

Djibouti
Copyright and neighboring rights
Law No.154/AN/06 of July 23, 2006

[NB - Law No. 154/AN/06 of July 23, 2006, on the Protection of Copyright and Neighboring Rights]

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Title 1 – Copyright

Chapter 1 – Subject matter of copyright

Article 1 - The author of a work of the mind shall enjoy in that work, by the mere fact of its creation, an exclusive incorporeal property right that shall be enforceable against all persons.

This right shall include attributes of a moral nature, as well as attributes of an economic nature, as determined by this Law.

Art. 2. – The provisions of this Law shall protect copyright in all original literary, scientific or artistic works of any kind, form of expression, merit or purpose, without this protection being subject to any formality whatsoever.

Art. 3: Protected works

The following, in particular, shall be considered works of the mind within the meaning of this Law:

- ((1) books, pamphlets and other literary, artistic and scientific writings;
- ((2) lectures, addresses, sermons, pleadings and other works of such nature;
- ((3) works created for the stage, including both dramatic and dramatico-musical works and choreographic and mimed works, the production of which is fixed in writing or otherwise;
- ((4) musical compositions with or without words
- ((5) works of drawing, painting, engraving and lithography;
- ((6) works of applied art such as tapestries and handicrafts, including the drawings and models thereof;

- ((7) works of architecture, comprising also designs, models and the building itself;
- ((8) sculptures, bas-relief and mosaics of all kinds;
- ((9) photographic works, to which are assimilated, for the purposes of this Law, works expressed by a process analogous to photography;
- ((10) cinematographic works, to which are assimilated, for the purposes of this Law, works expressed by a process analogous to cinematography;
- ((11) geographical maps, illustrations, plans, sketches and three-dimensional works relative to geography, topography, architecture and science;
- ((12) computer programs, expressed in source code or object code.

Art. 4.- Derived works

The authors of translations, adaptations, transformations or arrangements of works of the mind or expressions of folklore shall enjoy the protection afforded by this Law, without prejudice to the rights of the author of the original work.

The same shall apply to the authors of anthologies or collections of works, expressions of folklore or data such as databases that, by reason of the selection or the arrangement of their contents, constitute intellectual creations.

Art.5.- The title of a work of the mind shall enjoy the same protection as the work itself, in so far as it presents a materialized idea.

Art.6.- "Original work" means a work that, by its characteristic elements and its form, or by its form alone, enables its author to be identified. "Derivative work" means a work based on pre-existing elements.

Art.7.- A work shall be deemed to have been created, irrespective of any public disclosure, by the mere fact of realization of the author's concept, even if incomplete.

Art.8.- Non-protected works

Notwithstanding the provisions of Articles 3 and 4, protection shall not apply to:

- ((a) laws, judicial decisions, decisions of administrative bodies, as well as official translations of such texts;
- ((b) news of the day or to miscellaneous facts having the character of mere items of press information, published, broadcast or communicated to the public;
- ((c) ideas, processes, systems, operating systems, concepts or principles themselves, although protection shall extend to their expression.

Chapter 2 – Authors' rights

Art.9.- Moral rights

((1) Moral rights shall consist of the author's right to:

- ((1) decide on the disclosure of his work;
- ((2) respect for his name and authorship;
- ((3) respect for the integrity of his work.

((2) The name of the author shall be given on each copy that reproduces a work and each time that a work is made available to the public, to the extent and in the manner that is customary.

((3) A work may not undergo any modification without the author's consent given in writing. No person shall be entitled to make a reproduced work available to the

public in a form or under circumstances that would be detrimental to his honor or reputation.

((4) Where manifest abuse by the copyright owner prevents the exercise of the right of disclosure, the Minister responsible for culture may apply to the civil court so that the court may order any appropriate measure.

((5) The rights afforded to the author by the previous paragraphs shall be perpetual, inalienable and imprescriptible. They may be transferred to the author's heirs upon his death.

Art.10.- Economic rights

I. The author shall enjoy the exclusive right to use his work in any way whatsoever and to make a financial profit from it. In particular, he shall have the exclusive right to perform or authorize the performance of any of the following acts:

(1) reproducing the work in any format whatsoever, including in the form of cinematographic films and sound recordings by any processes that enable it to be indirectly communicated to the public;

(2) representing, performing or reciting the work in public, directly or by any means or process whatsoever, including sound or visual broadcast;

(3) communicating the work to the public by any means or process of telecommunication, of sounds, data, images or messages of any kind;

(4) producing a translation, adaptation, arrangement or any transformation of the work;

(5) commercially renting a computer program, except where the program is itself the main rental object.

II. Under the terms of this Article, the work shall mean a work in its original form and in any form derived from the original.

III. Third parties may only carry out one of the acts listed in the above paragraphs with the formal and written consent of the author. Any partial or complete performance of one these acts without the consent of the author or his successors in interest or title shall be unlawful.

Art.11.- Droit de suite

(1) Authors of graphic and three-dimensional works shall, notwithstanding any transfer of the original work, have an inalienable right to share in the proceeds from any sale of the work by public auction or through a dealer.

(2) The right shall be constituted by a levy, in favor of the author or his heirs, of five percent of the proceeds from the sale.

(3) The protection provided for in the preceding paragraphs shall only apply to authors who are not nationals of the Republic of Djibouti to the extent that their country of origin offers protection to Djiboutian authors.

Chapter 3 – Term of protection

Art.12 The rights mentioned in Articles 10 and 11 shall be protected during the life of the author and for 50 years following his death.

Art.13.- For a work of joint authorship, the rights shall be protected for the lifetime of the last surviving co-author and for 50 years after his death.

Art.14.- (1) For an anonymous or pseudonymous published work, the rights shall be protected until the date when such a work was lawfully made available to the public for the first time. However, Article 12 shall apply if the identity of the author is revealed or if there is no doubt about the real identity of the author before the expiry of that period.

(2) The periods provided for in the previous paragraph shall only apply when the work has been made accessible to the public before the expiry of a period of 50 years after it was made, failing which the protection shall end at the expiry of the latter period.

