

GABON

Law Instituting Protection for Copyright and Neighboring Rights

(No. 1/87, of July 29, 1987)

Article 1. The purpose of this Law is to institute protection for copyright in literary, artistic or scientific works.

Its provisions shall also apply to the protection of the rights, known as *neighboring rights*, of performers, phonogram producers and producers of radio and television broadcasts.

TITLE I—COPYRIGHT

Chapter I

The Protection of Copyright

Article 2. The author of any original work of the mind, whether it be literary, artistic or scientific, shall enjoy in that work, by the mere fact of its creation, an incorporeal, exclusive property right, known as *copyright*, enforceable against all persons. This right shall comprise the attributes of an economic nature laid down by this Law.

The existence or conclusion, by the author of a work of the mind, of a contract of service shall imply no exception to the enjoyment of the right afforded by the first paragraph above.

Article 3. The provisions of this Law shall protect the rights of authors in all works of the mind, whatever their type, value, purpose, mode or form of expression, without the need for any formality.

Article 4. The following, in particular, shall be considered works of the mind within the meaning of this Law:

- written works (books, pamphlets, articles or other literary, artistic or scientific writings);
- oral works (lectures, addresses, sermons and other works of like nature);
- works created for the stage or for broadcasting, whether dramatical, dramatico-musical, cho-

reographic or mimed works, the acting form of which is fixed in writing or otherwise;

- musical compositions with or without words, whether in written form or not;
- audiovisual works, to which shall be assimilated works expressed by a process analogous to cinematography;
- works of drawing, painting, lithography, etching or wood engraving, or others of the same kind;
- sculptures and mosaics of all kinds;
- works of architecture, including both the plans and models and the construction itself;
- tapestries and articles created by artistic professions and applied art, including both the sketches or models and the work itself;
- illustrations, maps and graphic and three-dimensional reproductions of a scientific or technical nature;
- photographic works of an artistic or documentary character, to which shall be assimilated works expressed by a process analogous to photography;
- works of national folklore.

Article 5. Translations, adaptations and arrangements of literary, scientific or artistic works shall be protected as original works, without prejudice to the rights of the author of the original work used.

The same shall apply to collections of literary or artistic works such as encyclopedias or anthologies which, by reason of the selection or arrangement of the subject matter, constitute intellectual creations.

Works inspired by national folklore shall also be protected.

Article 6. Works of folklore shall belong *ab origine* to the national heritage.

For the purposes of this Law

-"folklore" shall mean all literary and artistic productions created on the national territory by authors presumed to be Gabonese nationals or by

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national ethnic communities, passed from generation to generation, which form one of the fundamental elements of the national traditional cultural heritage;

-“work inspired by folklore” shall mean any work composed of elements borrowed from the traditional Gabonese cultural heritage.

Article 7. Works of national folklore shall be protected without limitation in time.

Article 8. The right of exploitation of folklore shall be administered by the National Artistic and Cultural Promotion Agency (ANPAC).

The adaptation of folklore or the utilization of elements borrowed from folklore must be declared to the National Artistic and Cultural Promotion Agency (ANPAC).

The public performance and reproduction of folklore with a view to exploitation for profit-making purposes shall require authorization from that body. Such authorization shall be granted against payment of a royalty, the proceeds of which shall be used for cultural and welfare purposes for the benefit of the authors. The amount of such royalty shall be determined according to the regulations in force, as a function of the conditions customary for protected works in the same category.

Copies of works of national folklore and copies of translations, adaptations, arrangements and other transformations of such works, manufactured abroad without ANPAC's authorization, may be neither imported nor distributed.

Article 9. The title of a work of the mind shall enjoy the same protection as the work itself if it is original in character.

Even if the work is no longer protected under Articles 34, 35 and 61 of this Law, no one may use this title to identify a work of the same kind if such use is liable to mislead.

