

# Democratic Republic of the Congo

## Protection of copyright and related rights

Ordinance-Law No. 86-033 of April 5, 1986

[NB – Ordinance-Law No. 86-033 of April 5, 1986, on the protection of copyright and related rights]

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### Title 1 - Copyright

#### Chapter 1 – General provisions

**Art.1.-** The author of a work of the mind, purely as a result of its creation, shall enjoy an exclusive intangible property right in the work that is binding on everyone.

This right shall have intellectual and moral attributes, as well as economic attributes that are determined by this Ordinance-Law.

The existence or conclusion of a contract to hire a work or service by the author of a work of the mind shall carry no restriction on the enjoyment of the author's moral and economic right recognized in the first subparagraph of this Article.

**Art.2.-** The work shall be deemed created, regardless of any public disclosure, by virtue of the mere fact that the author's concept has been put into practice, if only incompletely.

**Art.3.-** This Ordinance-Law shall be applicable to the works of Congolese nationals. It shall only apply to the works of foreigners, unless there is an international convention or reciprocity, if such works have been published in the Democratic Republic of the Congo. However, no infringement may be made of the integrity or authorship of works published abroad, even in the absence of an international convention or reciprocity.

**Art.4.-**Without prejudice to the provisions of Law No. 82-001 of January 7, 1982, governing industrial property, this Ordinance-law shall protect the copyright in all works of the mind, regardless of the genre, form of expression, merit or purpose.

The following in particular shall be considered works of the mind:

- (a) books, pamphlets and other literary, artistic and scientific writings;
- (b) lectures, addresses, pleas, sermons, lessons, statements, commentaries and other works of the same nature in oral, written or recorded form.
- (c) dramatic and dramatico-musical works and theatrical works in general, as well as choreographic works and pantomimes with a fixed production;
- (d) musical compositions with or without lyrics;
- (e) cinematographic works, including works expressed by processes analogous to cinematography;
- (f) newspapers, journals or other publications of the same nature;
- (g) works of drawing, painting, architecture, etching and lithography;
- (h) photographic works, including works expressed by processes analogous to photography;
- (i) works of applied art, whether handicraft or produced on an industrial scale;
- (j) illustrations, maps and three-dimensional works relative to geography, topography, architecture or any other science;
- (k) architectural plans, drawings and models;
- (l) musical arrangements, adaptations, translations and other transformations, provided they have been authorized by the author of the original work when the work is not part of shared cultural heritage;
- (m) collections of literary or artistic works, such as encyclopedias, guides, dictionaries and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations protected as such, without prejudice to the copyright in each of the works forming part of such collections;
- (n) folklore;
- (o) works derived from folklore.

**Art.5.-** The title of a work of the mind, provided that it is original, shall be protected as the work itself, and must always be mentioned with the name of the author when the work is publicly disseminated.

Even if the work is no longer protected, nobody may use that title to designate a work of the same kind, in conditions likely to cause confusion.

**Art.6.-** Under the terms of this Ordinance-Law, the phrases below shall mean the following:

- (a) original work: work presented in the initial form of creation;
- (b) derived work: that which results from the adaptation or transformation of an original work such that it constitutes an autonomous work;

- (c) individual work: a work of which the author is one person;
- (d) collaborative work: work for which the creation has involved two or more natural persons or legal entities;
- (e) collective work: a work produced on the initiative of a natural person or legal entity who publishes or discloses it according to his/her instructions and under his/her name, and the whole of which is produced by a number of contributors in such a way that it is impossible to attribute a particular contribution to the whole of or any one of them;
- (f) pseudonymous work: work signed using a *nom de plume*;
- (g) anonymous work: work not reproduced in several copies made available to the public;
- (h) unpublished work: work for which the author's identity is not known;
- (i) posthumous work: work made public after the death of the author;
- (j) composite work: new work that incorporates a pre-existing work without the collaboration of the author of that work;
- (k) folklore: artistic, literary or scientific work passed from generation to generation and constituting one of the basic elements of the traditional cultural heritage;
- (l) work derived from folklore: work composed of elements borrowed from the traditional cultural heritage;
- (m) publication: making copies of a work available to the public;
- (n) performance: direct communication of the work in public, particularly by means of:
  - recital, performance, dramatic performance;
  - disseminated by any procedure, be that words, sounds or images;
  - projection, transmission of the work broadcast by a loudspeaker and possibly a radio-television screen located in a public place;
- (o) reproduction: material fixation of the work by all processes making it possible to communicate the work indirectly to the public, particularly through printing, drawing, engraving, photography, casting and any other process of graphic and plastic arts, as well as through mechanical, cinematographic or magnetic recording; for works of architecture, reproduction shall also consist of the repeated execution of a model plan or project.