Art.15.- (1) For a cinematographic work, the rights shall be protected until the expiry of a period of 50 years from the date when the work was made lawfully accessible to the public with the author's consent.

(2) The period provided for in the previous paragraph shall only apply when the work has been made accessible to the public before the expiry of a period of 50 years after it was made, failing which the protection shall end at the expiry of the latter period.

Art.16.- For a photographic work or work of applied art, the rights shall be protected for 25 years from the production of the work.

Art.17.- For posthumous works, the rights shall belong to the author's successors in title for a period of 50 years from the production of the work, provided that the work has been disclosed during this period. Posthumous works disclosed to the public after the expiry of this period shall be protected for 25 years from the date of disclosure. In such cases, the right of exploitation shall belong to the owners of the manuscripts or originals associated with the work and who carry out the publication or arrange for it to be carried out.

Posthumous works must be published separately, except where they represent just a fragment of a previously published work.

Art.18.- The periods provided for in the previous articles relating to author protection shall run to the end of the calendar year when they are due to expire.

Chapter 4 – Owners of copyright

Art.19.- Principles

(1) Unless the Law states otherwise, the author of the work shall own the copyright.

(2) The author of a work shall be the person who created it.

Art.20.- Presumption of authorship

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

(2) In the case of anonymous and pseudonymous works, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease

to apply when the author reveals his identity and establishes his claim to authorship of the work or, for a pseudonymous work, where the pseudonym adopted by the author leaves no doubt as to his identity.

Art.21.- Employment contract or a contract to make a work

(1) Copyright, even in a work produced under an employment contract or a contract to make a work, shall belong to the author of the work, unless otherwise stipulated in the Law or the contract.

(2) However,

((a) the economic rights in the software created by one or more employees in the execution of their duties or following the instructions given by their employer shall be the property of the employer;

((b) where the work is produced by administrative officers within the limits of their duties, the pecuniary rights deriving from the disclosure of that work may be distributed according to the specific rules of the administrative department in which they are employed;

((c) the pecuniary rights deriving from the disclosure of the works of pupils or trainees of a school, teaching institution or artistic establishment may be distributed according to the specific rules of the school or establishment.

Art.22.- Work of joint authorship

(1) "Work of joint authorship" means a work, the creation of which is the result of contributions on the part of two or more authors, irrespective of whether it constitutes an indivisible whole or is composed of parts having independent creative character.

(2) A work of joint authorship shall belong jointly to the co-authors. The co-authors shall exercise their rights by common consent, failing which the court shall decide.

(3) When the contribution of each co-author is of a different kind, each may, in the absence of an agreement to the contrary, exploit his personal contribution separately, without, however, prejudicing the exploitation of the joint work.

Art.23.- Composite work

(1) "Composite work" means a new work in which a pre-existing work is incorporated without the collaboration of the author of that work.

(2) A composite work shall belong to the author who created it, without prejudice to the rights of the author of the pre-existing work.

Art.24.- Collective work

(1) "Collective work" means a work created by several authors on the initiative of a natural person or legal entity who or which discloses it under his or its direction and name, where the personal contributions of the various authors who participated in its creation are merged in the whole for which they were made, so that it is impossible to attribute to each author a separate right in the whole work once completed.

(2) A collective work shall belong to the natural person or legal entity who or which initiated its creation and disclosed it.

Art.25.- Cinematographic works

(1) In the case of a cinematographic work, the rights shall originally belong to the intellectual creators of the work.

(2) Unless proved otherwise, the authors of a jointly produced cinematographic work shall be the authors of the screenplay, adaptation, script, musical compositions with or without lyrics produced specially for the work; director; and the main illustrator in the case of cartoons. When the cinematographic work is based on a protected pre-existing work, the author of the original work shall be included in the list for the new work.

Art. 26.- The producer of a cinematographic work shall be the natural or legal person who takes the initiative and responsibility for production of the work.

Art. 27.- The director of a cinematographic work shall be the natural person who assumes the direction of, and the artistic responsibility for, the transformation into pictures and sound, and the cutting of the cinematographic work, as well as the final editing.

Art. 28.- A cinematographic work shall be deemed to have been completed when the first master copy has been established by joint agreement between the director and the producer.

Art. 29.- If any contributor to a cinematographic work refuses to complete his contribution to the work or is unable to do so due to circumstances beyond his control, he shall not be entitled to oppose use of that part of his contribution already in existence for the purpose of completing the work. Unless otherwise stipulated, the contributors to a cinematographic work may dispose freely of their personal contribution for exploitation in a different field on condition that they do not prejudice exploitation of the work to which they have contributed.

Art. 30.- Before undertaking the making of the cinematographic work, the producer shall be bound to enter into written contracts with all those whose works are to be used for the production of the film.

Art. 31.- Written contracts concluded with the intellectual creators of the work shall stipulate, unless otherwise agreed, assignment of the exclusive right of cinematographic exploitation of the work to the producer for a limited period that is specified in the contract.

The above presumption shall not apply to pre-existing works that are used to produce the work, or musical works that may or may not pre-exist, with or without words.

Art. 32.- The author of a radio or radio visual work shall be deemed to be the natural person or persons

responsible for the intellectual creation of such a work. The provisions of Article 29 shall also be applicable to radio or radio visual works.

Chapter 5 – Assignment of rights

Art.33.- The economic rights listed in Article 10 may be transferred, for or without payment. The author may assign the rights in his work in whole or in part.

Art.34.- Conditions of assignment

(1) The assignment of the author's rights shall be subject to each of the assigned rights being separately mentioned in the instrument of assignment and the area of exploitation of the assigned rights being defined as to its scope and purpose, as to place and as to duration.

(2) Where special circumstances demand, the contract may be validly concluded by an exchange of telegrams or faxes, on condition that the field of exploitation of the assigned rights be defined in compliance with the first paragraph of this Article.

Art.35.- Effects of assignment

(1) Total or partial assignment of any one of the rights specified in Article 13 above shall not imply assignment of any other of the said rights.

(2) When a contract entails total assignment of one right, the effects of that assignment shall be limited to the methods of exploitation provided for in the contract.

