

**Law No. 85-660, of July 3, 1985, on Author's Rights and
on the Rights of Performers, Producers of Phonograms
and Videograms
and Audiovisual Communication Enterprises***

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**Title I
Copyright**

Article 1.—I. In Article 3 of Law No. 57-298 of March 11, 1957, on Literary and Artistic Property,¹ the words “cinematographic works and works made by processes analogous to cinematography” shall be replaced by the words “cinematographic works and other works consisting of moving sequences of images, with or without sound, together referred to as audiovisual works.”

II. In that same Article, the words “photographic works of an artistic or documentary character, and other works of the same character produced by processes analogous to photography” shall be replaced by the words “photographic works and other works produced by techniques analogous to photography.”

III. In that same Article, following the words “choreographic works,” shall be inserted the words “, circus acts and feats.”

IV. In that same Article, after the word “lithography;” shall be inserted the words “graphical and typographical works;”

V. In that same Article, after the words “the sciences” shall be inserted the words “; software; according to the conditions set out in Title V of Law No. 85-660 of July 3, 1985, on Authors' Rights and on the Rights of Performers, Producers of Phonograms and Videograms and Audiovisual Communication Enterprises.”

Article 2. In Articles 14 and 15 of the above-mentioned Law No. 57-298 of March 11, 1957, the words “cinematographic work” shall be replaced by the words “audiovisual work.”

Article 3. Article 16 of the above-mentioned Law No. 57-298 of March 11, 1957, shall read as follows:

“**16.** An audiovisual work shall be considered completed when the final version has been established by common accord between the director or, possibly, the joint authors, on the one hand, and the producer, on the other.

Destruction of the master copy of such version shall be prohibited.

Any change made to such version by adding, deleting or modifying any element thereof shall require the agreement of the persons referred to in the first paragraph.

Any transfer of an audiovisual work to another kind of medium with a view to a different mode of exploitation shall require prior consultation with the director.

The authors’ own rights, as defined in Article 6, shall be exercised by them only in respect of the completed audiovisual work.”

Article 4. Article 17 of the above-mentioned Law No. 57-298 of March 11, 1957, shall be worded as follows:

“**17.** The producer of an audiovisual work shall be the natural or legal person who takes the initiative and responsibility for making the work.”

Article 5. In Article 18 of the above-mentioned Law No. 57-298 of March 11, 1957, the words “or television” and “and television” shall be deleted.

Article 6. The second sentence of the first paragraph of Article 19 of the above-mentioned Law No. 57-298 of March 11, 1957, shall read as follows: “He shall determine the method of disclosure and shall fix the conditions thereof, subject to Article 63.1.”

Article 7. In Article 20 of the above-mentioned Law No. 57-298 of March 11, 1957, the words “or rights to exploit” shall be inserted following the words “right to disclose.”

Article 8.—I. The second paragraph of Article 21 of the above-mentioned Law No. 57-298 of March 11, 1957, shall be supplemented by the following sentence: “However, for musical compositions with or without words the term shall be seventy years.”

II. The first sentence of the first paragraph of Article 22 of the said Law shall be supplemented as follows: “; however, for musical compositions with or without words the term shall be seventy years.”

III. The first paragraph of Article 23 of the said Law shall be supplemented as follows: “; however, for musical compositions with or without words the term shall be seventy years.”

Article 9. Article 27 of the above-mentioned Law No. 57-298 of March 11, 1957, shall read as follows:

“**27.** Performance shall consist in the communication of the work to the public by any process whatsoever, particularly:

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- public recitation, lyrical performance, dramatic performance, public presentation, public projection and transmission in a public place of a telediffused work;
 - by telediffusion.

Telediffusion shall mean distribution by any telecommunication process whatsoever of sounds, images, documents, data and messages of any kind.

Transmission of the work towards a satellite shall be assimilated to performance.”

Article 10.—I. In Article 31 of the above-mentioned Law No. 57-298 of March 11, 1957, the words “contracts for performance and publication” shall be replaced by the words “contracts for performance, publication and audiovisual production.”