Article 10. For the purposes of this Law

-“original work” shall mean a work whose characteristic elements and whose form, or whose form alone, enable its author to be distinguished, that is to say that it has in no way been inspired by a prior creation;

-“derived work” shall mean a work whose creation results from the contributions of a number of natural persons. Such a work may be the result of relative collaboration where the individual contribution of each author can be clearly identified, or of absolute collaboration where the individual con-

tribution of each author can no longer be distinguished in the overall work created jointly;

-“composite work” shall mean a new work in which a preexisting work or elements of a preexisting work are incorporated without the collaboration of the author of that latter work;

-“collective work” shall mean a work created on the initiative of a natural or legal person who edits it, publishes it and discloses it under his direction and name, and in which the personal contributions of the various authors who participated in its development are merged in the overall work for which they were conceived, so that it is impossible to attribute to each author a separate right in the work as created;

-“posthumous work” shall mean a work made available to the public after the death of the author;

-“audiovisual work” shall mean a television, cinematographic, radio or videographic work or any other work expressed by analogous processes.

Article 11. Notwithstanding the provisions of Articles 2 to 5 above, protection shall not apply:

-to laws and regulations and officially published preparatory work therefor, decisions of the courts and of administrative bodies and official translations of such texts;

-the news of the day published, diffused or communicated to the public.

Article 12. A work shall be considered created, irrespective of any public disclosure, by the mere fact of the author's conception and of its realization, even incomplete.

Article 13. Authorship of a work shall belong, save proof to the contrary, to that person or persons under whose name or pseudonym the work is disclosed.

Article 14. A work of collaboration shall belong jointly to the coauthors. The coauthors must exercise their rights by common accord. In the case of disagreement, the competent jurisdiction shall decide.

Where the participation of each of the coauthors is of a different kind, each shall be entitled, in the absence of agreement to the contrary, to oppose exploitation of the joint work.

Article 15. The authors of pseudonymous or anonymous works shall enjoy in such works the rights afforded by Article 2 above. They shall be

represented, in the exercise of these rights, by the original editor or publisher until such time as they reveal their identity and prove their authorship.

The declaration referred to in the preceding paragraph may be made by testament: however, any rights acquired previously by third parties shall be maintained.

These provisions shall not apply where the pseudonym adopted by the author leaves no doubt as to his identity.

Article 16. A composite work shall belong to the author who has created it, without prejudice to the rights of the author of the preexisting work.

Article 17. A collective work, in the absence of proof to the contrary, shall belong to the natural or legal person under whose name it has been disclosed. The author's rights shall vest in that person.

Article 18. In the case of a work produced by an employee-author under a contract of service, copyright shall belong *ab origine* to the author in accordance with the provisions of the second paragraph of Article 2 above.

However, in the case of a three-dimensional work or of a commissioned portrait in painting, photography or any other medium, the author shall not have the right to exploit the work or the portrait by any means whatsoever without the express authorization of the person who has commissioned the work. In the event of manifest abuse by the owner preventing exercise of the right of disclosure, the competent court may, at the request of the authors, of the successors in title or of ANPAC, order any appropriate measure.

Where the work has been produced by employees of an administration as part of their functions, the pecuniary rights deriving from disclosure of the work may be distributed in accordance with the special rules of the administration that employs them.

Where the work has been produced by pupils or trainees at a school of art or any other teaching establishment, the pecuniary rights deriving from disclosure of the work may be distributed in accordance with the special rules of the school or establishment.

Article 19. Authorship of an audiovisual work shall belong to the natural person or persons who have brought about the intellectual creation of the work.

The authors of the screenplay, of the adaptation, of the script and of the musical compositions, with or without words, created for the making of the work, and the director of the work shall be deemed the coauthors of an audiovisual work made in collaboration.

Where the audiovisual work is derived from a preexisting protected work, the author of the original work shall be assimilated to the author of the new work.

Article 20. The producer of an audiovisual work shall be the natural or legal person who takes the initiative and responsibility for making the work. The producer may be the author or one of the coauthors of the work if he satisfies the definition given in Article 19 above.

The relationship between the producer and the coauthors of such audiovisual works shall be governed by written contract which, with the exception of the authors of musical compositions with or without words and unless otherwise agreed, shall imply assignment to the producer of the exclusive right of exploitation of the work, to the exclusion of the other rights.