(3) A clause in an assignment contract that confers the right to exploit the work in a manner that was unforeseen or unforeseeable at the time the contract was entered into shall be explicit and shall specify a proportionate share of the profits from the exploitation.

(4) In the event of a partial assignment, the successor in title shall replace the author in the exercise of the rights assigned, in the conditions, within the limits and for the period specified in the contract.

Art.36.- Assignment of future works

(1) Total transfer of future works shall be void, unless it is transferred to the Office of Copyright and Neighboring Rights.

(2) It shall be lawful, however, to conclude a contract commissioning graphic or three-dimensional works that confers temporary exclusive rights of a duration not exceeding five years and respects the author's independence and freedom of expression.

Art.37.- Remuneration in the event of assignment

(1) Assignment for consideration must confer on the author a proportionate share in the proceeds of sale, hire or exploitation of the work in any form whatsoever.

(2) However, the remuneration of the author may be a lump sum payment in cases where:

((1) the basis for calculating the proportionate share cannot be practically determined;

((2) the cost of controlling would be out of proportion with the desired results;

((3) the use of the work is only of an accessory nature in relation to the object

exploited;

((4) in the case of assignment of rights for software.

Art.38.- Right to reconsider or withdraw

(1) Notwithstanding the assignment of his right of exploitation, the author shall enjoy, even after the publication of his work, the right to reconsider or to withdraw in relation to the assignee. He may only exercise this right, however, on condition that he indemnifies the assignee beforehand for any loss that this reconsideration or withdrawal may cause him.

(2) When the author decides to have his work published after exercising the right to reconsider or withdraw, he shall be bound to offer his exploitation rights first to the assignee he originally chose, under the conditions originally specified.

Art.39.- Transfer of the ownership of the original copy of a work, or one or more copies thereof, shall not include transfer of the copyright relating to that work.

Art.40.- Transfer by succession

(1) With the exception of the right to modify the work, copyright as defined in Articles 10,11 and 12 shall be transferable by succession.

(2) The exercise of moral rights shall belong jointly to the successors and to the Office of Copyright and Neighboring Rights.

(3) Authors' economic rights which have escheated shall accrue to the Office of Copyright and Neighboring Rights, and the proceeds of royalties resulting therefrom shall be used for cultural and welfare purposes, without prejudice to any rights of creditors and to the execution of such assignment contracts as may have been entered into by the author or his successors in title.

Chapter 6 – Special contracts

Art.41.- Publishing contract

(1) The publishing contract shall be the contract under which the author of the work or his successors in title assign to the publisher, under specified conditions, the right to manufacture or have manufactured in quantity graphic, mechanical or other copies of the work, on condition that he ensures publication and dissemination thereof.

(2) The form and mode of expression, the conditions for the making of the publication and the termination clauses shall be specified in the contract.

Art.42.- A contract for publication at the author's expense shall not constitute a publishing contract within the meaning of Article 41. Under such a contract, the author or his successors in title 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.

Such a contract shall constitute a business contract, governed by agreement, usage and the relevant provisions of ordinary law.

Art.43.- A "shares" contract shall not constitute a publishing contract within the meaning of Article 41.

Under such a contract, the author or his successors in title shall commission a publisher to manufacture, at his 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.

Art.44.- Authors' obligations

(1) The author shall hand over to the publisher, within the period specified in the

contract, the work to be published in a form that makes normal production possible.
(2) Unless otherwise agreed or unless it is technically impossible, the work to be published shall remain the property of the author. The publisher shall be responsible for it for one year after completion of production.
(3) The author shall assure the publisher of undisturbed and, unless otherwise agreed, exclusive exercise of the rights assigned.

Art.45.- Publishers' obligations

(1) The publishing contract must indicate the minimum number of copies constituting the first printing.

However, this obligation shall not apply to contracts providing for a minimum of royalties guaranteed by the publisher.

(2) The contract must also provide for remuneration proportionate to the proceeds from exploitation, except in the cases of lump-sum payment provided for in Article 37 of this Law.

(3) The publisher shall be accountable. Once a year, the publisher shall be required to provide the author with all the documentary evidence necessary for establishing the accuracy of his accounts. If he fails to do so, he shall be compelled to comply by a judge.

Any contrary clause shall be considered non-existent.

Art.46.- Neither the bankruptcy of the publisher nor a settlement approved by the court shall terminate the contract. The receiver may not remainder the copies manufactured or sell them out until at least 15 days have elapsed since he advised the author of his intention by registered letter with acknowledgement of receipt. The author shall have a right of preemption over all or some of the copies. In the absence of an agreement, the purchase price shall be determined by expert opinion.

Art.47.- The publisher may not transfer the benefit of the publishing contract to third parties independently of his own business, either free of charge or for a consideration or in the form of corporate stock, without first having obtained the author's permission. In the event of disposal of the business, if such disposal is liable to be seriously detrimental to the material or moral interests of the author, the author shall be entitled to be indemnified, even in the form of termination of the contract.

Art.48.- In the case of a contract of fixed duration, the rights of the assignee shall lapse automatically on expiry of the term in question without need of any formal notice.

However, for three years after expiry of that term, the publisher may continue to market at the normal price the copies remaining in stock, unless the author prefers to buy the copies at a price which, in the absence of an amicable agreement, shall be fixed according to expert opinion; this faculty afforded the first publisher shall not prevent the author from making a further publication within a period of 30 months.

Art.49.- (1) The publishing contract shall end, regardless of the cases provided for in the general rules of law or in the foregoing articles, when the publisher destroys all the copies.
(2) Termination shall take place automatically when, after receiving a formal notice from the author fixing a suitable period, the publisher has not published the work or, if it is out of print, has not republished it.

(3) The edition shall be considered out of print if two orders for delivery of copies addressed to the publisher have not been met within three months.

(4) In the event of the author's death, if the work is incomplete, the contract shall be terminated in respect of the unfinished part of the work, in the absence of an agreement between the publisher and the author's successors in title.

Art.50.- Performance contract

A performance contract shall be a contract under which the author of a work of the mind and his successors in title authorize a natural person or legal entity to perform said work under conditions determined by them.