**Art.7.-** Official acts of the authority shall not give rise to any copyright. Any other literary, artistic or scientific publications produced by the authorities shall generate copyright for the authorities.

## **Chapter 2 – Owner of copyright**

**Art.8.-** In the absence of proof to the contrary, the person whose name or pseudonym is mentioned on the work disseminated shall be assumed to be the author thereof.

Copyright, even where it concerns a work produced in the framework of a work contract or service contract, shall belong originally to the author.

The employer may only exploit the author's work within the specific limits of his/her usual activity.

**Art.9.-**The copyright in a collaborative work shall belong to the co-authors who shall exercise their rights by joint agreement.

In the event of disagreement, it shall fall to the competent authority to issue a ruling.

If the involvement of each of the co-authors relates to different genres, each one may, unless otherwise agreed, separately exploit his/her personal contribution, yet without causing harm to the exploitation of the joint work.

**Art.10.-**Copyright in a collective work, unless proved otherwise, shall belong to the natural person or legal entity who took the initiative behind it and under whose name the work was disclosed.

**Art.11.-**Copyright in a composite work shall belong to the person who created it, subject to the copyright in the pre-existing work.

**Art.12.-**The author of a pseudonymous or anonymous work shall enjoy the rights recognized for it by this Ordinance-Law.

However, as long as the author does not reveal his/her identity, the publisher whose name appears on the work shall, without other proof, be presumed to represent the author and, in this capacity, shall have grounds to protect and enforce the rights of the author.

**Art.13.-**The copyright in the translation, adaptation, transformation or arrangement of any work of the mind shall belong to its author, without prejudice to the copyright of the original work. The same shall apply to the authors of anthologies or collections of various works that, by reason of the selection and arrangement of their contents, shall constitute new intellectual creations.

**Art.14.-**The copyright in folklore shall belong to the State, which shall exercise it under the arrangements laid down by the President of the Republic.

**Art.15.-**The copyright in a work inspired by folklore shall belong to the person who created it.

**Art.16.-**The copyright in a cinematographic work shall belong jointly to the following creators:

- (1) screenplay writer;
- (2) adaptation writer;
- (3) scriptwriter;
- (4) author of the musical composition with or without lyrics produced specially for the work;
- (5) director;
- (6) main illustrator in the case of cartoons;
- (7) author of the original work, when the cinematographic work is based on a protected pre-existing work.

### **Chapter 3 – Author’s prerogatives and the associated limitations**

#### **Section 1 - Author’s prerogatives**

**Art.17.-**The author of a protected work shall enjoy the exclusive right to claim authorship of the work and, in particular, to demand that his/her name appear whenever all or part of the work is quoted, communicated or published, reproduced or transformed in any way whatsoever.

**Art.18.-**The author shall enjoy the exclusive right to ensure the integrity of his/her work.

The author may, for this purpose, oppose any deformation, mutilation, amendment or, generally speaking, any infringement of the work.

The author may oppose the destruction of the published work.

Any translation, adaptation, transformation or arrangement of any kind may only be carried

out by the author or with his/her authorization.

**Art.19.-** The author shall have the right to carry out any modifications to the work that he/she deems proper in order to make it conform to the ideal he/she has of it. The author may oppose the work being published as is and even destroy it if he/she deems it unworthy, as well as opposing its reconstitution by third parties.