II. That same Article 31 shall be supplemented as follows:

“Transfers of the rights of audiovisual adaptation shall be effected by written contract in an instrument that is separate from the contract relating to publication proper of the printed work.

The assignee shall undertake in such contract to endeavor to exploit the assigned right in conformity with professional usage and to pay to the author in the event of adaptation a remuneration that is proportional to the revenue obtained therefrom.”

Article 11. In the fourth paragraph of item (iii) in Article 41 of the above-mentioned Law No. 57-298 of March 11, 1957, the word “broadcast” shall be replaced by the word “telediffusion.”

12. Article 45 of the above-mentioned Law No. 57-298 of March 11, 1957 shall read as follows:

“**45. Unless otherwise stipulated:**

(i) authorization to telediffuse a work by electromagnetic waves shall not include cable distribution of such telediffusion unless made simultaneously and integrally by the organization holding the authorization and without extension of the contractually stipulated geographical area;

(ii) authorization to telediffuse the work shall not constitute an authorization to communicate the telediffusion of the work in a place to which the public has access;

(iii) authorization to telediffuse a work by electromagnetic waves shall not include its transmission towards a satellite enabling the work to be received by the intermediary of other organizations unless the authors or their successors in title have contractually authorized the latter organizations to communicate the work to the public; in such case, the emitting organization shall be exempted from paying any remuneration.”

Article 13. There shall be added to Title III of the above-mentioned Law No. 57-298 of March 11, 1957, a Chapter III reading as follows:

Chapter III
Audiovisual Production Contracts

63-1. Contracts binding the producer and the authors of an audiovisual work, other than the authors of a musical composition with or without words, shall imply, unless otherwise stipulated and notwithstanding the rights afforded to the author by Title II above, assignment to the producer of the exclusive exploitation rights in the audiovisual work.

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

Contracts shall lay down the list of elements that have served to make the work that are to be preserved and the conditions of preservation.

63-2. Remuneration shall be due to the authors for each exploitation mode.

Subject to Article 35, where the public pays to receive communication of a given, individually identifiable audiovisual work, remuneration shall be proportional to the price paid, subject to any decreasing tariffs afforded by the distributor to the operator; the remuneration shall be paid to the authors by the producer.

63-3. The producer shall furnish at least once a year to the author and the joint authors a statement of revenue from exploitation of the work in respect of each exploitation mode.

At their request, he shall furnish to them all documentary evidence necessary to establish the accuracy of the accounts, in particular copies of the contracts in which he assigns to third parties all or a part of the rights he enjoys.

63-4. The author shall guarantee to the producer the undisturbed exercise of the rights assigned.

63-5. The producer shall be required to exploit the audiovisual work in conformity with the practice of the profession.

63-6. As regards payment of the remuneration due to them for exploitation of an audiovisual work, the authors shall enjoy the privilege instituted by Article 2101(4) and Article 2104 of the Civil Code.

63-7. Rehabilitation of the producer ordered by a court shall not imply termination of the audiovisual production contract.

Where the making or exploitation of the work is continued under Articles 31 *et seq.* of Law No. 85-98 of January 25, 1985, on the judicial rehabilitation or liquidation of enterprises, the receiver shall be required to respect all of the producer's commitments, particularly as regards the joint authors.

In the event of assignment of all or a part of the undertaking or of liquidation, the receiver, the debtor or the liquidator, as appropriate, shall be required to establish a separate lot for each audiovisual work that may be subject to assignment or to auction. He shall be required to inform, on pain of nullity, each of the authors and coproducers of the work by

registered letter one month before any decision on assignment or any procedure for sale by auction of property held indivisum. The assignee shall similarly be held to the obligations of the assignor.

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

Where the activities of the enterprise have ceased for more than three months or where liquidation is ordered, the author and the joint authors may require termination of the audiovisual production contract.”

Article 14. In the case of a commissioned work used for advertising, the contract between the producer and the author shall imply, unless otherwise stipulated, assignment to the producer of the exploitation rights in the work on condition that the contract specifies the separate remuneration payable for each mode of exploitation of the work as a function, in particular, of the geographical area, the duration of exploitation, the size of the printing and the nature of the medium.