A contract under which the Office of Copyright and Neighboring Rights confers on an entertainment manager the right to perform, for the duration of the contract, the existing or future works constituting the repertoire of that Office under conditions determined by the author or his successors in title shall be described as a general performance contract.

Art.51.- An entertainment organizer who performs protected works within the meaning of this Law, or causes them to be performed, shall secure the prior authorization provided for in Article 10 and pay the corresponding royalties.

The contract shall be concluded for a limited term or for a specified number of communications to the public.

Unless exclusive rights are expressly stipulated, it shall not confer any exploitation monopoly on the entertainment organizer. The entertainment organizer may not transfer the benefits of his contract without the formal, written consent of the author or his representative.

The validity of the exclusive rights accorded by a dramatic author may not exceed five years. Any interruption of performances for two consecutive years shall terminate the contract as of right.

Art.52.-

The entertainment manager shall be required to:

((1) inform the author or his representatives of the exact program of public performances;

((2) provide them with a documented statement of his receipts;

((3) pay them the amount of royalties provided for;

((4) ensure that the public performance takes place under technical conditions which guarantee the author's intellectual and moral rights, in accordance with the provisions of Article 9 above.

Chapter 7 – Limitations to copyright

Art.53.- Ephemeral recording

(1) Notwithstanding the provisions of Article 10, for its own programs the national broadcasting organization may, for the purposes of a broadcast delayed for technical or timing reasons and by its own technical means, make an ephemeral recording of one or more copies of any work that it is authorized to broadcast.

(2) All copies of the work shall be destroyed within a period of not more than six months from the date of the making of such copies, unless the author agrees to extend the period by any length. However, where the recording exceptionally has documentary character, one copy of it may be preserved in official archives This is nonetheless subject to the application of the provisions of Article 9.

Art.54.- Notwithstanding the provisions of Article 10, the following uses of a protected work shall be permissible without the author's consent in the case of a protected

work that has been lawfully published:

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

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

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

(d) the public performance of a work:

- 1. at official ceremonies, to the extent that this is justified by the nature of such ceremonies;

or

- 2. in the framework of the teaching activities of a teaching establishment;

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

(f) The reproduction in the press or the communication to the public of:

((1) any political speech or any speech delivered during legal proceedings; any lecture, address, sermon or other work of the same nature delivered in public, provided that the use is exclusively for the purpose of current information and to the extent justified by the intended purpose. The author shall retain the right to publish collections of such works;

((2) In the case of an article published in newspapers or periodicals on economic, political or religious topics, and in the case of the broadcast of any work of the same character, in cases where the right of reproduction, broadcast or communication to the public is not explicitly reserved;

(g) For the purpose of reporting on current events by means of photography, cinematography, broadcast or communication by wire to the public, the reproduction or making available to the public, to the extent justified by the informative purpose, of any work that can be seen or heard in the course of the said current event;

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

(i) The production of a copy or adaptation of software by the legitimate owner, provided that the copy or adaptation is:

- necessary for archiving and to replace the legally held copy in the event of it being lost, destroyed or rendered unusable, or

- necessary for using the computer program for purposes for which it was obtained, and that any copy or adaptation is destroyed where the prolonged ownership of the copy of the computer program ceases to be lawful.

Art.55.- Translation license

(1) If, after the expiration of a period of one year from the date of the first publication

of a writing, a translation of such writing has not been published in the Republic of Djibouti, by the owner of the right of translation or with his authorization, any national of Djibouti may obtain a non-exclusive license from the Ministry responsible for culture to translate and publish the work. The license shall only be issued if the applicant establishes that, after due diligence on his part, he was unable to find the owner of the right of translation or to obtain his authorization. A license may also be granted on the same conditions if all previous editions of a translation are out of print.

(2) Any license granted under this Article must be intended for school, university or research use.

(3) The owner of the right of translation shall receive a compensation that is just and equitable.

Art.56.- Djibouti Radio and Television may also be granted a license to translate any work protected by this Law, provided that the translation is used only in broadcasts intended exclusively for teaching or for the dissemination of the result of specialized research to experts in a particular profession. A translation license may also be granted for this body to translate any text incorporated in an audiovisual work that is itself prepared and published for school and university use.

Art.57.- Reproduction license

If, after the expiration of a period of five years, a literary, scientific or artistic work published in print or as an audiovisual reproduction or in any other analogous form of reproduction has not offered for sale at a price comparable to that in use for similar works, in the Republic of Djibouti to satisfy the requirements of the general public or school and university teaching and research, any national of the Republic of Djibouti may obtain a non-exclusive license from the Ministry responsible for culture to reproduce and publish the work for school teaching and university requirements. The same shall apply if all previous editions of a work are out of print. The owner of the right of reproduction shall receive compensation that is fair and equitable.

Art.58.- The period referred to in Article 57 shall be reduced to three years in the case of a work of natural and physical sciences and technology. For works that belong to the realm of the imagination, such as novels and poetic, dramatic and musical works, as well as art books, encyclopedias and anthologies, the period shall be extended to seven years.

Art.59.- The conditions for the award and exercise of the translation license itself and the translation for broadcast purposes, as well as the reproduction license, shall be established by the Ministry responsible for Culture, and in accordance with the international commitments undertaken in such matters by the Republic of Djibouti, pursuant to Articles 98 and 99, paragraph 3.

Title 2 – Neighboring rights

Art.60.- General principle

The rights of phonogram producers and the rights of performers shall not encroach on the rights of authors. Consequently, no provision of this Title shall be interpreted in such a way as to limit the exercise of copyright by the owners thereof.

Art.61.- Performers' rights

(1) Definition

“Performer” means, to the exclusion of the supporting performer, the actor, singer,

musician, dancer or other person who presents, sings, recites, declaims, plays or in any other way performs a literary or artistic work or a variety or circus act or puppet show.

(2) Moral rights

- (a) the performer shall be entitled to respect for his name and his status;
- (b) he shall have the right to object to any distortion, mutilations or other modifications made to performances that are prejudicial to the performer's reputation;
- (c) this inalienable and imprescriptible right shall belong to him personally.
- (d) it shall be transferable to his heirs for the protection of the performance and of the deceased's memory.