Any act intended to perfect the unfinished work may only be undertaken by third parties with prior authorization from the author and the consent of any transferees.

**Art.20.-** The author shall have the right to exploit the work him/herself or to assign the rights of exploitation, as stated in Chapter IV below, so as to obtain a financial gain where applicable.

Notwithstanding the assignment of the work, the authors of graphic and three-dimensional works shall have the right to receive up to five per cent of the proceeds of any sale or resale of that work.

**Art.21.-**Any owner, assignee, entertainment manager, lessee or any other person exploiting an entertainment venue, public premises or a broadcast or television station where works of the mind by national or foreign authors are represented or performed shall be required to pay a royalty fixed by contract to the owners of the holders of copyright or related rights, as defined in Title II or to their representatives, in accordance with the provisions of this Ordinance-Law or other particular laws.

**Art.22.-**The rights referred to in Articles 17, 18 and 19 above shall be moral rights attached to the author as a person. They shall be perpetual, imprescriptible and inalienable.

They may only be exercised by heirs and other successors in title for the purpose of protecting the memory of the author.

**Art.23.-**In the case of a commissioned portrait or three-dimensional work using paint, photography or other means:

- (a) the author shall not have the right to reproduce it or publicly display it without the consent of the person who commissioned it or that of his/her successors.
- (b) the author or owner of the portrait shall not have the right to reproduce it or publicly display it without the consent of the person represented or that of his/her successors.

## **Section 2 -Limitations to copyright**

**Art.24.-**It shall be lawful to reproduce quotations or excerpts of protected works for cultural, scientific, teaching, critical or polemic purposes, provided that the source, title and name of the author are mentioned.

**Art.25.-** In order to illustrate a text, the reproduction of photographs in anthologies intended for teaching use and in scientific works shall be authorized.

**Art.26.-** Subject to the mention of the author's name and the source, the complete or partial dissemination by press or broadcast for the purposes of news, lectures and speeches for the public delivered in political, administrative, judicial or academic gatherings, as well as in public political meetings and official ceremonies, shall be lawful.

However, the authorization of the author shall be required if the work must be reproduced in separate, complete or partial collections, as well as in the form of a brochure.

**Art.27.-**Lessons delivered as part of teaching may be reproduced or summarized by the people to whom they were addressed. However, these may not be published, in part or in full, without the written authorization of the authors or their successors.

**Art.28.-** The reproduction of an architectural work by means of photography, cinematography, television or any other similar procedure, as well as the publication of the corresponding photographs in newspapers, journals and school textbooks, shall be lawful and may not give rise to payment of copyright.

**Art.29.-** The reproduction in a film or television program of figurative works of art that are permanently located in a public place or included in the film or program in a way that is incidental to the main subject, shall not require authorization from the author.

**Art.30.-**The author of a work of architecture may not prevent the owner from making the changes that he has decided to make. However, he/she may oppose his/her name being mentioned as the author of the change.

**Art.31.-**Free performances may be carried out, without prior authorization from the author and provided that the work has already been disseminated, if they are given free of charge in a teaching establishment during school hours and

have a direct bearing on the subject of the lesson.

**Art.32.-**The written or spoken press may reproduce an article published in a newspaper or journal, provided that the source, title and name of the author are mentioned, unless this article or the periodical in which it is published states that reproduction is prohibited.

News of the day or miscellaneous facts having the character of mere items of press information may be freely used.

## **Chapter 4 - Exploitation of economic rights**

### **Section 1 – Transfer of economic rights**

#### ***(1) General provisions***

**Art.33.-**The attributes of the copyright mentioned in Article 20 of this Ordinance-Law shall be partially or entirely assignable free of charge or at a price, as well as being transferable by succession.

**Art.34.-**The transfer of any of the rights referred to in Articles 20 and 21 carried out other than by virtue of the Law shall be recorded in writing.

