

Dahir No. 1-05-192 of 15 Moharrem 1427 (14 February 2006) enacting Law No. 34-05 amending and supplementing Law No. 2-00 on Copyright and Related Rights

(English version *)

PRAISE BE TO GOD ALONE!

(Seal of His Majesty Mohammed VI)

May it be known by the present – may God raise and strengthen its content!
That our Sherifian Majesty,
Considering the Constitution, particularly Articles 26 and 58,

HAS DECIDED THE FOLLOWING:

Law No. 34-05 amending and supplementing Law No. 2-00 on Copyright and Related Rights, as adopted by the House of Counsellors and the House of Representatives, is enacted and shall be published in the Official Journal following this dahir.

Done in Ifrane, on 15 Moharrem 1427 (14 February 2006).

Countersigned by:
The Prime Minister,
Driss Jettou

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**Law No. 34-05
amending and supplementing Law No. 2-00
on Copyright and Related Rights**

Article 1

Articles 1 (17 and 27), 7 (4), 10, 11 (2), 25 (1), 26, 27 (1), 28, 36 (2), 37, 38 (1), 39(3), 50, 51, 53, 57, 58, 59, 60, 61 and 63 of Law No. 2-00 on Copyright and Related Rights, enacted by dahir No. 1-00-20 of 9 Kaada 1420 (15 February 2000) are amended and supplemented as follows:

“Article 1

“17 – “Reproduction” means the making of one or more copies of a work, a performance or a phonogram, or the making of part of a work, a performance or a phonogram, in any form whatsoever, including sound and visual recording, and the permanent or temporary storage of a work, performance or phonogram in electronic form.

* Courtesy translation provided by WIPO.

27 – “Fixation” means the embodiment of sounds or images, or of images with sound, or the representation thereof, from which they may be perceived, reproduced or communicated by means of a device.

Article 7(4) – The right to authorize the acts referred to in paragraph 1 of the present Article belongs to the Moroccan Copyright Office.

Article 10 – Subject to the provisions of Articles 11 to 22 below, the author of a work has the exclusive right to carry out, forbid or authorize the following acts:

(a) Reprint and reproduce his/her work in any way and form whatsoever, permanent or temporary, including the temporary storage in electronic form;

(b)

(What follows remains unaltered)

Article 11(2) – The Moroccan Copyright Office may exercise the above-mentioned rights if there are no such people as those mentioned in the previous paragraph.

Article 25(1) – Except where there are provisions to the contrary..... the life of the author and 70 years following his/her death.

Article 26 – Economic rights surviving author and 70 years following his/her death.

Article 27(1) – The economic rights to a work published anonymously or under a pseudonym shall be protected for 70 years from the end of the calendar year when the work was lawfully published for the first time or, if such an event has not happened in the 50 years following the making of the work, 70 years from the end of the calendar year when the work was made accessible to the public or, if such events did not happen in the 50 years following the making of the work, 70 years from the end of the year in which it was made.

Article 28 – The economic rights to a joint work or an audio-visual work are protected for a period of 70 years from the end of the calendar year when the work was lawfully published for the first time or, if such an event has not happened in the 50 years following the making of the work, 70 years from the end of the calendar year when the work was made accessible to the public or, if such events did not happen in the 50 years following the making of the work, 70 years from the end of the year in which it was made.

Article 36(2) – Unless stipulated otherwise, the contract concluded between the producer of an audio-visual work and the co-authors.....

.....

(What follows remains unaltered)

Article 37(3) – If the disclosure of the work is unpaid, in this case remuneration is determined on a flat-rate basis. The Moroccan Copyright Office shall determine the percentages.....

.....

(What follows remains unaltered)

Presumption of ownership and existence of copyright

Article 38(1) – In civil, administrative and criminal procedures, the person whose name is usually indicated as being the author, performer, phonogram producer or publisher is, unless proved otherwise, considered to be the right holder, and as a result is entitled to bring an action. Unless proved otherwise, copyright or related rights remain for the work, performance or phonogram.