Article 21. The producer shall enjoy the right to arrange for the completion of a contribution left incomplete by one of the coauthors, as a result of either refusal or for reasons beyond his control. Such coauthor shall nevertheless enjoy the rights deriving from his contribution to the audiovisual work.

The provisions of the second paragraph of Article 14 above shall apply to audiovisual works.

Article 22. The director of an audiovisual work shall be the natural person who assumes the direction and the artistic responsibility for the transformation into pictures and sound, the cutting of the work and its final editing.

Article 23. An audiovisual work shall be deemed to have been completed once the final version has been established by common accord between the director or possibly the coauthors and the producer.

Article 24. Authorship of a radio work shall belong to the natural person or persons who have brought about the intellectual creation of the work. The provisions of the last paragraph of Article 19 and of Article 21 above shall apply to radio works.

Chapter II The Scope of Copyright

Article 25. The attributes of an intellectual and moral nature, the moral rights, shall consist in the right of the author:

- to decide the disclosure of his work;
- to determine the mode of disclosure, subject to the provisions of Article 20 above, concerning audiovisual works, and to lay down the conditions thereof;
- to claim authorship and defend the integrity of the work.

Article 26. The name or pseudonym of the author shall be mentioned each time the work is made available to the public.

The work may not be modified in any way without the consent of the author given in writing. The work may not be made available to the public in a form or under circumstances that could prejudice the honor or reputation of the author.

The rights afforded to the author under the preceding paragraphs shall be perpetual, inalienable and imprescriptible. On the death of the author, they may pass to his heirs who shall exercise them, unless willed otherwise by the author, in accordance with the statutory provisions in force.

Article 27. In the event of manifest abuse in the exercise or non-exercise of the right of disclosure on the part of the deceased author's successors in title, the competent court, at the request in particular of ANPAC, may order all appropriate measures.

Article 28. The economic attributes belonging to the author shall comprise the exclusive right to exploit his work in any form whatsoever and to derive pecuniary profit therefrom.

They shall permit, in particular, the exercise of the rights of performance, public execution, reproduction and of resale royalty (*droit de suite*).

Performance shall mean the direct communication of the work to the public.

Public execution shall consist in communicating the work to the public by any means or process whatsoever, including broadcasting and audiovisual means.

Reproduction shall mean the physical fixation of the work by any process, whether known or as yet to be discovered.

Resale royalty right (*droit de suite*) is defined in Article 48 of this Law.

Article 29. The exclusive right to authorize exploitation of his work, afforded to the author, shall cover:

- recitation, performance and public execution of his works by all means or processes, known or as yet to be discovered;
- public transmission by any means of the recitation, performance and execution of his works;
- diffusion of his works or their public communication by any other means serving to diffuse by wireless means the signs, sounds or images;
- public communication, either by wire or by wireless means, of the broadcast work where communication is effected by an organization other than the original organization;
- public communication of the broadcast work by loudspeaker or by any other device that transmits signs, sounds or images, whatever the place of reception of the communication;
- reproduction of the work in any physical form whatsoever, particularly in the form of a phonogram or of an audiovisual work;
- placing in circulation of the reproduced work;
- translation, adaptation, arrangement and any other transformation of his works.

The work shall also comprise the original, subject to any restrictive provisions expressly referred to in this Law.

Article 30. Unless otherwise provided by this Law, exploitation of the work shall require the prior formal authorization in writing of the author or of his successors in title or assignees.

Any full or partial performance or reproduction made without the authorization referred to in the above paragraph shall be unlawful. The same shall apply to translation, adaptation, arrangement, transformation or reproduction by any process whatsoever.

Article 31. Notwithstanding any assignment of his right of exploitation, the author shall enjoy, even after publication of his work, a right of withdrawal in respect of the assignee. He may not, however, exercise such right except on the condition that he indemnify the assignee beforehand for any prejudice that the withdrawal may cause him.

Article 32. A general lien on debtor's property shall be attached to the author's economic rights. It shall be exercised immediately after that guaranteeing the salaries of servants.