**Art.35.-** Notwithstanding the assignment of the right of exploitation, the author shall have the right of termination or withdrawal vis-à-vis the assignee,

even after the publication of the work.

The author may not, however, exercise this right without first providing indemnification for harm caused to the assignee thereby. When, after the right of termination or withdrawal has been exercised, the author decides to have the work published, he/she shall be obliged to give first refusal on the rights of exploitation to the originally identified assignee.

**Art.36.-** Any contract shall include the following:

- (1) domain and form of exploitation;
- (2) duration of assignment contract;
- (3) number of performances, broadcasts or copies, in the case of a mechanical reproduction or publication;
- (4) remuneration and means of payment. The payment to the author may not in any circumstances be less than ten per cent of the revenue from the sale or exploitation of the work;
- (5) provisions enabling possible amendments of content or termination.

**Art.37.-** The global assignment of future works shall be null and void.

## ***(2) Provisions specific to contracts of exploitation***

### ***A. Publishing contract***

**Art.38.-** The publishing contract shall be the agreement under which, excluding contracts for “publication at the author's expense” or a “half-and-half” contract, the author of the work or his/her successors assign to a publisher, under specific conditions, the right to produce

or have produced copies of the work and proceed with their publication and dissemination.

**Art.39.-** The publishing contract shall determine the form and means of expression, arrangements for carrying out the publication and the termination clauses.

**Art.40.-** The publishing contract shall state the minimum number of copies that make up the first printing. However, this obligation shall not apply to contracts laying down a guaranteed minimum of royalties to be paid by the publisher.

**Art.41.-** The publisher may not, without the author's agreement, make any amendment to the work. Unless the contract stipulates otherwise, the publisher must indicate the name or pseudonym of the author on each copy.

**Art.42.-**The contract shall provide for a remuneration to the author or his/her successors that is proportionate to the proceeds from exploiting the work.

Furthermore, the publishing contract may provide for the author to be paid an advance on this royalty, either at the time of commission, if the work is commissioned, or on the date of acceptance of the manuscript.

**Art.43.-**The publisher shall be required to provide the author with all the evidence needed to establish the accuracy of his/her accounts. Unless otherwise stipulated, at least once a year the author may demand that the publisher produce a

statement that mentions the following:

- (1) number of copies produced during the financial year, indicating the date and size of the printing;
- (2) number of copies sold;
- (3) number of copies in stock;
- (4) number of copies unusable or destroyed due to unforeseeable circumstances or *force majeure*;
- (5) sum of royalties due and royalties already paid to the author.

**Art.44.-**Except in the case of a transfer of his/her business assets, the publisher may not assign, free of charge or in return for payment, the profit from the publishing contract to third parties without obtaining the prior agreement of the author.

**Art.45.-**The publishing contract may be terminated by the publisher if the author, following the serving of six months' notice, has not enabled the publisher to proceed with publishing the work.

**Art.46.-** The author shall guarantee the publisher undisturbed and, unless otherwise agreed, exclusive exercise of the right granted. The author shall allow the publisher to fulfill his/her obligations and, in particular, shall deliver to the publisher within the period provided for in the contract the work to be published in a form that allows for it to be produced normally; the subject of the publication provided by the author shall remain the author's property.

**Art.47.-**The publishing contract may be terminated by the author independently of the cases provided for in ordinary law or the previous articles:

- (a) if, following the serving of six months' notice, the publisher has not made copies of the work available to the

public or, if the work is out of print, has not carried out a reprint. The work shall be considered out of print if two orders to the publisher for copies to be delivered have not been met within three months.

- (b) if the disposal of the business assets is likely seriously to compromise the moral or material interests of the author. In the event of contract termination following non-implementation of the clauses on the part of the publisher, the author shall retain the advances he/she has received from the publisher, without prejudice to the right to damages.

**Art.48.-** The publishing contract shall end independently of the cases provided for in ordinary law or the previous articles if the publisher destroys all copies.

**Art.49.-** Should the author die while the work remains unfinished, the contract shall be voided in relation to the unfinished part of the work, unless there is an agreement between the publisher and the author's successors.