Article 39(3) – Total or partial assignment..... the agreement of the Moroccan Copyright Office.

Article 50 – Subject to the provisions of Articles 54 to 56,

(b) the communication to the public of his/her performance, except where the communication is made from a broadcast of the performance;

.....

(d) the reproduction of a fixation of his/her performance in any way and form whatsoever, permanent or temporary, including the temporary storage in electronic form;

.....

(g) the making available to the public

..... individually chosen by them;

(h) the import of a fixation of his/her performance.

Unless otherwise agreed:

(What follows remains unaltered)

Article 51 - Subject to the provisions of Articles 54 to 56,

(a) the direct or indirect reproduction of his/her phonogram in any way and form whatsoever, permanent or temporary, including the temporary storage in electronic form;

.....

.....

.....

(e) the making available to the public

..... individually chosen by them;

(f) the communication to the public of his/her phonogram;

(g) The broadcast of his/her phonogram.

Article 53 – If a phonogram for broadcasting or for any communication to the public, any interactive transmission not included, a single equitable remunerationshall be paid by the user.

The sum received for the use of a phonogram shall be halved among the performers and the phonogram producers.

Article 57 – ...shall be protected for 70 years from the end of the calendar year of the first authorized publication or, if such an authorized publication has not happened in the 50 years following the creation of the work, 70 years from the end of the calendar year when the work was created.

Article 58 - ...shall be protected for 70 years from the end of the calendar year of the first authorized publication or, if such an authorized publication has not happened in the 50 years following the creation of the work, 70 years from the end of the calendar year when the work was created.

Article 59 - ...shall be protected for 70 years from the end of the calendar year of the first authorized publication or, if such an authorized publication has not happened in the 50 years following the creation of the work, 70 years from the end of the calendar year when the work was created.

Article 60 – The protection and exploitation
to the Moroccan Copyright Office.

Article 61 - The court having jurisdiction.....

- (a)
- (b) to order the impounding of copies of works or sound recordings suspected of being made, imported or in the process of being exported without the authorization of the owner of any right protected under this Law where the making or importation of copies is subject to such authorization, as well as the impounding of the packaging of, the implements that could be used
.....referring to, such copies.

The provisions.....

(What follows remains unaltered)

Article 63 – Whomsoever uses, without the authorization of the Moroccan Copyright Office, an expression of folklore in a way that is not permitted by Article 7(1) is committing.....

(What follows remains unaltered)

Articles 29, 62, 64 and 65 of the aforementioned Law No. 2-00 are amended and supplemented as follows:

*Term of protection
for works of applied art*

Article 29 – Works of applied art shall be protected for 70 years from the end of the calendar year of the first authorized publication or, if such an authorized publication has not happened in the 50 years following the creation of the work, 70 years from the end of the calendar year when the work was created.

Article 62 - The owner of any right protected under this Law whose right has been infringed shall be entitled to payment, by the infringer, of damages for the prejudice suffered as a consequence of the act of infringement.

The amount of damages shall be fixed in keeping with civil law, taking into account the importance of the material and moral prejudice suffered by the owner of the right, as well as the importance of the infringer's profits attributable to the infringement.

The owner of the right has the possibility of choosing between damages effectively sustained, plus any profit resulting from the prohibited activity that has not been taken into account in the calculation of those damages, or the pre-established damages of between five thousand (5,000) dirhams and twenty five thousand (25,000) dirhams, as deemed equitable to repair the prejudice suffered.

At the end of the civil proceedings, the court that tried the case may order the unsuccessful party to reimburse reasonable costs for legal fees incurred by the other party.

Where infringing copies exist, the court shall have the authority to order the destruction or other reasonable disposition of those copies and their packaging outside the channels of commerce in such a manner as to avoid harm to the right holder, unless the owner of the right requests otherwise.

If an implement or device has been used to commit or continue to commit acts of infringement, the court shall, whenever and to the extent that it is reasonable, order their destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimize the risks of further infringements, including surrender to the owner of the right.