An agreement between the organizations representing the authors and the organizations representing the advertising producers shall lay down the basic elements used to form the remuneration that correspond to the various uses of works.

The term of the agreement shall be of between one and five years.

Its provisions may be made compulsory for all the parties by way of decree.

Failing agreement concluded either within nine months of the promulgation of this Law or on the date of expiry of the preceding agreement, the bases for the remuneration referred to in the second paragraph of this Article shall be determined by a Committee chaired by a magistrate of the judiciary designated by the First President of the Court of Cassation and composed, in addition, of one member of the Council of State (*Conseil d'État*) designated by the Vice-President of the Council of State, one qualified person designated by the Minister responsible for culture and an equal number of members designated by the organizations representing the authors and of members designated by the organizations representing advertising producers.

The organizations entitled to designate members of the Committee and the number of persons each organization shall be entitled to designate shall be specified by an order of the Minister responsible for culture.

The Committee shall take its decisions on a majority of the members present. In the event of an equally divided vote, the chairman shall have a casting vote. The Committee's decisions shall be enforceable if, within one month, its chairman has not requested a second decision.

The decisions of the Committee shall be published in the Official Journal of the French Republic.

Title II Neighboring Rights

Article 15. Neighboring rights shall not prejudice authors' rights. Consequently, no provision within this Title shall be interpreted in such a way as to limit the exercise of copyright by its owners.

In addition to any person having a justified interest, the Minister responsible for culture shall be entitled to take legal action, particularly where there is no known successor in title or where there is no heir or no spouse entitled to inheritance.

Article 16. Save for ancillary performers, considered such by professional practice, performers shall be those persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works, variety, circus or puppet acts.

Article 17. A performer shall have the right to respect for his name, his authorship and his interpretation.

This inalienable and imprescriptible right shall be attached to his person.

It may be transmitted to his heirs in order to protect the interpretation and the memory of the deceased.

Article 18. The fixation of his performance, its reproduction and its communication to the public and also any separate use of the sounds or the images of the performance, where the latter has been fixed as regards both the sounds and the images, shall be subject to written authorization by the performer.

Such authorization and the remuneration deriving therefrom shall be governed by Articles L 762-1 and L 762-2 of the Labor Code, subject to the fourth paragraph of Article 19 below.

Article 19. The signature of a contract concluded between a performer and a producer for the making of an audiovisual work shall imply the authorization to fix, reproduce and communicate to the public the performance of the performer.

Such contract shall lay down separate remuneration for each mode of exploitation of the work.

Where neither a contract nor a collective agreement mention the remuneration for one or more modes of exploitation, the amount of such remuneration shall be determined by reference to the schedules established under specific agreements concluded, in each sector of activity, between the employees' and employers' organizations representing the profession.

Article L 762-2 of the Labor Code shall only apply to that part of the remuneration paid in accordance with the contract that exceeds the bases laid down in the collective agreement or specific agreement.

Contracts concluded prior to the entry into force of this Law between a performer and a producer of audiovisual works or their assignees shall be subject to the preceding provisions

in respect of those modes of exploitation which they excluded. The corresponding remuneration shall not be in the nature of a salary. This right to remuneration shall lapse at the death of the performer.

Article 20. The provisions of the conventions or agreements referred to in the preceding article may be made compulsory within each sector of activity for all the parties concerned by order of the Minister concerned.

Failing agreement concluded in accordance with the preceding Article either within six months following the entry into force of this Article or at the date of expiry of the preceding agreement, the types and bases of remuneration for the performers shall be determined, in respect of each sector of activity, by a Committee chaired by a magistrate of the judiciary designated by the First President of the Court of Cassation and composed, in addition, of one member of the Council of State designated by the Vice-President of the Council of State, one qualified person designated by the Minister responsible for culture and an equal number of representatives of the employees' organizations and representatives of the employers' organizations.

The Committee shall take its decisions on a majority of the members present. In the event of equally divided voting, the chairman shall have a casting vote.

The Committee shall decide within three months of the expiry of the time limit laid down in the second paragraph of this Article.

