

DECREE RELATING TO COPYRIGHT IN LITERARY, SCIENTIFIC
AND ARTISTIC WORKS

[omissions]

Article 1

Under the appellation "Copyright", the prerogatives relating to the exclusive exploitation of a person's creation, including all the modalities in respect of the protection which he may claim for it, are recognised in favour of the person under whose name a literary, scientific or artistic work is made public, constituting, at least for a limited period, a legal monopoly to this effect.

Article 2

The notion of copyright implies, by itself, a particular form of complete appropriation. It gives rise, independently of any suggestion of material integration in the intellectual works which form the subject thereof, to the juridical concept of incorporeal or intellectual property which forms the basis of literary and artistic property, protected by law.

Article 3

Copyright confers the maximum of advantage upon its owner. To its character of exclusivity, which forms an obstacle to any rival claim in respect of the same works, there is added the quality of opposability, which is capable, if need be, of being invoked against all persons.

Article 4

Whereas subjective rights, established in relation to a totality of values, positive or negative, devolve upon the same person and are divided into patrimonial and extra-patrimonial rights, the monopoly of exploitation indicated in Article 1, and vested in the author, comprises only the patrimonial rights, without prejudice to the non-commercial privilege, which devolves upon him, of conserving the mastery of his thought and of his work, and of deciding,

if need be, upon its publication or its non-publication. This right, which belongs to him alone, is absolute; it is discretionary.

Article 5

This moral or extra-patrimonial right, forming part of the attributes of personality, and not being capable of pecuniary evaluation, remains intangible and is inalienable and undistrainable.

Article 6

Further, the author has the right to choose between the publication of his work under his name, or under another name, or in anonymous form.

Article 7

In so far as the author has not proceeded to publish his work, its reproduction by any means is strictly prohibited. No person may compel the writer or artist to reveal his intellectual or moral personality to the public.

Article 8

Accordingly, the work cannot be the subject of seizure on the part of creditors of the writer or of the artist.

Article 9

If the author consents to allow the publication of his work in a specified manner, the work may only be published in accordance with such manner. Agreements drawn up to this effect, in the form of a contract for publication, reproduction or performance, have the force of law as between the parties, in accordance with Article 925 of the Civil Code.

Article 10

Copyright comprises the exclusive right of the author of a literary, scientific or artistic work to make use of his work and to authorise the utilisation thereof, in whole or in part; to dispose of his rights, upon any basis, in whole or in part, and to

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transmit them by will or by operation of law. Utilisation of the work may be effected, in accordance with its nature, by any of the following processes, or by others which may come into existence hereafter.

The author may:

- (a) publish it, either in printed form or in any other form;
- (b) present, recite, exhibit or perform it publicly;
- (c) reproduce it, adapt it or present it by cinematography;
- (d) adapt it, and authorise its general or special adaptation to apparatus serving to reproduce it mechanically or electrically, or perform it in public by means of such apparatus;
- (e) diffuse it by photography, telephotography, television, radio-diffusion or by any other process at present known or which may subsequently be invented and which serves for the reproduction of signs, sounds and images;
- (f) translate it, transpose it, arrange it, score it, dramatisé it, adapt it and, in general, transform it in any manner;
- (g) reproduce it, in any form, in whole or in part.

Article 11

Literary, scientific and artistic works, protected by the present Decree, comprise: books, manuscripts, brochures of all kinds, whatever their length, manuscripts or printed texts of lectures, speeches, lessons, sermons and other works of the same nature; theatrical and dramatico-musical works, choreographies and pantomimes, the acting form of which is fixed in writing or otherwise; musical compositions, with or without words; drawings, illustrations, paintings, sculptures, engravings, lithographies; photographic and cinematographic works; astronomical or geographical spheres, maps, plans, sketches or plastic works relating to geography, geology, topography, architecture, or any other science; and finally all literary, scientific or artistic productions, capable of being published or reproduced.

Article 12

The rights of an author in respect of unedited or unpublished works are equally recognised.

Article 13

The same protection is also granted to works of art executed principally for industrial purposes, without such protection extending to the industrial utilisation of scientific theories.

Article 14

Translations, adaptations, compilations, arrangements, abridgments, dramatisations, or other versions of literary, scientific and artistic works, including photographic and cinematographic adaptations, enjoy the protection established by the present Decree as original works, without prejudice to the rights of the author in respect of the work utilised.

Article 15

When the works indicated in the preceding Article are ascribable to works which have fallen into the public domain, they are still protected as original works. However, this protection does not convey the exclusive right to utilise the basic work.

Article 16

Literary, scientific and artistic works which enjoy the benefit of legal protection and which are published in newspapers and magazines may not be reproduced without authorisation, whatever the nature of their subject.

Article 17

Articles of news, published in newspapers and magazines, may be reproduced in the press, unless their reproduction is forbidden by a special or general reservation included in them. In all cases, the source from which they originate must be indicated in a precise manner. However, the simple signature of the author shall be equivalent to a mention of reservation.

Article 18

The protection of the law does not apply to information contained in news of the day published in the press.