(3) Economic rights

Performers shall have the exclusive right to carry out or authorize the performance of any of the following acts:

- (a) broadcast and communication to the public of their unfixed performances;
- (b) the first fixation of their performance in a phonogram;
- (c) the reproduction in any manner or form of their performance fixed in a phonogram.

Art.62.- Phonogram producers' rights

(1) Definitions

- (a) A phonogram shall be any exclusively aural fixation of sounds of a performance or of other sounds or performances of sounds, other than in the form of a fixation incorporated in an audiovisual work.
- (b) A phonogram producer means the natural person who, or the legal entity which, first takes the initiative to and responsibility for fixing the sounds from a performance or other sounds or performances of sounds.

(2) Phonogram producers shall have the exclusive right to perform or authorize the performance of any of the following acts:

- (a) direct or indirect reproduction of their phonograms in any manner or form;
- (b) commercial renting of their phonogram.

Art.63.- Broadcasting organizations' rights

Broadcasting organizations shall have the exclusive right to perform or authorize the performance of any of the following acts:

- (a) fixation of their broadcast programs;
- (b) reproduction of a fixation of their broadcast programs;
- (c) rebroadcast of their broadcast programs.

Art.64.- Term of protection

(1) Performers

The rights mentioned in Article 61 shall be protected for a period of 50 years from:

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

(2) Phonogram producers

The rights mentioned in Article 62 shall be protected for a period of 50 years from the end of the year when the phonogram was published or, if the publication does not take place within 50 years from the fixation of the phonogram, 50 years from the end of the year of fixation.

(3) Broadcasting organizations

The rights mentioned in Article 63 shall be protected for a period of 25 years from the end of the year when the broadcast takes place.

Art.65.- Limitations on neighboring rights

Notwithstanding the provisions of Articles 61 to 63, the following acts shall be allowed without the authorization of the right holders mentioned in those articles and without payment of a consideration:

- (a) reporting current events, on the condition that only short fragments of a performance, a phonogram or a broadcast are used;
- (b) reproduction solely for scientific research;
- (c) reproduction in the context of teaching activities, except if the performances or phonograms have been published as teaching materials;
- (d) reproduction solely for the personal and private use of the person who produced it;
- (e) the reproduction, in the form of quotation, of short fragments of a performance, a phonogram or a broadcast, provided that such citations are compatible with fair practice and do not exceed the extent justified by the purpose of information;
- (f) generally speaking, any other purposes which, under the provisions of this Law, constitute exceptions in relation to works protected by copyright, and which apply mutatis mutandis to performers, phonogram producers and broadcasting organizations.

Title 3 – Payment for private copies

Art.66.- Reproduction using sound, visual or audiovisual recording on physical media of works, performances by performers or phonograms protected under this Law, intended for strictly personal and private use as provided for in Articles 54(A) and 65(D) above shall result in remuneration for Djiboutian authors, performers and phonogram producers, of a sum to be based on the nature and recording length of these physical media.

The remuneration shall be paid to the Djiboutian Office of Copyright and Neighboring Rights provided for in Article 75 of this Law by the natural or legal persons who produce or import these physical media, on presentation of documents suitable for defining the remuneration and checking the amount.

Art.67.- The rates of remuneration and means of payment of the remuneration shall be laid down by Decree of the Council of Ministers.

Art.68.- Remuneration for private copying shall be repayable where the recording material is acquired for their own use or production by:

1. audiovisual communication companies;
2. the producers of phonograms or the persons who carry out the reproduction of phonograms on behalf of phonogram producers;
3. persons, whether natural persons or legal entities, of whom a list shall be drawn up by the Minister responsible for culture, and who make use of recording material for the purpose of assisting persons with visual or auditory disabilities.

Title 4 - Protection of expressions of folklore

Art.69.- Definitions

Under this Law:

(1) "expressions of folklore" means all literary, scientific and artistic works created by authors presumed to be of Djiboutian nationality, passed from generation to generation and constituting one of the basic elements of the Djiboutian traditional

cultural heritage;

((2) "work inspired by folklore" means any work composed exclusively of elements borrowed from the Djiboutian traditional cultural heritage.

Art.70.- (1) Expressions of folklore shall belong originally to the national heritage.

(2) Public performance and direct or indirect fixation of expressions of folklore with a view to exploitation for profit-making purposes shall be subject to prior authorization by the Office of Copyright and Neighboring Rights provided for in Article 40 of this Law, against payment of a royalty, the amount of which shall be equal to 50 per cent of royalties received for the use of similar protected works.

(3) The proceeds from royalties shall be used for cultural and social purposes for the benefit of national authors.

Art.71.- The provisions of Article 70 above shall not apply when expressions of national folklore are used by a public entity for nonprofit purposes. However, the public entity shall be required to make a declaration to the Office of Copyright and Neighboring Rights.

Art.72.- Copies of expressions and works of national folklore, as well as copies of translations, arrangements and other transformations of such works, made abroad without the authorization of the Office of Copyright and Neighboring Rights, may not be either imported or distributed on the national territory.

Art.73.- Any user of expressions of folklore shall respect their integrity and ensure that they are communicated to the public with full respect for that integrity.

Title 5 – Collective management of rights and works in the public domain

Art.74.- The collective management of rights provided for in this Law for authors, performers and phonogram producers or their successors in title, as well as the protection of works that have entered the public domain and expressions of folklore, shall be entrusted to the Office of Copyright and Neighboring Rights.

Art.75.- Paying public domain

(1) On the expiration of the terms of protection provided for in this Law, the author's works shall pass into the public domain.

(2) The representation, public performance and reproduction of these works shall require an authorization from the Office of Copyright and Neighboring Rights. If the performance is for profit, the authorization shall be granted in exchange for payment of a royalty calculated on the basis of the gross income from the operation. This royalty shall be equal to half that usually applied to works of the same category in the private domain.