Its decision shall have effect for a duration of three years unless the parties concerned reach an agreement prior to that date.

Article 21. The producer of phonograms shall be the natural or legal person who takes the initiative and the responsibility for the initial fixation of a sequence of sounds.

The authorization of the producer of phonograms shall be required prior to any reproduction, making available to the public by way of sale, exchange or rental, or communication to the public of his phonogram, other than those referred to in the following Article.

Article 22. Where a phonogram has been published for commercial purposes, neither the performer nor the producer may oppose:

- (i) its direct communication in a public place where it is not used in an entertainment;
- (ii) its broadcasting or the simultaneous and integral cable distribution of such broadcast.

Such uses of phonograms published for commercial purposes, whatever the place of fixation of such phonograms, shall entitle the performers and the producers to remuneration.

Such remuneration shall be paid by the persons who use the phonograms published for commercial purposes in accordance with items (i) and (ii) in this Article.

Such remuneration shall be based on the revenue from exploitation or, failing that, may be calculated as a lump sum in those cases laid down by Article 35 of the above-mentioned Law No. 57-298 of March 11, 1957.

It shall be shared half each between the performers and the producers of phonograms.

Article 24. The schedule of remuneration and the conditions of payment of the remuneration shall be laid down by specific agreements for each branch of activity between the organizations representing the performers, the producers of phonograms and the persons using phonograms in accordance with items (i) and (ii) in Article 22. Such agreements shall set out the terms under which the persons using phonograms under such conditions shall satisfy their obligation to furnish to the societies for the collection and distribution of royalties the detailed program of uses which they effect and all the documentary elements that are indispensable for distributing the royalties.

The provisions of such agreements may be made compulsory for all of the parties concerned by order of the Minister responsible for culture.

The term of such agreements shall be of between one and five years.

Article 24. Failing agreement within six months of the entry into force of this Law or if no agreement is achieved on expiry of the preceding agreement, the schedule of remuneration and the conditions for paying remuneration shall be decided by a Committee chaired by a magistrate of the judiciary designated by the First President of the Court of Cassation and composed, in addition, of one member of the Council of State designated by the Vice-President of the Council of State, of one qualified person designated by the Minister responsible for culture and of an equal number of members designated by the organizations representing the beneficiaries of the right to remuneration and of members designated by the organizations representing those persons who, in the branch of activity concerned, use the phonograms in accordance with the conditions laid down in items (i) and (ii) in Article 22. The organizations that shall be entitled to designate members of the Committee and the number of persons that each organization shall be entitled to designate shall be determined by an order of the Minister responsible for culture.

The Committee shall take its decisions on a majority of the members present. In the event of an equally divided vote, the chairman shall have a casting vote.

The decisions of the Committee shall be enforceable if, within a period of one month, its chairman has not requested a second decision.

The decisions of the Committee shall be published in the Official Journal of the French Republic.

Article 25. The remuneration referred to in Article 22 shall be collected on behalf of the entitled persons and distributed among them by one or more bodies mentioned in Title IV of this Law.

Article 26. The producer of videograms shall be the natural or legal person who takes the initiative and the responsibility for the initial fixation of a sequence of images, whether accompanied by sounds or not.

The authorization of the producer of videograms shall be required prior to any reproduction, making available to the public by means of sale, exchange or rental, or communication to the public of his videogram.

The rights afforded to the producer of a videogram under the preceding paragraph, the authors' rights and the performers' rights of which he disposes in respect of the work fixed on the videogram may not be separately assigned.

Article 27. The reproduction of its programs, making them available to the public by sale, rental or exchange, their telediffusion and their communication to the public in a place to which the latter has access in exchange for payment of an entrance fee, shall be subject to the authorization of the audiovisual communication enterprise.

Audiovisual communication enterprises shall be those bodies referred to in Title III of Law No. 82-652 of July 29, 1982, on audiovisual communication and the suppliers of audiovisual communication services holding a public service concession or declared or authorized in accordance with Title IV of the said Law.

Article 28. Subject to the international conventions, the right to remuneration afforded by Articles 22 and 32 shall be shared amongst the authors, performers, producers of phonograms or of videograms in respect of phonograms and videograms fixed for the first time in France.