Article 19

The right to paternity, in respect of a

literary or artistic work, is the right which the author has to publish the work under his name. Being an intellectual creation, the work is linked with the author by a relationship of intellectual filiation. Thus, if it is for the author alone to decide whether his work should or should not be published, it is also for him alone to decide whether his work should or should not be published under his name.

Article 20

The author is equally invested with the right to defend his name. Not only may he proceed against any person who gives a false name to his works and forbid such person to publish them under a name other than that of the author, but he may take proceedings against persons who usurp his name.

Article 21

The fraudulent use of the name of an author constitutes an infringement, and every infringement is an offence. In such a case, apart from the penalties of fine and confiscation specified, according to circumstances, in Articles 349, 350 and 351 of the Penal Code, which will be applied by the competent Correctional Court, the victim of the offence, by making himself a civil party, may also claim damages under repressive jurisdiction, in conformity with Articles 3 C.I.C., 11 C.P., 1168 and 1169 of the Civil Code.

Article 22

An accomplice in infringement is punishable under the conditions of common law. He can be proceeded against even if the principal offender is unknown and has not been made a party to the proceedings.

Article 23

Authors have the exclusive right, during their lifetime, to sell, to cause to be sold, to distribute, to perform, to translate or to cause to be translated into another language, any of their works in general, to assign property in them, in whole or in part, employing the processes appropriate to the reproduction of each category of works, with due regard to the enunciations of Article 10 of the present Decree.

Article 24

Upon the death of an author, the same rights pass to his heirs, who will benefit from them, as owners of his patrimonial rights, for twenty-five years calculated from the date of his death, in the order and in accordance with the rules determined in the Civil Code in respect of succession. Thereafter, the protected works fall into the public domain.

Article 25

During this period of twenty-five years, the surviving spouse, having community of property to the exclusion of personal heirs, legatees and assigns, is entitled, apart from other advantages which the law confers upon such spouse, to one half of the receipts resulting from the exploitation of the intellectual works of the deceased author when such works were created during the course of the marriage. Any disagreement between interested parties will be resolved by the appropriate Courts.

Article 26

This division of pecuniary products will not operate in the event of a final judgment of judicial separation or divorce pronounced between spouses, and ceases if the said spouse contracts a new marriage.

Article 27

Any person who has published, reproduced, displayed or caused to be performed without being furnished with the written consent of the author or of his heirs or successors in title, an artistic, literary or scientific work of which he has not acquired the ownership, is guilty of the offence of infringement, and will be proceeded against and punished in accordance with the provisions of Articles 347, 348, 349, 350 and 351 of the Penal Code.

Article 28

The competent Magistrate (Juge de Paix) is required to confiscate, upon the first request of the authors, their heirs or other proprietors, and for their profit, all examples or copies or reproductions of a work, printed or engraved or painted, or intended for any process, or sculpted, without the consent referred to in the preceding Article.

Article 29

The infringer shall, moreover, be ordered by the competent Court to pay damages.

Article 30

The vendor of infringing editions shall equally be liable for damages, in favour of the proprietor, even if such vendor is not recognised as an infringer.

Article 31

A parody or a pastiche will not be deemed to be an infringement. These are lawful, provided they do not constitute a reproduction of the original work and cannot mislead by causing confusion.

Article 32

Equally, there is occasion to distinguish between infringement and plagiarism. Plagiarism, although morally blamable, only gives rise to sanctions in the event of abuse which makes it assimilable to infringement. This is the case when borrowings from the works of other persons, without mention of source, are considerable and damaging. In this matter, the Courts enjoy considerable freedom in making appraisalment.

Article 33

A translation, published without the authorisation of the author, constitutes an infringement if the work is still in the private domain.

Article 34

All the means of proof under common law are admissible to establish infringement in the literary and artistic field.

Article 35

The President (Doyen) of the Civil Court may, by judgment on petition, authorise the seizure of infringing articles. Subject to any appropriate civil or penal action, his intervention ceases to be facultative in its application when required to have the effect of suspending public performances or presentations of theatrical works or musical compositions made in violation of copyright. Giving summary decision, in application of Article 754 C.P.C., the President of the Civil Court shall be competent, in cases of duly-established

urgency, to order replevin or splitting-up of the seized articles constituting infringement, upon reasoned considerations, and without prejudice to the principal party.

Article 36

When the Civil Court, sitting in its normal capacity, has decided the matter at issue, at the request of the alleged infringer, the Court is competent to order the cancellation of the seizure, and even to condemn the distrainer, who is liable to pay damages. The Court is equally competent to pronounce infringement at the request of the author or his successors in title. Nevertheless, upon action by the alleged infringer, the author also has the right to reply by means of a petition direct to the Court of Petty Sessions.

Article 37

Even in the absence of complaint by the injured party, the Public Prosecutor may, as an administrative act, order seizure and proceed against infringers.

Article 38

In so far as the author has not revealed himself, by the disclosure of his identity, proceedings may be validly instituted by the publisher in the case of anonymous works.