**Art.50.-** A contract for "publication at the author's expense" shall not constitute a publishing contract within the meaning of Article 38; under such a contract, the author or his/her successors shall remit an agreed sum to the publisher, on condition that the publisher manufacture copies of the work in quantity, in the form and according to the modes of expression specified in the contract, and ensure its publication and dissemination.



**Art.51.-** A "half-and-half" contract does not constitute a publishing contract within the meaning of Article 38; under such a contract, the author or his/her successors shall commission a publisher to manufacture, at his/her expense and in quantity, copies of the work in the form and according to the modes of expression specified in the contract, and to ensure their publication and dissemination, subject to a reciprocally contracted agreement to share the profits and losses of exploitation in the proportion specified.

*B. Performance contract*

**Art.52.-** A performance contract shall be a contract under which the author of a work of the mind and his/her successors authorize an entertainment manager to perform the work under conditions determined by them.

A contract under which the national professional body for copyright protection and management, referred to in Article 111, confers on an entertainment manager the right to perform, for the duration of the contract, the existing or future works constituting the repertoire of the body under conditions determined by the author or his/her successors shall be described as a general performance contract. In the case provided for in the foregoing paragraph, an exception may be made to the provisions of Article 37.

**Art.53.-** Under the terms of this Ordinance-Law, an entertainment manager shall be considered to be any

natural person who, or legal entity that, occasionally or permanently, performs or arranges the performance for the public and by any means, of works of the mind.

**Art.54.-** The entertainment manager shall be obliged to present, at the request of the competent authority, the prior authorization from the author, his/her successors or the national professional body for copyright and royalties protection and management, in accordance with Articles 20 and 21.

**Art.55.-** The performance contract shall be concluded for a limited period or for a specified number of public performances.

Unless exclusive rights are expressly stipulated, such a contract shall not confer any monopoly of exploitation on the entertainment manager.

**Art.56.-** The validity of the exclusive rights granted by a playwright as part of a performance contract may not exceed three years; interruption of performances for one year shall automatically terminate these rights, unless otherwise agreed.

**Art.57.-** The entertainment manager may not transfer the profit from his contract without the formal and written consent of the author, his/her successors or representative(s).

The entertainment manager shall be required to:

- (1) inform the author, his/her successors or the national body for copyright protection and management of the exact program of public performances;
- (2) provide them with a documented statement of his/her receipts;
- (3) pay them the amount of royalties provided for on the dates they are due;
- (4) ensure that the public performance takes place under technical conditions which guarantee the author's intellectual and moral rights.

### *C. Cinematographic production contract*

**Art.58.-** The cinematographic production contract shall be an agreement under which the authors of works used for the production assign to the producer, under specific conditions, the rights to use the cinematographic work, without prejudice to the rights recognized by law for the authors of the works used.

**Art.59.-** The cinematographic production contract shall establish the forms and means of expression, arrangements for implementation, termination clauses and the remuneration for the authors of the works used.

**Art.60.-** The authors shall guarantee the producer undisturbed and, unless otherwise agreed, exclusive exercise of the rights granted. The authors shall allow the producer to fulfill his/her obligations and, in particular, shall deliver to the producer within the period provided for in the contract the work to be produced in a form that allows for it to be produced.

**Art.61.-** If one of the authors of the cinematographic work refuses to finish his/her contribution to the work or finds it impossible to finish it, due to *force majeure*, he/she may not oppose the use of this completed part of the contribution for the purposes of finishing the work.

**Art.62.-** Unless otherwise stated, the authors of a cinematographic work may dispose of their personal contribution with a view to its exploitation in a different genre, provided that this does not prejudice the exploitation of the work on which they collaborated.

**Art.63.-** The author or authors of the assigned works may terminate the contract if the cinematographic production is not carried out in the period provided for in the contract, beginning from the day when the author or authors fulfilled their obligation.