Where there is a danger that acts of infringement may be continued, the court shall expressly order that such acts not be committed. Furthermore, the court shall fix a sum the equivalent of at least 50% of the value of the operation as damages.

Article 64 – Any wilful infringement of the following committed unlawfully and in any way, for the purposes of commercial exploitation, shall be punished by imprisonment for a

period of between two and six months and a fine of between ten thousand (10,000) and one hundred thousand (100,000) dirhams, or just one of these penalties:

- copyright mentioned in Articles 9 and 10;
- rights of performers mentioned in Article 50;
- rights of phonogram producers mentioned in Article 51;
- right of broadcasting agencies mentioned in Article 52.

Wilful infringements for the purposes of commercial exploitation shall mean:

- any deliberate infringement of copyright or related rights that is not directly or indirectly motivated by financial gain;
- any deliberate infringement committed for commercial advantage or private financial gain.

The same penalties provided for in the first paragraph above, as well as additional measures and sanctions mentioned in Article 64.3 below, shall be applied to:

- Whomsoever imports or exports copies made in violation of the provisions of this Law;
- Whomsoever unlawfully commits one of the acts mentioned in Article 7(1) of this Law;
- Whomsoever commits one of the acts mentioned in Article 65 of this Law;
- Against whomsoever the criminal liability mentioned in Article 65(4) of this Law has been established.

Article 65 – Without prejudice to the provisions of Law No. 77-03 on audio-visual communication, the following acts shall be considered unlawful and, in the application of Articles 61 to 64 of this Law, shall be assimilated to infringements of the rights of authors, performers and phonogram producers:

- (a) the manufacture, import, export, assembly, modification, sale, rental or hire of a device, system or means specifically designed or adapted to disable any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made;
- (b) the manufacture, import, export, assembly, modification, sale, rental or hire of a device, system or means that is designed or adapted, knowingly or with reasonable grounds to know, to enable or assist the decoding of encrypted signals containing programmes without the authorization of the lawful distributor;
- (c) the reception and redistribution of signals containing originally encrypted programmes knowing that they have been decoded without the authorization of the lawful distributor;
- (d) the circumvention, removal, restriction of any effective technological measure;
- (e) the manufacture, import, sale, offer to the public or distribution of any device, element, service or means used, or advertised or promoted as, or essentially

- designed or produced with the aim of enabling or assisting the circumvention, disabling or restriction of any effective technological measure;
- (f) the removal or alteration of any rights management information without authority;
 - (g) the distribution or import for distribution of rights management information, when such acts are committed in the knowledge that rights management information has been removed or altered without authority;
 - (h) the distribution, import for distribution, broadcasting, communication to the public or making available to the public, without authorization, of works, performances, sound recordings or broadcasts, knowing that electronic rights management information has been removed or altered without authorization.

As used in this Article, the expression “effective technological measure” shall mean any technological measure, device or component that, in its normal use, controls access to a work, performance, phonogram or other subject of protection, or protects any copyright or related rights.

As used in this Article, "rights management information" means information that identifies the author, the work, the performer or the performance, the phonogram producer, the phonogram, the broadcasting agency, the broadcast or the owner of any right under this Law, or information about the terms and conditions of use of the work and other productions referred to in this Law, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance, the copy of a phonogram or a fixed broadcast programme or appears in connection with the broadcast, communication to the public or the making available to the public of a work, fixed performance, phonogram or broadcast programme.

In application of Articles 61 to 64, any device or system or means mentioned in this Article and any copy from which rights management information has been removed, or in which such information has been altered, shall be assimilated to infringing copies of works.

Article 3

The aforementioned Law No. 2-00 is supplemented by Articles 60.1, 60.3, 61.1 to 61.7, 64.1, 64.2, 64.3, 65.1, 65.2 and by a Part IV bis entitled “Liability of service providers”, as follows:

Article 60.1 - Right to engage in legal proceedings

The Moroccan Copyright Office has the right to engage in legal proceedings to defend the interests with which it is entrusted.