(3) Royalties from the exploitation of a work from the public domain shall be paid into a special fund managed by the Office of Copyright and Neighboring Rights and shall be used for cultural, artistic promotion and social development purposes.

Art.76.- Collective rights management

(1) To the exclusion of any other natural person or legal entity, the Office of Copyright and Neighboring Rights shall be authorized to represent authors, performers and phonogram producers or their successors in title, as an intermediary vis-à-vis users and user associations, to authorize the collective exploitation, in all countries, of their works, performances or phonograms, receive the associated royalties and distribute them to their beneficiaries.

(2) This body shall manage on the national territory the interests of the various foreign collective management organizations within the framework of agreements of reciprocal performances that it might be called upon to conclude with them.

(3) The Office of Copyright and Neighboring Rights shall be authorized to:

- lay down in its constitution the membership criteria and various member categories;
- contribute by all appropriate means to the promotion of national creativity in the

artistic, literary, musical and dramatic fields;

- create and manage for the benefit of authors, artists, performers and their heirs a welfare and solidarity fund.

(4) The Office of Copyright and Neighboring Rights shall make available to potential users the complete repertoire of works, performances and phonograms it represents and shall facilitate their exploitation, in exchange for fair remuneration.

(5) The Office of Copyright and Neighboring Rights shall be able to bring legal proceedings to defend the interests for which it is responsible.

(6) The Office of Copyright and Neighboring Rights shall be authorized to appoint sworn representatives with the authority to monitor the implementation of the instructions of this Law on the national territory and report any infringements.

Art.77.- (1) A conciliation body shall be created under the Ministry of Culture and tasked with ruling on disputes that may arise between the Office of Copyright and Neighboring Rights and users or associations of users of works, performances or phonograms and that relate to conditions of use for the repertoires managed by the Office.

(2) The provisions of this Article shall not apply to works in the public domain or to expressions of folklore.

Art.78.- Creation of commissions

Two statutory commissions shall be created as follows:

- 1 The Commission for works' compliance in various artistic domains: examining the works registered and determining whether they truly belong to the applicant,
- 2 The Commission for controlling scientific, literary and theatrical works: classifying works declared to the Office of Copyright and Neighboring Rights.

Art.79.- The composition, appointment of members and operational arrangements of these Commissions shall be laid down by an Order issued by the Council of Ministers.

Title 6 - Creation and organization of the Office

Art.80.- A public administrative and cultural body with legal personality known as the "Office of Copyright and Neighboring Rights" is hereby created under the supervision of the Ministry of Culture.

Art.81.- Responsibilities

(1) The Office of Copyright and Neighboring Rights shall act as intermediary between authors or their successors in title and users of musical, literary and artistic works. The Office of Copyright and Neighboring Rights shall ensure compliance with copyright in the country and facilitates user compliance by generally authorizing the use of the works of its entire repertoire.

(2) The Office of Copyright and Neighboring Rights shall be managed by a Director appointed by Decree issued by the Council of Ministers.

(3) The Director shall be appointed following a proposal made by the Minister of Culture in the Council of Ministers.

The Board of Directors may propose to the Minister of Culture that the Director be removed.

(4) He shall have authority over all staff that he recruits, appoints to all positions and dismisses in accordance with the Office's Staff Rules.

(5) He may delegate his signature to agents placed under his authority.

(6) He may be assisted by a Deputy Director whose appointment is subject to approved by the Board of Directors.

Art.82.- The organization and operation of these bodies shall be established by Decree issued by the Council of Ministers.

Art.83.- Board of Governors

The Board of Governors of public establishments and enterprises is composed of nine members appointed by the Council of Ministers on the basis of a proposal from the relevant Minister.

The Board of Governors is composed of nine members:

- 1. Representatives of Ministerial Departments:
 - one representative from the Ministry of Culture,
 - one representative from the Ministry of National Education,
 - one representative from the Ministry of Finance,
 - one representative from the Ministry of Justice,
 - one representative from the Ministry of Trade,

 - 2. Elected Representatives from the following professional organizations:
 - one representative of authors and composers,
 - one representative of radio and/or television broadcasters,
 - one representative of publishers and printers,
 - one representative of graphical arts, painters, photographers and craft workers.
- The mandate shall be for three years. All members are eligible for reelection. Only the Council of Ministers may terminate the mandate of Governors.

Art.84.- The missions and composition of the Board of Governors are to:

- set the minimum sum for royalties for authors and publishers to be accepted as members of the Office,
- adopt distribution regulations and social regulations,
- define the fee policy and approve fees negotiated by the Director,
- approve the statement of estimated income and expenditure,
- approve the financial accounts,
- approve the investment programs,
- approve the enterprise's operational and organization plan,
- set the general conditions of staff remuneration,
- authorize the purchase, exchange or disposal of goods or rights over movable or immovable property.

Art.85.- The first meeting of the Board of Governors shall be convened by the relevant Minister. The Board shall elect from among its members a Chair and a Vice-Chair for a period that may not exceed their mandate as Governors.

The Chair shall be responsible for presiding over the Board meetings, drawing up the agenda and jointly signing the minutes and deliberations with all the other Governors. He shall have no management authority.

Art.86.- In the event of absence, indisposition or death of the Chair, the Vice-Chair shall preside over the Board for a maximum of two months, after which time a new Chair must be elected.

Art.87.- The Board of Governors shall be able to deliberate if half of its members are in attendance or are represented. A Governor may only be represented by another Governor, and the latter shall only be entitled to a maximum of two votes (including his own). The Board shall take majority decisions. If the votes are split, the Chair shall have the casting vote.

Art.88.- The meetings of the Board of Governors shall be convened by its Chair. The

Board shall meet at least twice a year to adopt the budget and the social accounts. If the Board has not met for six months, the relevant Minister must order a Board meeting in the following two weeks.

Art.89.- The Board of Governors must vote on the budget for the following financial year by November 15 at the latest, and approve the accounts for the previous year by June 30 at the latest.

Art.90.- The meeting must be convened by registered letter with acknowledgement of receipt sent out at least two weeks in advance. Failure to respect this time frame shall mean that the Board cannot meet.