**Art.64.-** If the contract is terminated following non-compliance with these clauses by the producer, the authors shall retain the advances received by him/her without prejudice to the right to damages.

**Art.65.-** The producer of the cinematographic work may terminate the contract if the authors have not enabled him/her to carry out the cinematographic production, following the serving of a one-year notice period.

**Art.66.-** The producer shall mean any natural person or legal entity who takes the initiative for the production and the financial responsibility of exploiting the work. The director shall be the person responsible for artistic responsibility and management of the transformation into sound and images, editing the work and its final cut.

***(3) Provisions on hire, loan and reproduction for personal and private use***

**Art.67.-**The right to hire out and loan to the public copies of sound, graphic and audiovisual works may only be exercised by the copyright holders of those works, unless they have duly assigned those rights.

**Art.68.-**Any person who produces or imports into the Democratic Republic of the Congo devices able to manufacture productions and the media intended for sound and visual recordings shall be required to pay a royalty to the national body responsible for copyright management and protection. The amount shall be calculated in proportion to the retail revenues.

***(4) Specific provisions on photographic works***

**Art.69.-**Unless proved otherwise, the photographer shall be considered to be the person whose name, signature or initials are indicated as required by proper usage on the copies of the image or when the image is publicly communicated or displayed.

**Art.70.-** Within the limits provided for by this Ordinance-law, the author shall enjoy the exclusive right to reproduce the image by printing, graphically or using any other procedure, as well as to communicate and display it publicly.

**Art.71.-** The name of the photographer shall be indicated, to the extent and in the manner that are required by proper usage, on any copy reproducing the

photographic image and whenever it is publicly displayed or communicated.

The image shall not be subjected to any amendment that may infringe upon the professional reputation of the photographer. No one may publicly display or communicate it in a way or under circumstances that harm the photographer.

**Art.72.-**If the photographer has assigned one or more copies of a photographic image or if the image has been published, assigned copies or copies from the publication may be publicly presented.

**Art.73.-** Where photographic images have been presented or communicated during an event, it shall be lawful to insert such images

in the written, filmed or televised news account of the event.

lifetime of each of the collaborators, and 50 years following the death of the last collaborator.

## **Section 2 – Term of protection of economic rights and public domain**

### ***(1) Term of protection of economic rights***

**Article 74.**-The term of protection afforded by the law for economic rights in literary, artistic and scientific works shall extend for the lifetime of the author and 50 calendar years from his/her death.

**Art.75.**-The owners of a posthumous work shall enjoy the right of exploitation for 50 years following the first of January of the calendar year following the year when the work is published, displayed, performed or exhibited for the first time. If the right is transferred to the surviving spouse, the protection shall last for the entire lifetime thereof.

**Art.76.**-The term of protection for anonymous or pseudonymous works shall be 50 years from the first of January of the calendar year following the year when the work is published. However, when the pseudonym adopted by the author leaves no doubt as to his/her identity, or when the author of the anonymous work reveals himself/herself, the term of protection shall be that provided in Article 75.

**Art.77.**- As for photographic works, the term of protection shall be 25 years from publication.

**Art.78.**-The term of protection for a collaborative work shall extend for the

If a collaborator dies without leaving a will or heirs, his/her rights shall be added to the rights of the coauthors. The right of exploitation shall be for the heirs or successors and shall exist for 50 years from the first of January of the calendar year following the death of the last surviving collaborator.

**Art.79.**-The protection of a collective work shall last for the entire lifetime of the natural person or legal entity that owns the copyright in the work, and for 50 years following the year of the owner's death or dissolution.

### ***(2) Public domain***

**Art.80.**-At the end of the period of protection of the right of exploitation, artistic, literary and scientific works shall enter the public domain.

**Art.81.**-The right of exploitation in works within the public domain shall be managed by the national body responsible for copyright management and protection.

The performance or reproduction of these works shall be subject to the authorization of this body.

**Art.82.**-The authorization to exploit works from the public domain shall be subject to:

- respect for moral rights;
- prior declaration;
- payment of a royalty that will be used for cultural and social purposes for the benefit of the authors.