Article 29. The beneficiaries of the rights afforded by this Title may not prohibit:

circle;

- (i) private and gratuitous representations carried out exclusively within the family
- (ii) reproductions strictly reserved for private use by the person who has made them and not intended for any collective use;

- (iii) subject to adequate elements of identification of the source:
 - analyses and brief quotations justified by the critical, polemical, pedagogical, scientific or informatory nature of the work in which they are incorporated;
 - press reviews;
 - dissemination, even in full, for the purposes of current affairs information, of speeches intended for the public in political, administrative, judicial or academic assemblies and in public meetings of a political nature or in official ceremonies;

- (iv) parody, pastiche and caricature, observing the rules of the genre.

Performers may not prohibit reproduction and public communication of their performance where it is accessory to an event that constitutes the main subject of a sequence within a work or audiovisual document.

Article 30. The term of the economic rights under this Title shall be fifty years as from January 1 of the calendar year following that of first communication to the public, of performance of the work, of its production or of the programs referred to in Article 27 above.

Title III

Remuneration for Private Copying of Phonograms and Videograms

Article 31. The authors and performers of works fixed on phonograms or videograms and the producers of such phonograms or videograms shall be entitled to remuneration for the reproduction of the said works made in accordance with item (ii) in Article 41 of the above-mentioned Law No. 57-298 of March 11, 1957, and item (ii) in Article 29 of this Law.

Article 32. The remuneration for private copying shall be assessed, under the conditions defined below, as a lump sum as laid down in the second paragraph of Article 35 of the above-mentioned Law No. 57-298 of March 11, 1957.

It shall be exempted from value added tax.

Article 33. The remuneration laid down in the preceding Article shall be paid by the manufacturer or importer of recording mediums that may be used for reproduction for private use of works fixed on phonograms or videograms, at time these mediums enter into circulation in France.

The amount of the remuneration shall depend on the type of medium and the recording time it offers.

Article 34. The types of medium, the rates of remuneration and the conditions of payment of such remuneration shall be determined by a Committee chaired by a representative of the State and composed, in addition, in half of persons designated by the organizations representing the beneficiaries of the right of remuneration, in quarter of persons designated by the organizations representing the manufacturers or importers of the mediums referred to in the first paragraph of the preceding Article and in quarter of persons designated by the organizations representing the consumers.

The organizations entitled to designate members of the Committee and the number of persons that each organization shall be entitled to designate shall be determined by an order of the Minister responsible for culture.

The Committee shall take its decisions on a majority of the members present. In the event of an equally divided vote, the chairman shall have a casting vote.

The decisions of the Committee shall be enforceable if, within one month, its chairman has not requested a second decision.

The decisions of the Committee shall be published in the Official Journal of the French Republic.

Article 35. The remuneration referred to in Article 32 shall be collected on behalf of the entitled persons by one or more of the bodies referred to in Title IV of this Law.

It shall be distributed amongst the entitled persons by the bodies mentioned in the preceding paragraph as a function of the private reproductions of which each work has been the subject.

Article 36. The remuneration for private copying of phonograms shall belong in half to the authors, in quarter to the performers and in quarter to the producers.

The remuneration for private copying of videograms shall belong in equal parts to the authors, the performers and the producers.

Article 37. The remuneration for private copying shall be refunded when the recording medium is acquired for their own use or production by:

- (i) audiovisual communication enterprises;
- (ii) producers of phonograms or videograms and persons who carry out the reproduction of phonograms or videograms on behalf of their producers;
- (iii) legal persons or bodies, of which the list shall be established by the Minister responsible for culture, that use recording mediums for the purpose of assisting the visually or orally handicapped.

Title IV **Royalty Collection and Distribution Societies**

Article 38. The societies for the collection and distribution of authors' royalties and the royalties of performers and producers of phonograms and videograms shall be established in the form of civil law companies.

The members must be authors, performers, producers of phonograms or videograms, publishers or their successors in title. Such duly established civil law societies shall be entitled to take legal action to defend the rights for which they are responsible under their statutes.