The meeting invitation must state the location of the meeting and the agenda, and must enclose all documents relating to the agenda.

Otherwise, items on the agenda for which suitable documents have not been produced shall not be discussed.

Art.91.- For urgent matters, the Board may meet with 24 hours' notice. However, the urgent matter must be duly explained by the Chair of the Board of Governors at the beginning of the meeting. In the event of a challenge, the Governors may vote to cancel the meeting by simple majority.

Art.92.- Details relating to the date of the Board meeting, the agenda and the enclosed documents must be communicated to the relevant Minister for his information in the same period of time as for the members of the Board of Governors. The relevant Minister may ask for an item to be added to the agenda: in such cases, he shall inform the Chair of the Board of Governors at least one week before the date scheduled for the Board meeting. He must also attach any draft resolutions and a summary of reasons.

The Chair of the Board shall send the Governors a new agenda including the items requested, at least four days before the scheduled Board meeting date.

Art.93.- A record of attendance shall be kept to be signed by the Governors taking part in the Board meeting. The Chair of the Board shall be responsible for keeping the record.

Governors who have missed two consecutive Board meetings without explanation shall be considered to have resigned their positions.

Title 7 – Welfare and Cultural Fund

Art.94.- A Welfare and Cultural Fund is hereby set up within the Office, for which the operating rules and conditions of use for the benefit of creators and their heirs shall be laid down in an Order issued by the Council of Ministers.

Art.95.- The Welfare and Cultural Fund shall have separate accounts. It shall be financed by funds originating mainly from:

- royalties payable to foreign nationals whose rights are protected in Djibouti,
- investment interest on sums pending transfer or distribution,
- sums payable to authors who have died with no authorized beneficiary or heir, in accordance with Article 4, paragraph 3 of the above-mentioned Law, without prejudice to the right of creditors and the execution of transfer contracts that may have been concluded by the authors or their successors in title,
- proceeds from the exploitation of folklore belonging to the national heritage i pursuant to Article 70 of this Law,
- the exploitation of works that have become part of the public domain,
- levies from the sale of blank cassettes or magnetic tape intended for recording for

private purposes (payment for private copies) made in Djibouti or imported, in accordance with the provisions of Article 70, paragraph 2.

Title 8 - Procedures and sanctions

Chapter 1 – Provisional measures

Art.96.- At the request of any holders of copyright or a neighboring right, their successors in title or the Djiboutian Office of Copyright and Related Rights (BDDA), the appropriate court may order protective measures to hinder the imminent infringement of the holders' rights or to halt an established infringement.

Art.97.- The infringement of rights shall be established by criminal police officers or sworn BDDA agents.

Art.98.- (1) At the request of the people referred to in Article 76, the relevant authorities in the Republic of Djibouti may order the following, in exchange for a security deposit where appropriate:

(a) - the seizure from all premises of copies of an unlawfully reproduced, imported or commercially hired, work that have been or are being manufactured, as well as all the materials or equipment directly used for these purposes;

(b) - the seizure of proceeds from any unlawfully implemented public reproduction or communication;

(c) - the suspension, whatever the day and time, of any manufacture, public performance, communication or other activity that is ongoing or announced and that constitutes an infringement or a preparatory act to infringement.

(2) The above provisions shall be applicable in the event of unauthorized exploitation of expressions of folklore or a work that has entered the public domain.

(3) For the purposes of this Law, an unlawfully imported copy shall be understood to mean any copy of a work, performance, phonogram or expression of folklore that, had it been produced in the Republic of Djibouti, would have constituted an unlawful reproduction.

(4) The seized court shall rule on the seizure in a period not exceeding three days from the referral.

(5) The above provisions shall be applicable *inaudita altera parte* where any delay is likely to cause irreparable harm to the right holder or the evidence. In such cases, the defendant shall be notified of the protective measure implemented against him.

Art.99.- (1) Within 30 days from the date of the order provided for in Article 98, the distrainee or the garnishee may ask the judge ruling in interlocutory proceedings (the competent court) to order the release from seizure or to repeal or amend the measure ordered or to authorize the resumption of production or performances under the authority of an administrator appointed to be the custodian, for the benefit of whomsoever it may concern, of the proceeds from such production or exploitation.

(2) If the request of the distrainee or garnishee is granted, the latter may be ordered to deposit a sum to guarantee any damages that may be claimed by the author.

Art.100.- (1) The measures ordered under Article 106 shall be lifted as of right in the event of a non-suit or discharge ordered by a correctional court.

(2) They shall also be lifted if they are repealed by the court seized under the terms of Article 106.

(3) In the absence of criminal prosecution, the said measures shall likewise be lifted

as of right where the plaintiff has failed to refer the case to the competent civil court within 30 days of the seizure of unlawful works or enactment of the protective measure.

Art.101.- Customs retention

(1) Without prejudice to the relevant provisions of the Customs Code, where the owner of a copyright or neighboring rights suspects imminent importation or exportation of goods, the circulation of which shall infringe the present Law, he may write to the customs authorities to request the suspension of the free circulation of the said goods.

(2) The petitioner shall provide the customs authorities with all the information it needs to rule on his request. This shall include proof of his right and an accurate description of the goods.

(3) The detention measure shall be lifted automatically where the right owner fails, within 10 working days following notification of the detention of the goods, to prove to the customs service:

- (a) either that precautionary measures under Article 82 have been taken,
- (b) or that he has instituted proceedings before the civil or criminal courts and has provided the necessary guarantees to cover his possible liability in the event of the infringement claim subsequently being rejected,
- (c) or covered his possible liability in the event of the infringement claim subsequently being rejected.

(4) For the purpose of institution of the legal proceedings referred to in the previous paragraph, the right owner may require the customs administration to communicate the names and addresses of the sender, the importer and the consignee of the goods detained, or of the holder thereof, and also the quantity thereof, without invocation of professional secrecy by that administration.

Chapter 2 – Civil proceedings and evidence

Art.102.- (1) The claim for damages resulting from unauthorized acts by right holders reserved under this Law shall take the form of civil proceedings.