The sum of the royalty shall be equal to half that usually applied for works of the same category in the private domain.

- (f) “producer of videograms” means the natural person who, or the legal entity which, first fixes the sounds or images;
- (g) “broadcasting” means the transmission of sounds or of sounds and images by wireless means for public reception;
- (h) “reproduction” means the making of a copy or copies of a fixation or a substantial part of that fixation;

## **Title 2 – Related rights**

### **Chapter 1 – General provisions**

**Art.83.-** Related rights shall include the prerogatives that the law recognizes for performers, producers of phonograms and any other sound and audiovisual medium and broadcasting organizations to authorize or prohibit the dissemination of their performances and to receive remuneration for each public performance, without prejudice to the exclusive rights of the author of the work.

**Art.84.-** Under the terms of this Ordinance-Law:

- (a) “performers” means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works;
- (b) “phonogram” means any exclusively aural fixation;
- (c) “publication” means the offering of copies of a phonogram to the public;
- (d) “producer of phonograms” means the natural person who, or the legal entity which, first fixes the sounds;
- (e) “videogram” means fixation of sounds and images;

- (i) “rebroadcasting” means the simultaneous broadcasting by one broadcasting organization of a broadcast of another broadcasting organization;
- (j) “fixation” means the embodiment of sounds, images, or both in a material form sufficiently permanent or stable to permit them to be perceived, reproduced, or otherwise communicated.

### **Chapter 2 – Performers**

**Art.85.-** Without the authorization of the performers, no person shall perform any of the following acts:

- (a) broadcasting and communication to the public of their performance that have not yet been fixed or broadcast;
- (b) incorporation in a fixation of sounds or images or images and sounds of their as yet unfixed performances;
- (c) reproduction of a fixation of their performance carried out for purposes that contradict those for which the authorization for fixation was given.

**Art.86.-**Whomsoever uses a fixation or reproduction thereof to disseminate it by broadcasting or any other form of communication to the public shall be required to pay the performers a remuneration of which the amount and means of payment shall be fixed by agreement between users and the body responsible for copyright protection and management.

### **Chapter 3 – Broadcasting organizations**

**Art.87.-** Radio and television broadcasts and television programs are artistic activities protected by law. Broadcasting organizations shall enjoy the right to authorize or prohibit the fixing of their broadcasts, the rebroadcasting of their broadcasts and their reproduction.

**Art.88.-** Retransmission to the public for profit of radio and television broadcasts in places freely accessible to the public shall confer upon the broadcasting organization the right to a royalty set by the competent authority.

**Art.89.-** Broadcasting organizations may, without the authorization of the performers, make fixations of a performance rendered by an artist for the sole purpose of using it for a pre-determined number of teaching or cultural broadcasts.

### **Chapter 4 – Producers of phonograms and videograms**

**Art.90.-** Producers of phonograms and videograms shall have the right to authorize or prohibit:

- (a) the direct or indirect reproduction of their phonograms or videograms or copies thereof;
- (b) the export or import of their phonograms or videograms or copies thereof in order to sell or distribute them to the public.

**Art.91.-** For the purposes of proving infringement of the rights recognized under law, all copies of phonograms or videograms produced on the territory of the Democratic Republic of the Congo shall bear the record number assigned by the duty copy service.

**Art.92.-**The use for broadcast or communication to the public of a phonogram or videogram published for profit, or of a reproduction of that phonogram or videogram, shall give rise to the payment of a royalty from the user to the phonogram or videogram producer and the performers.

**Art.93.-** The royalties received for the use of phonograms and videograms and copies of phonograms and videograms of foreign producers shall be handed to the body responsible for copyright management and protection, and shall be used to promote the cultural and artistic activities of the Democratic Republic of the Congo.

**Art.94.-** The royalties received for the use of phonograms or videograms and copies of phonograms or videograms of Congolese producers shall be divided into 60 per cent for performers and 40 per cent for producers, unless otherwise agreed.