Article 33. When the work has been lawfully made available to the public, the author may not prohibit:

- communications such as performance, execution, diffusion:
 - . where they are private, made exclusively within a family circle and generate no receipts of any kind;
 - . if they are made free of charge for strictly educational or welfare purposes or during a religious service in premises reserved for that purpose;
- reproductions, translations and adaptations intended for strictly personal and private use.

Article 34. Subject to mention of the title of the work and the name of the author, analyses and short quotations taken from a work already made lawfully available to the public shall be lawful on condition that they comply with fair use and to the extent that they are justified by the scientific, critical, polemic, teaching or informatory purpose, including quotations from newspaper articles and periodicals in the form of press reviews.

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

Article 35. Literary, scientific or artistic works seen or heard in the course of a current event may, for the purposes of information, be reproduced and made available to the public in a report on that event by means of photography, cinematography or sound or visual diffusion.

Article 36. Subject to mention of the name of the author and of the source and provided that the rights of reproduction or diffusion have not been expressly reserved, the following may be reproduced by the press or diffused for informatory purposes:

- articles on current economic, political or religious topics published in the original version or in translation in newspapers or periodicals or diffused;
- speeches intended for the public, made at deliberative assemblies, public court hearings or at public political meetings and official ceremonies.

Article 37. Works of art, including architectural works, permanently located in a public place, may be reproduced and made available to the public by means of cinematography, photography or television. The same shall apply where the inclusion of such a work in a film or a broadcast is of an acces-

sory or incidental nature only in relation to the main subject.

Article 38. Unless otherwise stipulated, the authorization for sound or visual diffusion shall cover all free communication, either sound or visual, made by the radio and television broadcasting organization using its own technical and artistic facilities and under its own responsibility.

Pursuant to the provisions of Article 28 above, this authorization shall not cover church clubs and public places such as cafés, restaurants, hotels, cabarets, shops in general, cultural centers, private clubs, for which prior authorization must be requested in accordance with the fifth paragraph of Article 29 above.

Article 39. By derogation from Article 30 above and without prejudice to the rights of the author in the diffusion of his work, the radio and television broadcasting organization may, for its own broadcasts, record the work by means of its own technical facilities for the purpose of subsequent diffusion dictated by timetable or technical reasons.

The diffusion of such recordings shall require declaration.

Article 40. Non-exclusive and non-assignable licenses may be granted by ANPAC to any Gabonese national who so requests with respect to:

- the translation of foreign works already made lawfully available to the public and their publication on the national territory;
- the reproduction and publication on the national territory of foreign works already made lawfully available to the public.

Article 41. Such licenses shall apply to works intended for:

- purposes limited to school, university or research use, as regards Article 40 above;
- purposes limited to the needs of school and post-university teaching, as regards Article 40 above.

The grant of a license shall not prejudice the author's moral rights afforded by Article 25 of this Law.

Chapter III

Transfer of Copyright

Article 42. Copyright may be transferred by succession to the author's heirs or his legatees.

Article 43. Where there is neither heir nor legatee, copyright shall accrue to the State and the proceeds of royalties from such copyright shall be devoted by ANPAC to cultural and welfare purposes for the benefit of Gabonese authors, without prejudice to the rights of creditors and the execution of such contracts of assignment as may have been concluded by the author or his successors in title.

Article 44. The right of disclosure of posthumous works shall be exercised during their lifetime by the executor or executors appointed by the author. If there are none, or after their death, and unless the author has willed otherwise, this right shall be exercised in the following order: by the descendants, by the spouse or spouses against whom there exists no final judgment of separation and who have not remarried, by the heirs other than the descendants who inherit all or part of the estate and by the universal legatees or donees of the totality of the future estate.

This right may be exercised even after expiry of the exclusive right of exploitation specified in Article 60 below.

Article 45. The right of the author to exploit his work may be assigned in whole or in part, for consideration or free of charge, to a natural or legal person. However:

- the assignment shall be evidenced in writing, on pain of nullity;
- assignment by the author of any of the economic rights referred to in Article 29 above shall not imply assignment of the other rights;
- where a right is assigned in whole by contract, the scope shall be limited to the modes of exploitation laid down in the contract;
- the person to whom the right of exploitation of a work has been assigned may not, except as otherwise agreed, transfer such right to a third party without the agreement of the copyright owner.