The statutes of the royalty collection and distribution societies shall lay down the conditions under which associations of general interest shall enjoy in respect of events for which no entrance fee is charged a reduction on the amount of authors' royalties and of the royalties of performers and producers of phonograms which they are required to pay.

The royalty collection and distribution societies shall hold available for potential users the complete repertoire of the French and foreign authors and composers they represent.

These societies shall be required to utilize for activities to promote creation, to promote live entertainment and training activities for performers, 50% of the non-distributable amounts collected under Article 22 above and 25% of the amounts obtained from the remuneration for private copying.

The distribution of the corresponding amounts, which shall not be to the benefit of just a single body, shall be subject to a vote at the general meeting of the society taken on a two-

thirds majority, Failing such majority, a new general meeting, convened specifically for that purpose, shall take a decision on a simple majority.

The use made of such sums shall be subject, each year, to a special report by the auditors.

Article 39.—I. The royalty collection and distribution societies shall be required to appoint at least one auditor and one alternative from the list referred to in Article 219 of Law No. 66-537 of July 24, 1966, on commercial companies, who shall carry out their duties in compliance with the provisions laid down in the said Law, subject to the rules specific to them. Article 457 of the above-mentioned Law No. 66-537 of July 24, 1966, shall be of application.

Article 29 of Law No. 84-148 of March 1, 1984, on the prevention and amicable settlement of disputes in enterprises shall be of application.

II. The draft statutes and general regulations of the royalty collection and distribution societies shall be addressed to the Minister responsible for culture.

Within one month of receipt, the Minister may apply to the first instance court in the event of substantial and earnest reasons against the incorporation of a society.

The court shall assess the professional qualifications of the founders of such societies, the human and material means that they intend to use to collect royalties and to exploit their repertoire.

III. Any member shall be entitled, subject to the conditions and time limits set out by decree, to obtain communication:

- (i) of the annual statement of accounts and the list of administrators;
- (ii) of the reports of the administrative council and the auditors that are to be submitted to the general meeting;
- (iii) where appropriate, the text and motivation of resolutions submitted and information concerning candidates for the administrative council;
- (iv) the overall amount, certified by the auditors, of the remuneration paid to the most highly remunerated persons, whereby the number of such persons shall be ten or five depending on whether the staff exceeds 200 employees or not.

IV. Any group of members representing at least one tenth of the membership may take legal action for the designation of one or more experts to be entrusted with submitting a report on one or more administrative operations.

The public prosecutor and the works council shall be entitled to act in the same way.

The report shall be addressed to the requestor, to the public prosecutor, to the works council, to the auditors and to the administrative council. This report shall be annexed to the report drawn up by the auditors for the purposes of the first general meeting; it shall be given the same publicity.

Article 40. Notwithstanding the general provisions applicable to civil law companies, the request for dissolution of a royalty collection and distribution society may be submitted to the court by the Minister responsible for culture.

In the event of infringement of the law, the court may order a society to cease exercising its collection activities in one sector of activity or for one mode of exploitation.

Article 41. The royalty collection and distribution society shall communicate its annual statement of accounts to the Minister responsible for culture and shall bring to his notice, two months at least before examination by the general meeting, any draft amendment to the statutes or rules for the collection and distribution of royalties.

It shall address to the Minister responsible for culture, at the latter's request, any document relating to the collection and distribution of royalties or copy of agreements concluded with third parties.

The Minister responsible for culture or his representative may obtain, from documents or on the spot, the information referred to in this Article.

Article 42. Contracts concluded by the civil law societies of authors or of owners of neighboring rights, in implementation of their purpose, with the users of all or part of their repertoire shall constitute civil law instruments.

Article 43. The societies that collect and distribute the royalties of producers of phonograms and videograms and of performers shall have the faculty, within the limits of the mandate given to them by all or part of the members or by foreign organizations having the same purpose, to collectively exercise the rights afforded by Articles 21 and 26 by concluding general contracts of joint interest with the users of phonograms or videograms for the purpose of improving the dissemination of the latter or of promoting technical or economic progress.