Article 39

Authors who have a pseudonym have, in this respect, the same rights as authors who publish under their real name.

Article 40

The offence of infringement prescribes after three years, in accordance with the distinctions between periods of time established by Articles 466 and 477 C.I.C.

Article 41

Literary property, in respect of an intellectual work, exists as of right, from the sole fact of its creation, independently of any formality.

Article 42

The rights of foreign authors, nationals of a State bound by the same International Conventions as Haiti, are protected, under the benefits of reciprocity recognised by their domestic law, equally with the rights granted to Haitian authors, in respect of all

works which are the product of the intellect, whatever their nature, value, extent or destination. However, as regards any work published in Haiti, the author or the owner of such right is required, before putting it on sale, to deposit six copies with the State Registry for the Interior and for National Defence, for distribution to public libraries by the Head of that Department. Moreover, when works of a didactic character and publications which are of interest to Youth are concerned, three supplementary copies must be deposited with the Department of National Education, for purposes of control, without prejudice to the preceding provisions.

Article 43

This legal deposit shall be effected, for works published abroad and put on sale in Haiti, by a national of Haiti, or by a foreigner domiciled in Haiti, within three months of their publication.

Article 44

In the event of failure by the copyright owner to carry out the above requirement, a summons will be served on him, through the Court Usher, at the request of the Government Commissioner, upon the written order of the Ministerial Departments concerned. If the deposit in question is not accomplished within thirty days following such summons, the offender will incur the penalty of a fine of two hundred and fifty gourdes, which will be pronounced against him by the competent Jurisdiction, at the instance of the Public Prosecutor. In the event of recidivism, this fine will be doubled.

Article 45

With a view to facilitating the utilisation of literary, scientific and artistic works, use is recommended of the expression "Droits Réservés", or its abbreviation "D.R.", or the symbol "C" (within a circle), followed by an indication of the year from which protection commences, together with the name and address of the owner of the rights and the place of origin of the work, on the back of the title page, in the case of a written work, or in any other appropriate

place, according to the nature of the work, as, for example, in the margin, on the back, on the permanent base, pedestal or substance upon which the work is affixed. It is, moreover, understood that the fact of reserving the rights in the above form, or in any other form, will not be interpreted as a condition for the protection of the work in application of the present Decree.

Article 46

The author of any work which is protected shall, when he disposes of his copyright by sale, assignment, or in any other manner, conserve the right to claim paternity of his work, and to oppose any modification or utilisation thereof which could be prejudicial to his reputation as author, unless, by earlier, contemporary or subsequent consent to such modification, he has assigned this right or has renounced it.

Article 47

The title of a protected work which, by reason of its international reputation, has acquired a character which is so distinctive that it gives it a special identity, shall not be reproduced in another work without the consent of the author. This prohibition does not extend to the use of a title in relation to works of such a different nature that all possibility of confusion is eliminated. Where appropriate, the suppression of the title, with requirement to the usurper for damages in favour of the injured party, may be ordered, following legal proceedings.

Article 48

The proprietors of posthumous works, by succession or any other title, are assimilated to their authors and enjoy the same rights and privileges, subject to the obligation to print such works separately.

Article 49

When they present an original character, letters, that is to say, written matter which one person addresses to another and which constitute correspondence exchanged between them, also enjoy the same protection as is acquired for literary property.

Article 50

To this effect, it is necessary to distinguish, on the one hand, between the body of the letter, that is the material instrument, and on the other hand, the work itself or the content of the instrument.

Article 51

Although, as from its receipt, the material property of the letter belongs to the addressee, copyright resides in the person of the writer, and upon his death passes to his heirs or successors in title, who, in turn, conserve it for twenty-five years, in accordance with the provisions of Article 24.

Article 52

If, according to general principles, the author of a letter may freely dispose of his work and, in particular, alienate it, either for valuable consideration or gratuitously, he may, nevertheless, only publish it provided he does not mention the name of the addressee, unless so authorised by him, and provided it causes the addressee no harm, even of moral character.

Article 53

Assured by the material ownership of the letter, the addressee, for his part, has the right to conserve it for himself, and to refuse to restore it to the sender. He also has the right to require it to be restored in

the event of it being unduly detained by a third party.

Article 54

Nevertheless, the rights of the author of the letter, and also those of the addressee, are limited by the right to secrecy. Secret matter included in the letter is inviolable; but this principle only applies to letters which are confidential in character. It is for the Judge concerned to decide the dividing line between letters destined to remain secret and those which can be divulged without penalty.

Article 55

Any violation of secrecy of a letter, which is not justified by a serious and legitimate interest, is an abuse of the right of ownership and can give rise to an action for damages, based upon the provisions of Article 1168 of the Civil Code.

Article 56

The present Decree abrogates all Laws or provisions of Laws, all Decrees or provisions of Decrees, all Decree-Laws or provisions of Decree-Laws which are contrary to it, and will be published and executed at the diligence of the Secretaries of State of Justice, of the Interior and National Defence, of Foreign Affairs and National Education, each in so far as it is concerned.