Article 60.2 – Swearing in of agents and impounding

Agents of the Moroccan Copyright Office, commissioned by the supervising authority and sworn in under the conditions provided for in the legislation currently in force regarding the swearing in of reporting officers, are authorized to establish infringements of this Law.

They may, once the infringements have been established, proceed to impound the phonograms, videograms and any other usable recording medium, as well as any material used for unlawful reproduction.

Article 60.3 – Assistance of the public authorities

Public authorities of all kinds are required to lend their assistance and support to the Moroccan Copyright Office, as well as to its agents, as part of the fulfilment of their duties.

Border measures

Article 61.1 – The Customs and Excise Authority may, at the written application of an owner of copyright or related right (based on the model adopted by that Authority), suspend the release for free circulation of merchandise suspected of being counterfeit or pirated, infringing copyright and related rights.

The aforementioned application shall be supported by appropriate evidence that there is an infringement of protected rights and shall provide sufficient information that one could reasonably expect the owner of the right to know about for the suspected counterfeit or pirated merchandise to be reasonably recognizable by the Customs and Excise Authority.

The applicant and the declarant or the holder of the merchandise shall be informed, without delay, by the Customs and Excise Authority, of the suspension measure taken.

The suspension application referred to in the first paragraph above shall be valid for a period of one year or the remaining period of protection of the copyright or related rights if this is less than one year.

Article 61.2 - The suspension measure referred to in Article 61.1 above shall be lifted as of right where the requester, within ten working days following notification of the suspension measure, fails to prove to the Customs and Excise Authority that:

- provisional measures have been ordered by the president of the competent court;
- an action at law has been attempted and that the security set by the court has been provided, to cover his/her potential liability should the counterfeiting or piracy not be subsequently recognized.

Article 61.3 – For the purposes of bringing the legal action referred to in Article 61.2 above, the applicant may obtain from the Customs and Excise Authority information relating to the names and addresses of the importer, the sender, the recipient of the merchandise and the quantity of merchandise, notwithstanding any provisions to the contrary.

Article 61.4 – If the Customs and Excise Authority establishes or suspects that imported, exported or transit merchandise are counterfeit or pirated, the Authority shall, of its own motion, suspend the release for free circulation of such merchandise. In this case, the Authority shall without delay inform the owner of the right of the measure taken and shall communicate to him/her, upon written request, the information referred to in Article 61.3 above.

The declarant or holder of the merchandise shall also be informed of this measure without delay.

The above suspension measure shall be lifted as of right where the owner of the right, within ten working days following the date when the Authority communicated the information to him/her, fails to prove to the Customs and Excise Authority that the measures or actions have been undertaken in the conditions referred to in Article 61.2 above.

Article 61.5 – The merchandise for which the release for free circulation has been suspended in application of the provisions of Articles 61.1 to 61.4 above and that has been recognized, by a judgment that has become final, as being counterfeit or pirated merchandise shall be destroyed, except in exceptional circumstances. It may in no way be authorized for export or be the subject of other customs procedures or systems, except in exceptional circumstances.

Article 61.6 – The measure suspending the release for free circulation implemented in application of the provisions of Articles 61.1 to 61.5 above does not incur the liability of the Customs and Excise Authority.

Should the merchandise not be recognized as counterfeit or pirated, the importer may apply to the court for damages for any prejudice suffered, to be paid by the applicant.

Article 61.7 – The scope of application of the provisions of Articles 61.1 to 61.6 above shall not apply to merchandise of a non-commercial nature contained in the personal luggage of travellers, in small quantities or sent in small consignments for personal and private use.

Article 64.1 – In the case of persistent infringement, the penalties provided for in Article 64 above shall be doubled.

Article 64.2 – If the perpetrator of one of the acts mentioned in Article 64 commits a new act that constitutes an infringement of copyright or related rights less than five years after a first judgment that has become final, he/she shall be punished by a term of imprisonment of between one and four years and a fine of between sixty thousand (60,000) dirhams and six hundred thousand (600,000) dirhams, or just one of these penalties.