(2) Any person who has infringed rights recognized under this Law in any protected work, performance, phonogram or expression of folklore shall be required to pay the relevant right holder damages to compensate the harm caused by the infringement, the amount of which shall be set by the competent court, as well as the payment of costs including legal fees.

Art.103.- Proof of infringements of the provisions on the protection of copyright and neighboring rights may derive either from the reports of officers or employees of the judicial police, officials of the customs, or from reports drawn up by sworn BDDA agents.

Chapter 3 – Criminal provisions

Art.104.- Any infringement of copyright or neighboring rights shall constitute the offense of counterfeiting.

Art.105.- Any person who knowingly engages in the following shall also be guilty of the offense of counterfeiting:

- (a) imports or exports counterfeit copies or imitations;
- (b) sells or offers for sale, makes available to the public or generally places into circulation counterfeit copies of a work, performance or phonogram.

Art.106.- (1) Any person who has knowingly done or caused to be done any act whatsoever that infringes the provisions of this Law shall be liable to a fine of between 50,000 and 200,000 Djibouti francs.

In the event of a repeat offense, the fine may be increased to 100,000 to 400,000 Djibouti francs, to which may be added a term of imprisonment of between one and six months. Under this Law, repeat offense is understood to mean when the infringer has already been convicted for an identical offense in the five years prior to the current offense.

(2) The court may also order:

- the confiscation of counterfeit items;
- the confiscation of any items or materials that have been directly used to produce the unlawful copies;
- the confiscation of revenues seized to be handed to the owner of the infringed rights;
- the temporary or permanent closure of the establishment used by the person convicted;
- the publication and posting of the conviction ruling.

Art.107.- (1) Fraudulently placing on a work, performance or phonogram the name of an author or holder of neighboring rights or any other distinctive sign adopted by him to designate his work, performance or phonogram shall also be punished with the penalties provided for in Article 106 of this Law.

(2) Those who knowingly import, export, sell or offer for sale, make available to the public or generally introduce into circulation copies referred to in paragraph 1 of this Article shall also be punished with the same penalties.

Art.108.- Those who exploit a work made up of an expression of folklore or work that has become part of the public domain without having obtained the prior consent of BDDA shall also be punished by the penalties provided for in Article 106.

Title 9 – Scope of application of the Law

Art.109.- Application to works

(1) This Law shall apply to:

- ((a) the works of nationals of the Republic of Djibouti;
- ((b) the works of legal persons covered by Djiboutian jurisdiction;
- ((c) the works of foreign nationals of which the first publication took place in the Republic of Djibouti;
- ((d) works of foreign nationals who are resident in the Republic of Djibouti;
- ((e) works of architecture erected on the territory of the Republic of Djibouti and any work of art incorporated in a building located on that territory.

(2) This Law shall also apply to all works that must be protected under bilateral or multilateral agreements to which the Republic of Djibouti is or will be a party.

Art.110.- Application to performances, phonograms and broadcast programs

(1) The provisions of this Law shall apply:

- (a) to the performances or performers who are nationals of the Republic of Djibouti;
- (b) to performances that take place on the territory of the Republic of Djibouti;
- (c) to performances fixed on a phonogram protected under the terms of this Law;
- (d) to performances not fixed on a phonogram and disseminated in a broadcast program protected under the terms of this Law.

(2) The provisions of this Law shall apply to:

- (a) phonograms that have been produced by a national of the Republic of Djibouti;
- (b) phonograms for which the first fixation of sounds was carried out in the Republic of Djibouti;
- (c) phonograms published for the first time in the Republic of Djibouti.

(3) The provisions of this Law shall apply to:

- (a) broadcast programs if the headquarters of the broadcasting organization is located on the territory of the Republic of Djibouti;
- (b) broadcast programs transmitted from a station located in the territory of the Republic of Djibouti.

(4) The provisions of this Law shall also apply to performances, phonograms and broadcast programs protected by virtue of the bilateral or multilateral agreements to which the Republic of Djibouti is a party.

Title 10 – Final provisions

Art.111.- Operation of the Law over time

(1) The provisions of this Law shall also apply to works created, performances held or fixed, phonograms fixed and broadcasts carried out before the date of entry into force of this Law, provided that such works, performances, phonograms and broadcast programs have not yet become part of the public domain due to expiry of the protection period applicable to them under previous legislation or the legislation of their country of origin.

(2) The legal effects of acts and contracts concluded or stipulated before the entry into force of this Law shall remain entirely exempt and unaffected.

Title 11 - Obligations relating to the action of international intellectual property

Art.112.- The Office of Copyright and Neighboring Rights shall be a member of international organizations according to the conditions provided for in the constitutions of such organizations.

The Office shall undertake to promote exchanges of experience and training with equivalent organizations in other member countries.

The Office of Copyright and Neighboring Rights shall be compelled to conclude cooperation agreements with relevant equivalent organizations and shall ensure compliance with and implementation of regional and international commitments.

Title 12 – Various provisions

Art.113.- The State shall support BDDA by paying an annual subsidy provided for in the State budget, that shall be the equivalent of wages and operating expenditure.

This subsidy shall be proposed by the relevant Minister.

The subsidy shall be graduated after a period of five financial years.

Art.114.- Djibouti Radio and Television (RTD) shall carry out the transfer of all files in the national and international repertoire, as well as one copy of works of authors and/or right holders to BDDA which is the organization responsible for the collective management of authors and/or right holders.

Art.115.- Djibouti Radio and Television (RTD) shall be required to apply and enforce internally the provisions arising from copyright legislation concerning the use of audiovisual works in accordance with Decree No. 99-0170/PR/MCC on the Constitution and General Conditions of Djibouti Radio and Television (RTD).

Art.116.- However, due to the rapid and contemporary development of intellectual property in this sphere, traditional knowledge, genetic resources, folklore and the Internet shall be the subject of a draft Decree to supplement this Law.

Art.117.- This Law shall repeal all contrary provisions and in particular Law No. 114/AN/96 of September 3, 1996 on Copyright.

Art.118.- This Law shall be implemented as a State Law and published in the Official Gazette of the Republic of Djibouti upon its enactment.