Article 44. The legal persons at present governed by the Law of July 1, 1901, relating to contracts of association and having as their purpose the collection and distribution of royalties may transfer to a civil law society for the collection and distribution of royalties all or part of their assets and, in particular, the mandates given to them by their members, by simple decision of an extraordinary general meeting of the association. Such transfer must take place within a maximum period of one year as from the promulgation of this Law. The associations referred to in this Article may be partners in the civil law society for a maximum period of two years as from transfer.

Title V Software

Article 45. Unless otherwise stipulated, software created by one or more employees in the exercise of their duties shall belong to the employer together with all the rights afforded to authors.

Any dispute concerning the application of this Article shall be submitted to the first instance court of the registered place of business of the employer.

The first paragraph of this Article shall also apply to servants of the State, local authorities and public establishments of an administrative nature.

Article 46. Unless otherwise stipulated, the author may not oppose adaptation of the software within the limits of the rights he has assigned nor exercise his right to correct or to retract.

Article 47. Notwithstanding item (ii) in Article 41 of the above-mentioned Law No. 57-298 of March 11, 1957, any reproduction other than the making of a back-up copy by the user or any use of software not expressly authorized by the author or his successors in title shall be subject to the sanctions laid down by the said Law.

Article 48. The rights afforded by this Title shall lapse on expiry of a period of 25 years as from the date of the creation of the software.

49. -The price of assignment of rights in software may be calculated as a lump sum.

50. In respect of software, infringement seizure shall be carried out under an order issued on request by the presiding judge of the first instance court. The presiding judge shall authorize distraint where appropriate.

The officiating bailiff or the police commissioner may be assisted by an expert designated by the petitioner.

Failing a writ of summons within fifteen days of the seizure, the infringement seizure shall be null and void.

In addition, the police commissioners shall be required, at the request of any author of software protected by this Law or of his successors in title, to carry out a descriptive seizure of the infringing software, whereby such descriptive seizure may take the physical form of a copy.

Article 51. Subject to the international conventions, foreigners shall enjoy in France the rights afforded under this Title on condition that the law of the State of which they are nationals or on the territory of which they have their place of residence, their registered offices or an effective establishment affords its protection to software created by French nationals and by persons having in France their place of residence or an effective establishment.

Title VI Guarantees and Sanctions

Article 52. Publishing, reproduction, distribution, sale, rental or exchange activities in respect of videograms intended for the private use of the general public shall be subject to supervision by the National Cinematographic Center.

Those persons whose activity it is to publish, reproduce, distribute, sell, rent or exchange videograms intended for the private use of the general public shall be required to keep up-to-date documents enabling the origin and destination of videograms to be established as also the exploitation revenue from such videograms. The sworn agents of the

National Cinematographic Center shall be entitled to have communicated to them such documents of an accounting or other than accounting nature.

The lack of such documents, the refusal to supply information, the supply of false information and acts for the purpose of dissimulating the origin or the destination of videograms or of revenue from the exploitation of videograms shall be liable to the penalties laid down by Article 18 of the Cinematographic Industry Code, subject to the conditions laid down therein.

Article 53. In addition to the reports of police officers or agents, proof of the existence of any infringement of this Law may be provided by the statements of sworn agents designated by the National Cinematographic Center and by the societies referred to in Title IV. Such agents shall be approved by the Minister responsible for culture.

Article 54. Publication of the acts and agreements entered into in the production, distribution, performance or exploitation in France of audiovisual works shall be given by entering them in the register referred to in Title III of the Cinematographic Industry Code.

However, the filing of a title under Article 32 of the above-mentioned Code shall be provisional for audiovisual works other than cinematographic works.

Article 55. Indirect communication to the public in the form of videograms of an audiovisual work shall require the formality of statutory deposit of a videogram as stipulated by Law No. 43-341 of June 21, 1943, amending the statutory deposit arrangements.