Article 46. The incorporeal property defined by Article 2 above shall be independent of property of the material object. The person who acquires that object shall not be invested, by its acquisition, with any of the rights provided by this Law, except in the cases referred to by the provisions of the fourth paragraph of Article 60 below. These rights shall subsist in the person of the author or his successors in title.

Article 47. Assignment for consideration shall comprise in favor of the author, subject to the con-

ditions set out in Article 45 above, participation that is proportional to the revenue of all kinds proceeding from the sale or exploitation of the work, with a guaranteed minimum amount.

However, the author's remuneration may be evaluated as a lump sum in accordance with the conditions laid down by regulation.

It shall be lawful for the parties to convert, at the request of the author or his successors in title, the rights under contracts in force to annual lump sums for periods to be determined by the parties.

Article 48. Notwithstanding any assignment of the original work, the authors of graphic and three-dimensional works shall have an inalienable right to a share of the proceeds of any sale of that work by public auction, by the intermediary of a dealer, whatever the methods used by the latter to carry out the operation.

After the death of the author, this resale royalty right (*droit de suite*) shall subsist for his heirs or legatees in accordance with the provisions set out in the second paragraph of Article 60 below.

This right shall be constituted by the levy on behalf of the author, his heirs or legatees, of five percent of the proceeds of sale without deduction at the basis. An order issued by the Ministry responsible for culture shall specify the conditions under which authors and their successors in title may assert, on the occasion of the sales referred to in the first paragraph, the rights afforded them by the provisions of this Article.

Article 49. A performance contract is an instrument under which the author of a work, or his successors in title, authorize a natural or legal person to perform the work under conditions determined by him.

A general performance contract is the instrument under which ANPAC affords an entertainment promoter the faculty to perform, during the term of the contract, the existing or future works constituting the repertoire of that body under the conditions determined by the author or by his successors in title.

Article 50. "Entertainment promoter" shall mean any natural or legal person who occasionally or regularly performs protected works, or causes them to be performed, in an establishment open to the public, by any means whatsoever.

Article 51. The entertainment promoter who performs protected works, or causes them to be per-

formed, shall be required to obtain the prior authorization as provided in Article 30 above.

The performance contract shall be concluded for a limited term or for a specified number of communications to the public. Unless exclusive rights are expressly stipulated, the contract shall not afford to the entertainment promoter any exploitation monopoly.

The entertainment promoter may not transfer the benefits of such *intuitu personae* contract without formal consent given in writing by the author or his representative.

Article 52. The entertainment promoter shall be required to inform the author, his successors in title or ANPAC of the exact program of public performances and to supply a documented statement of receipts and to make payment to them as agreed in the contract.

Article 53. A publishing contract is the instrument under which the author of a work or his successors in title assign to a person known as the publisher the right to manufacture or have manufactured a specific number of copies of the work, on condition that such person ensures publication and diffusion thereof.

Article 54. The publishing contract must specify the form and mode of expression, the terms of execution of the publication and, possibly, the termination clauses.

It shall state the minimum number of copies that are to constitute the first printing, except where it stipulates a minimum of royalties guaranteed by the publisher.

It must provide, for the author or his successors in title, remuneration proportionate to the proceeds of exploiting the work, except in the case of lump-sum remuneration as referred to in Article 47 above and in the case of publication by newspapers and periodicals.

Article 55. The author shall be required to
-guarantee the publisher undisturbed and, unless otherwise agreed, exclusive exercise of the right assigned;

-have the right respected and defend it against any possible infringement;

-permit the publisher to fulfill his obligations and, in particular, deliver to him, within the period of time stipulated in the contract, the subject matter of the publication in a form allowing normal manufacture.