Article 64.3 – In cases of infringement of the provisions of this Law, the competent court may order the following preventive measures and subsidiary penalties, provided that a prior order or judgment on the same subject has not already been issued against the same parties:

1 – the impounding of all copies made in infringement of the provisions of this Law, the packaging, the implements that could be used to commit the infringement, the assets linked to the infringement and the documents, accounts or business papers referring to such copies;

2 – the confiscation of any assets with which the link with the unlawful activity may be established and, except in exceptional circumstances, all the copies made in infringement of the provisions of this Law and their packaging, materials and equipment used to manufacture them, without any compensation of any kind for the defendant;

3 – the destruction, except in exceptional circumstances, of these copies and their packaging, materials and equipment used to manufacture them or, in exceptional cases, their destruction in another reasonable way, outside commercial circuits so as to reduce to a minimum the risks of further infringements, and all of the above without any compensation of any kind for the defendant;

4 – the permanent or temporary closure of the establishment used by the perpetrator of the infringement or his/her accomplices;

5 – the publication of the condemnatory sentence in one or more newspapers designated by the competent court, at the cost of the person convicted, although the costs of this publication must not exceed the maximum of the applicable fine.

Special provisions

Article 65.1 - the following non-profit entities: libraries, archive services, educational institutions or public broadcasting organizations shall not be subject to the provisions of Article 64 for the violations mentioned in Article 65, paragraphs (a), (d), (e), (f), (g) or (h).

Non-profit entities covered in the previous paragraph may not be ordered to pay damages under Article 62 for the violations mentioned in Article 65, paragraphs (a), (d), (e), (g), (h) or (i) if they provide proof that they were not aware or had no reason to think that their acts constituted a prohibited activity.

Article 65.2 – Any infringement of the rights of an owner of copyright or related rights may be the subject of proceedings ordered by right by the public prosecutor without any need for a private party or owner of a right to bring a complaint.

PART IV bis

Liability of service providers

Article 65.3 – For the application of the provisions of Article 65.4, and for the purposes of the duties referred to in Article 65.5 (B) to (D), “service provider” shall mean a provider or operator of facilities for on-line services or for access to networks, including a provider of

transmission, routing or connection for digital communication on-line, with no alteration of the content, between points specified by the user and of his/her choice.

For the purposes of the duty referred to in Article 65.5 (A), “service provider” shall mean only a provider of transmission, routing or connection for digital communication on-line, with no alteration of the content, between points specified by the user and of his/her choice.

Article 65.4 –

- (A) Any service provider that, knowing or having valid reasons to know about any infringement of copyright or related rights committed by another person, has led to, encouraged, caused or substantially contributed to this infringement, will have its liability incurred under civil law for this unlawful activity.
- (B) Any service provider that has deliberately led to, encouraged, caused or substantially contributed to this infringement, will have its liability incurred under criminal law for this unlawful activity, in accordance with the provisions of this Law.
- (C) Any service provider that has the right and capacity to supervise and control infringements of copyright or related rights committed by another person, and with a direct financial interest in that activity, will have its liability incurred under criminal law for this unlawful activity, in accordance with the provisions of this Law.
- (D) Any service provider that deliberately supervises or controls infringements of copyright or related rights committed by another person, and with a direct financial interest in that activity, will have its liability incurred under criminal law for this unlawful activity, in accordance with the provisions of this Law.
- (E) Any action against the service provider referred to in (A) to (D) above shall be brought in accordance with the code of civil procedure or the code of criminal procedure. Furthermore, in order to bring legal action against the service provider, it shall not be necessary to join together with any other person, and it shall not be necessary to obtain a prior legal judgment in a separate procedure to determine the liability of another person.

