*

**Albert Sègbégnon HOUNGBO**