Article 56. The publisher shall be required to:
-carry out or have carried out manufacture in accordance with the conditions, in the form and following the modes of expression stipulated in the contract;

-make no change to the work without written authorization from the author;

-unless otherwise agreed, have the name, pseudonym or symbol of the author appear on each of the copies;

-unless specially agreed, effect publication within the period of time that is usual in the trade;

-ensure permanent and sustained exploitation of the work and commercial distribution in accordance with the practices of the trade.

Article 57. The publisher shall also be required to provide accounts to the author and appropriate proof to establish the accuracy of his accounts.

Article 58. The author may give a publisher a preferential right for the publication of his future works of a given kind. This right shall be limited for each kind of work to five new works as from the date of signature of the publishing contract concluded for the first work or to production completed within a period of five years as from that same date.

Article 59. The following shall not constitute publishing contracts within the meaning of Article 53 above:

-a contract of service known as a *contract at the author's expense*, which shall constitute a contract of enterprise governed by the agreement, customary practice and the provisions of the texts relating to civil and commercial obligations;

-a contract of participation association known as a *contract at joint expense*, which constitutes a partnership.

Chapter IV

Duration of Economic Rights

Article 60. The economic rights of the author shall apply with respect to a work as of its creation. These rights shall last for the lifetime of the author. On his death, the rights shall subsist during the current calendar year and the fifty years thereafter.

In the case of works of collaboration, the authors' economic rights shall subsist for the benefit of all successors in title during the current calendar

year and the fifty years following the death of the last surviving contributor.

The economic rights of the author shall last for fifty years as from the end of the current calendar year in which the work was made lawfully available to the public:

-in the case of photographic works, radio and audiovisual works and works of applied art;

-in the case of anonymous or pseudonymous works; however, where the pseudonym leaves no doubt as to identity prior to expiry of that period, the term of exploitation shall be calculated in accordance with the first paragraph above.

In the case of a posthumous work, these rights shall belong to the author's successors in title if the work is disclosed within the period referred to in the first paragraph above. If the work is disclosed after expiry of that period, the right shall belong to the owner of the manuscripts or originals of the work who effects publication or causes it to be effected.

Posthumous works shall be published separately, except where they constitute only a fragment of a work published previously. They may be joined to previously published works by the same author only if the author's successors in title still enjoy the right of exploitation in those works.

Chapter V

Public Domain

Article 61. On the expiry of the terms of protection laid down in Article 60 above, the author's works shall fall into the public domain.

The right of exploitation of works in the public domain shall be exercised by ANPAC. Performance, public execution and reproduction of such works shall require prior authorization issued by that body. In the case of a profit-making utilization, authorization shall be granted against payment of a fee calculated in accordance with the general tariffs and schedules in force.

Chapter VI

Exercise of Copyright

Article 62. The protection and exploitation of authors' rights as defined in this Law shall be entrusted to ANPAC.

That body, to the exclusion of any other natural or legal person, shall be entitled to grant authoriza-

tions, to collect the appropriate royalties from users of literary, artistic or scientific works and to distribute the royalties among the authors or their successors in title. It shall also administer, on the territory of the Republic, the interests of the various foreign societies of authors within the framework of conventions or agreements to be concluded with such societies.

Chapter VII

Procedure and Sanctions

Article 63. All disputes arising from the application of the provisions of this Law which are within the jurisdiction of the judiciary shall be submitted to the competent courts, without prejudice to the right of the injured party to institute criminal proceedings under the general rules of law.

Article 64. ANPAC may institute legal proceedings to defend the interests of the authors in their stead.

Article 65. Any infringement of any of the moral or economic rights defined in this Law shall constitute an offense punishable by the articles of the Criminal Code penalizing infringement of literary and artistic property.

Article 66. At the request of any author of a work protected by this Law, of his successors in title or of ANPAC, the examining magistrate investigating an action for infringement or the presiding judge may, in all such cases, order:

-the seizure at any place of the copies already manufactured or in the process of manufacture of an unlawfully reproduced work;

-the seizure of revenue from any reproduction, performance or diffusion made unlawfully of a protected work;

-the suspension of any manufacture or public performance, in progress or announced, that constitutes infringement or an act preparatory to infringement;

-any other measure deemed necessary.