Article 65.5 – If a service provider fulfills the conditions defined in Articles 65.5 to 65.11, it shall be able to benefit from the limitations of liability provided for in Articles 65.12 to 65.14 for infringements of copyright or related rights that it did not control, initiate or direct, and that took place by means of systems or networks controlled or exploited by it or in its name, in relation to the following functions:

- (A) The transmission or routing of material or the provision of connections for this material, with no alteration (...)
- (C) The measures listed in (A) and (B) above are ordered with due consideration given to the relative constraint imposed on the service provider and the damage caused to the owner of the copyright or related rights, the technical feasibility and the effectiveness of the measures, and considering the availability of methods of execution of comparable effectiveness but less onerously restrictive.

- (D) Except for orders for the judicial inquiry, or those that have no major negative effects on the exploitation of the communications network of the service provider, the measures provided for shall only be available if the service provider has been informed in the form and conditions provided for in the code of civil procedure.

Article 65.13 – The effective notice described in Articles 65.8(d) and 65.9(b) shall mean a written communication duly signed, containing within it the following:

1. The identity, address, telephone number and e-mail address of the owner of the copyright or related rights or his/her representative;
2. Information enabling the service provider to identify the material protected by copyright or related rights that has allegedly been infringed. If several materials on a single website on a system or network controlled or exploited by or for the service provider are covered by the same notice, a list of this material on the site may be provided;
3. Information enabling the service provider to identify and locate the material stored on a system or network controlled or exploited by or for the service provider, for which copyright or related rights have been allegedly infringed, and that must be withdrawn or for which access must be disabled;
4. A sworn statement attesting that the information in the notice is accurate;
5. A sworn statement from the litigating party attesting that the use of the material that is the subject of the complaint is not authorized by the owner of the copyright or related right or his/her representative;
6. A sworn statement from the litigating party attesting that he/she is the owner of a protected right that has allegedly been infringed, or that it he/she is authorized to act on behalf of the owner of such a right;

The notice may be forwarded by e-mail and the electronic signature shall satisfy the requirement for a signature.

In the case of notice relating to a search engine in accordance with Article 65.5(D), the information provided must be reasonably sufficient to enable the service provider to locate the reference or link on a system or network controlled or exploited by it or for it; however, if the notice given relates to a substantial number of references or links located on a single website on a system or network controlled or exploited by or for the service provider, a representative list of these references or links located on the site may be provided.

Article 65.14 –

(A) If the service provider withdraws the material or disables access in good faith on the basis of an alleged or apparent infringement of copyright or related rights, it shall be exonerated from any liability in the event of subsequent claims, provided that it promptly takes reasonable measures:

- To inform the person placing the material on line on its system or network of its actions;
- If the person issues a response to effective notice and is the subject of proceedings for infringement of copyright or related rights, to put the material back on line unless the person that initially issued effective notice does not appeal within a reasonable period.

(B) Any damage resulting from acts carried out in good faith by the service provider, on the basis of false information contained in the notice given or in a response to notice, shall incur the liability of the party that issued such false information.

(C) The “response to notice” issued by a subscriber whose material has been withdrawn or disabled inadvertently or because of mistaken identity must be written, duly signed by that subscriber and containing within it the following:

1. The identity, address and telephone number of the subscriber;
2. The identification of the material that has been withdrawn or for which access has been disabled;
3. The location where the material appeared before it was withdrawn or access disabled;
4. A sworn statement attesting that the information in the notice is accurate;
5. A statement in which the subscriber agrees to give jurisdiction to the court in his/her place of residence if this is on national territory, or to any other court competent due to the residence of the service provider if the residence of that subscriber is outside the national territory;
6. A sworn statement from the subscriber attesting that he/she believes in good faith that the material has been withdrawn or disabled inadvertently or because of mistaken identity.

The response to notice may be forwarded by e-mail and the electronic signature shall satisfy the requirement for a signature.

Article 65.15 – The Moroccan Copyright Office shall demand, upon written request of an owner of copyright or related rights or his/her representative, a service provider receiving notice, to identify any perpetrator of an alleged infringement of copyright or related rights and to communicate as soon as possible and where possible sufficient information about him/her to be forwarded to the owner of the right.

Article 4

The provisions of Article 61(4) of the above-mentioned Law No. 2-00 are hereby repealed.”

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