Article 56--There shall be inserted after Article 426 of the Penal Code an 426-1 worded as follows:

“**426-1.** Any fixation, reproduction, communication or making available to the public, on payment or free of charge, or any telediffusion of a performance, a phonogram, a videogram or a program made without authorization, where such is required, of the performer, the producer of phonograms or videograms and the audiovisual communication enterprise shall be punishable by imprisonment of between three months and two years and a fine of between 6,000 francs and 120,000 francs or one only of the two penalties.

Any importation or exploitation of phonograms or videograms made without the authorization of the producer or the performer, where such is required, shall be subject to the same penalties.

Failure to pay the remuneration due to the author, the performer or the producer of phonograms or videograms in respect of private copying or public communication or of the telediffusion of phonograms shall be subject to the fine laid down in the first paragraph.”

Article 57. Once the offenses under Article 426-1 of the Penal Code have been established, the competent police officers may effect seizure of the unlawfully reproduced phonograms and videograms, of the copies and articles manufactured or imported unlawfully and of the equipment specially installed for the purpose of such acts.

Article 58. The last but one paragraph of Article 425 of the Penal Code shall be worded as follows:

“Infringement in France of works published in France or abroad shall be punishable by imprisonment of between three months and two years and a fine of between 6,000 francs and 120,000 francs or by one only of these penalties.”

Article 59. The first two paragraphs of Article 427 of the Penal Code shall be worded as follows:

“In the event of repetition of the infringements specified in the three preceding articles, the penalties involved shall be doubled.

In addition, the court may order, either definitively or temporarily, for a period not exceeding five years, the closure of the establishment operated by the convicted person.”

Article 60. Article 428 of the Penal Code shall be worded as follows:

“**428.** In the cases referred to in the four preceding Articles, the court may order confiscation of all or part of the revenue obtained through the infringement and that of all phonograms, videograms, articles or copies that are infringing or have been unlawfully reproduced and of the equipment specifically installed for the purpose of committing the offense.

It may also order, at the cost of the convicted person, posting of the judgment in compliance with the conditions and subject to the penalties laid down by Article 51, and its publication in full or in extract in such newspapers as it may designate, without however the costs of such publication exceeding the maximum amount of the fine incurred.”

Article 61.—I. The beginning of Article 429 of the Penal Code shall read as follows:

“In those cases set out in the five preceding Articles, the equipment, the infringing articles and the receipts that have been confiscated shall be remitted to the victim or his successors in title to compensate the prejudice they have suffered; the surplus ...”

II. Consequently, at the end of this Article, the word “infringed” shall be replaced by the word “infringing.”

Article 62. There shall be inserted after the fourth paragraph (3) of Article 97 of the above-mentioned Law No. 82-652 of July 29, 1982, two additional paragraphs worded as follows:

“4. Any infringement of the provisions on time limits for disseminating cinematographic works contained in the authorizations, assignment contracts, work specifications and decrees mentioned in Articles 32, 78, 79, the third paragraph of Article 83 and Article 89.

Once an infringement of Article 89 has been established, the police officers may proceed with the seizure of the mediums unlawfully made available to the public.”

Article 63. This Law shall apply to the territorial entity of Mayotte and to the overseas territories.

64. Decrees taken in the Council of State shall set out the terms of application of this Law.

65. There shall be carried out, under the name of Code of Copyright and Neighboring Rights, a codification of the relevant legislative and regulatory texts by means of decrees taken in the Council of State after having obtained the opinion of the commission responsible for studying the codification and simplification of legislative and regulatory texts.

These decrees shall make such adaptations to the legislative texts as are required for the codification work, excluding any substantive amendment.

Article 66. This Law shall enter into force on January 1, 1986. However, the provisions in the first, second and third paragraphs of Article 19 and those of Article 20 shall enter into force on promulgation of the Law.

This Law shall be implemented as a law of the State.

* *French title:* Loi relative aux droits d'auteur et aux droits des artistes-interprètes, des producteurs de phonogrammes et de vidéogrammes et des entreprises de communication audiovisuelle.

Entry into force: January 1, 1986.

Source: *Journal officiel de la République française*, of July 4, 1985.

Note: Translation by the International Bureau of WIPO.

** Added by the International Bureau of WIPO.

¹ See *Le Droit d'auteur*, 1957, pp. 116-121 and 133-137.