The above provisions shall also apply in cases of unauthorized exploitation of works constituting expressions of folklore or that have fallen into the public domain.

Article 67. The distrainee or the garnishee may request the magistrate who has ordered seizure to end seizure or to limit its effects. The magistrate

may further authorize resumption of manufacture or of public performance under the authority of an administrator appointed as a receiver of the proceeds of such manufacture or exploitation on behalf of the person to whom the work belongs.

Article 68. The judge sitting in chambers may, if he accepts the request of the distrainee or garnishee, order the deposit by the petitioner of an amount to guarantee the damages to which the author of the work or his successors in title may be entitled.

Article 69. The measures ordered by the magistrate under Article 65 above shall be automatically lifted in the event of a non-suit or a *nolle prosequi*.

Article 70. The measures ordered by the presiding judge shall be lifted automatically on the thirtieth day following the decision if the petitioner fails to submit the matter to the competent civil court, unless criminal proceedings are in progress.

Article 71. ANPAC shall be authorized to appoint agents to secure proof of the existence of a performance or an execution or a public diffusion of any kind or of any infringement of the provisions of this Law on the territory of the Gabonese Republic. These agents shall be sworn before the first-instance court of their district in accordance with conditions set out by decree.

Article 72. The authorities of all security forces and the customs administration shall be required, at the request of the representatives of ANPAC, to give their assistance and, where appropriate, their protection.

Article 73. Any legal or natural person who has permitted unlawful reproduction or communication to the public in his establishment of protected works shall be deemed to have civil responsibility for such unlawful reproduction or public communication, together with any other person, whether his agent or not, who has materially committed the infringement.

Article 74. The exploitation of a work of folklore or of a work in the public domain for which prior authorization has not been obtained from ANPAC shall be liable to a civil fine amounting to twice the due fee, in accordance with the regulations in force.

Article 75. Any person who has infringed the copyright afforded to any protected work shall be liable for damages of an amount to be determined by the competent court.

Article 76. In all those cases provided for in this Chapter, the court shall order *ex officio* the confiscation of the unlawfully collected amounts and of all infringing copies and objects. It may also order confiscation of the equipment used to commit the infringement.

Chapter VIII

Scope of Application of the Law

Article 77. Works of the mind of nationals published in Gabon or abroad or unpublished works shall enjoy the protection of this Law. The same shall apply to new works by foreign nationals published on the territory of Gabon.

Subject to application of the international conventions to which the Gabonese Republic is a party, works not comprised in either of the above-mentioned categories shall not enjoy the protection afforded by this Law unless the country of which the original owner of copyright is a national, or in which he is domiciled, affords equivalent protection to works by Gabonese nationals. However, neither the integrity nor the authorship of those works shall be affected.

The list of countries for which the condition of reciprocity required by the preceding paragraph is deemed to have been met shall be established by an order issued jointly by the Minister responsible for culture and the Minister responsible for foreign affairs and cooperation.

The use of foreign works not enjoying protection under this Law shall be subject to payment of a fee to ANPAC under conditions similar to those applicable to protected works.

This fee shall be paid into a special fund established for cultural and welfare purposes for the benefit of Gabonese authors.

TITLE II—NEIGHBORING RIGHTS

Chapter I

The Protection of Neighboring Rights

Article 78. The provisions of this Law shall apply to the rights of performers, phonogram pro-

ducers and producers of radio and television broadcasts in the following cases:

-for performers, where:

- . the performer is a Gabonese national,
- . the performance takes place on Gabonese territory,
- . the performance is fixed on a protected phonogram;

-for phonogram producers, where:

- . the producer is a Gabonese national,
- . the first fixation of the sounds has been made in the Gabonese Republic,
- . the phonogram was first published in the Gabonese Republic;

-for radio and television producers, where:

- . the headquarters of the radio or television organization are located on Gabonese territory,
- . the radio or television broadcast has been transmitted from a station located on Gabonese territory.

Article 79. This Law shall also apply to performances, phonograms and radio and television broadcasts protected under international conventions to which Gabon is party.