**Art.95.-**The protection afforded to phonograms and videograms or to their copies shall be 25 years from January 1 following the end of the calendar year during which the phonogram or videogram or copies thereof were produced.

## **Title 3 – Copyright protection**

### **Chapter 1 – Criminal sanctions**

**Art.96.-** Any malicious or fraudulent violation knowingly committed against copyright shall constitute an infringement offense.

**Art.97.-**Infringement shall be punished by criminal imprisonment of between one month and one year, plus a fine of between 5,000 and 10,000 Zaïres, or one of these penalties only.

**Art.98.-** The following shall be considered infringements and shall be punished using the penalties provided for in Article 97: the sale, display, hire, possession, import and export of infringing works or objects where these acts have been knowingly committed and for commercial purposes.

**Art.99.-** The malicious or fraudulent placing on a work of art, literature or music of the name of an author or any distinctive sign adopted by him/her to designate his/her works shall be punished by criminal imprisonment of between one and five years, plus a fine of between 10,000 and 50,000 Zaïres, or one of these penalties.

Those who knowingly sell, display for sale, hire out, possess or bring into the territory of the Democratic Republic of the Congo for commercial purposes, objects or works referred to in the first subparagraph shall be punished with the same penalties only.

**Art.100.-**Article 14 of the Penal Code shall apply to the offenses provided for in Articles 96, 97 and 98.

**Art.101.-**In cases of violation of Articles 96, 97, 98 and 99, the revenues may be seized as the proceeds of the violation.

Furthermore, the revenues may be allocated to the claimant who has brought civil proceedings, to be used as part of the damages he/she is due, but only in proportion to the share of the work in the sum of revenues received.

**Art.102.-** Violations of this Ordinance-Law, except those provided for in Article 98, may only be prosecuted following a complaint by the person who claims to be aggrieved.

**Art.103.-** The court may, upon request of the aggrieved party, order the publication of the ruling, with or without grounds, in a journal indicated by him/her and at the expense of the infringer.

### **Chapter 2 – Proceedings in a civil court**

**Art.104.**-Copyright holders may, with the authorization of the judge in the place of infringement, instruct one or more experts appointed by the judge to produce a description of the alleged infringing objects or the details of the infringement and the tools that were specially used to carry out the infringement.



The judge may also, using the same order, forbid the holders of the infringing objects to part with them, allow the appointment of a custodian or even place the objects under seal. This order shall be served according to the usual procedures for issuing summons.

Should the case involve revenues, the judge may authorize the sequestration of the revenues.

**Art.105.-** The request shall contain the election of domicile in the area where the description must take place. The experts shall swear an oath to the judge that they will faithfully complete their task.

**Art.106.-** The judge may force the plaintiff to provide a security deposit. In this case, the order will only be issued once there is proof that the deposit has been made.

**Art.107.-** If the doors are closed or if the opening thereof is refused, proceedings shall be taken in accordance with the rules of civil procedure.

**Art.108.-**A copy of the record of the description shall be deposited with the registry within a time period fixed by the judge, with immediate notification to the plaintiff and the defendant.

**Art.109.-**If, within two weeks of the notification of the record of the description or the sequestration of revenues, there has been no summons to the court within the jurisdiction where the description was made, the order shall cease to have the full effect of the law, and the holder of the described or seized objects may request the return of all copies of the record, with the prohibition on anyone using its content or making it public, without prejudice to any damages.

**Art.110.-**The seized objects may be allocated against the distrainer to the applicant up to the limit of the prejudice suffered.

#### **Title 4 – Final and repealing provisions**

**Art.111.-**The management of copyright and related rights, and the protection of the moral and financial interests of all authors of works of the mind, shall be the responsibility of a national body that is the only one authorized to operate in the territory of the Democratic Republic of the Congo.

**Art.112.-**The Decree of June 21, 1948, relating to copyright protection, as well as any provisions that contradict this Ordinance-Law, are hereby repealed.

**Art.113.-** This Ordinance-Law shall enter into force on the date when it is signed.