Chapter II

Authorization of the Performers

Article 80. No one may accomplish any of the following acts without the authorization of the performers or their duly accredited representatives:

-the diffusion of their performance, except where diffusion is effected from a fixation or where it is a rebroadcast authorized by the radio or television organization that emitted the original performance;

-communication to the public of their performance, except where communication is made from a fixation of the performance;

-fixation of their unfixed performance;

-reproduction of a fixation of their performance in any of the following cases:

- . where the performance has been initially fixed without their authorization,
- . where the reproduction is made for purposes other than those for which the performers gave their authorization,
- . where the performance has been initially fixed, but the reproduction alone is made

for purposes other than those referred to in Article 85 below.

Article 81. Failing agreement to the contrary or conditions of employment to the contrary, the authorization to diffuse shall not imply the right to permit other television or radio organizations to emit or fix the performance or to reproduce the fixation.

The authorization to fix the performance and to reproduce such fixation shall not imply the right to diffuse the performance from the fixation or its reproductions.

Chapter III

Authorization of the Phonogram Producers

Article 82. No one may accomplish any of the following acts without the authorization of the phonogram producer:

-the direct or indirect reproduction of copies of the phonogram;

-the importation and distribution to the public of such copies.

Chapter IV

Authorization of the Radio and Television Organizations

Article 83. No one may accomplish any of the following acts without the authorization of the radio or television organization:

-the rebroadcasting of its radio or television broadcasts;

-the fixation of its radio or television broadcasts;

-the reproduction of a fixation of its radio or television broadcasts.

Article 84. The protection of all neighboring rights within the meaning of this Law shall subsist for a period of twenty years as from the end of the year in which they were first effected.

Chapter V

Limitation on Protection

Article 85. The provisions concerning protection of neighboring rights shall not apply in the following cases:

- private use;
- reports of current events on condition that use is limited to short fragments of a performance, a phonogram or a radio or television broadcast;
- use solely for the purposes of teaching and scientific research;
- quotations in the form of short fragments of a performance, a phonogram or a radio or television broadcast, on condition that they are compatible with fair practice and justified by the informatory purpose.

Article 86. The authorization of ANPAC shall not be required where the fixation or reproduction is made by a radio or television organization using its own facilities and for its own broadcasts, on condition that

- for each broadcast of a fixation, a performance or of reproductions thereof made under this Article, the radio or television organization is entitled to diffuse the performance concerned;
- for each broadcast of a fixation, a broadcast or a reproduction of such fixation made under this Article, the radio or television organization has the right to diffuse the broadcast;
- any other fixation or reproduction be effected for purposes of conservation and archives.

Chapter VI

Procedure and Sanctions

Article 87. Any natural or legal person whose neighboring rights have been infringed or are threatened with infringement may institute proceedings before the competent court.

Article 88. Independently of the remedy provided above, any person who knowingly infringes or causes the infringement of rights protected under

Title II of this Law shall be liable to the sanctions laid down by the Criminal Code as regards offenses against literary and artistic property, with the exception of the supplementary penalty of confiscation.

TITLE III—RIGHTS IN BLANK MEDIUMS

Article 89. Any copy or reproduction reserved for the private use of the copier of works fixed on a phonogram or videogram shall entitle the authors, performers, phonogram or videogram producers and radio or television producers to remuneration.

The remuneration shall be collected prior to any marketing of the product from the person who manufactures, causes to be manufactured or imports the blank mediums referred to in the first paragraph of this Article.

The amount of the remuneration shall be fixed at ten percent of the retail selling price, including all taxes, of the blank medium.

The remuneration shall be collected by ANPAC and shall be paid into the special fund referred to in Article 77 above.

TITLE IV—MISCELLANEOUS

Article 90. ANPAC alone shall be entitled to assume the exploitation and protection of the rights of intellectual creators on the national territory.

It shall automatically take the place of the professional organizations of authors hitherto entitled to exercise an activity in Gabon.

Article 91. Regulatory texts shall be promulgated where necessary for the application of this Law which repeals all earlier contrary provisions; shall be recorded, published under the emergency procedure and implemented as a Law of the State.

