

LAW No. 94-036 of 18 SEPTEMBER 1995
on
Literary and Artistic Property
(*J.O.*¹ No. 2333 of 06.11.95, p. 3554)

(English version *)

BOOK I
Copyright

TITLE ONE
SUBJECT OF COPYRIGHT

CHAPTER ONE
The nature of copyright

Article 1 – The author of an intellectual work shall enjoy in relation to it, by virtue of the mere fact of its creation, an exclusive incorporeal property right that is enforceable against all persons.

This right embodies intellectual, moral and proprietary attributes, which are set out in Books I and III of this Code.

The existence or signing of a contract for skill and labour or a service contract by the author of an intellectual work shall imply no exemption from the enjoyment of the right recognized in the first paragraph.

Article 2 – The incorporeal property defined by the first article shall be independent of the ownership of the material object. None of the rights provided for in this Law shall be vested in the person acquiring this object, except in the cases referred to in the provisions of the second and third paragraphs of Article 56. These rights shall subsist in the person of the author or his successors in title who, however, cannot require the owner of the material object to make this object available for the exercise of said rights. Nonetheless, where manifest abuse by the owner prevents the exercise of the right of disclosure, a civil court may order any measure appropriate, in compliance with the provisions of Article 23.

CHAPTER II
The created work and protected works

Article 3 – The work shall be deemed created, regardless of any public disclosure, by virtue of the mere fact that the author's concept has been put into practice, if only incompletely.

Article 4 – The provisions of this Law protect the rights of authors in all intellectual works, whatever their genre, form of expression, merit, medium or intended use.

Article 5 – The following, in particular, are deemed to be intellectual works within the meaning of this Law:

¹ Translator's Note: J.O. (Journal officiel) = Gazette.

* Courtesy translation provided by WIPO.

1. Books, brochures and other literary, artistic and scientific writings;
2. Lectures, speeches, sermons, oral addresses and other works of the same nature;
3. Dramatic or dramatico-musical works;
4. Choreographic works, circus acts or turns and pantomimes, whose performance is fixed in writing or otherwise;
5. Musical compositions with or without words;
6. Cinematographic and other works consisting in a series of interlinked images which give an impression of movement, whether or not they are accompanied by sound and, if it is accompanied by sound, capable of being audible, referred to together as audiovisual works;
7. Works of drawing, painting, architecture, sculpture, engraving and lithography;
8. Graphic and typographic works;
9. Photographic works and those done using techniques analogous to photography. A "photographic work" is the recording of light or some other kind of radiation on any medium on which an image is produced or from which an image may be produced, whatever the nature of the technique (chemical, electronic or other) by which this recording is made. A fixed image extracted from an audiovisual work is deemed to be not a "photographic work" but a part of the audiovisual work concerned;
10. "Works of applied art" which are two- or three-dimensional artistic creations that have a utilitarian function or are incorporated into a utilitarian article, whether a handcrafted work or one produced using industrial processes. A "utilitarian article" is one that fulfils an intrinsically utilitarian function that does not consist solely in presenting the appearance of the article or passing on information;
11. Illustrations and geographical maps;
12. Plans, sketches and plastic works relating to geography, topography, architecture and science;
13. Software programs which are sets of instructions expressed in words, codes, diagrams or any other form which, once they have been incorporated into a medium decipherable by a machine, may enable a computer to perform a task or achieve a particular result – an electronic or similar process capable of processing information;
14. The clothing and finery creations of seasonal industries. Industries regarded as seasonal clothing and finery industries shall be those that, owing to the requirements of fashion, frequently update the form of their products, in particular dressmaking, the fur industry, underwear, embroidery, fashion, shoes, glove-making, leather goods, the manufacture of original fabrics or special fabrics for haute couture, and goods produced by finery makers, boot makers and the manufacturers of furnishing fabrics;
15. "Expressions of folklore". These are productions of elements characteristic of Madagascar's traditional cultural heritage developed and perpetuated by a community or by individuals recognized as meeting the expectations of that community, including popular tales, popular poetry, songs and instrumental music, in addition to the artistic expressions of rituals and the productions of popular art. These expressions of folklore are not works within the meaning of this Law. They do, however, enjoy similar protection provided in a decree.

Article 6 – The authors of translations, adaptations, transformations or arrangements of intellectual works and expressions of folklore shall enjoy the copyright protection conferred by this Law, without prejudice to the rights of the author of the original work. The same applies to the authors of anthologies or collections of diverse works,

or expressions of folklore, and databases in compliance with the provisions of Article 7.

Article 7 – Databases are compilations of data or other information, or extracts from works, or whole works, in electronic or another form. The protection of these compilations extends only to the choice and arrangement of the contents. In the case of a compilation of works, the compilation and the works constituting the compilation shall be protected independently. In the case of a compilation of information, only the compilation shall be protected.

Article 8 – Provided it is original, the title of an intellectual work is protected as the work itself. Even where the work is no longer protected pursuant to Articles 52 to 54, no one may use this title to identify a work in the same genre, in conditions liable to cause confusion.

CHAPTER III Copyright holders

Article 9 – The “author” is the natural person who has created the work. In the absence of proof to the contrary, authorship belongs to the person or persons under whose name the work is disclosed.

Article 10 – The general rule whereby the creator is the author applies also to works created in the context of work or a commission contract.

Article 11 – A work to whose creation two or more natural persons have contributed is known as a collaborative work. A new work into which a pre-existing work is incorporated without the collaboration of the author of the latter shall be known as a composite work. A work created on the initiative of a natural person or legal entity who edits, publishes and discloses it under his own direction and in his own name and in which the personal contributions of various authors who take part in the writing of it merge into the whole for which they have been designed, so that it is impossible to attribute to each of them a distinct right over the whole that is created, shall be known as a collective work.

Article 12 – A work of collaboration is the joint property of the co-authors. The co-authors must exercise their rights by mutual agreement. In the event of disagreement, the civil courts shall decide. Where the participation of each of the co-authors is of a different kind, each one may, save as otherwise agreed, exploit his own personal contribution separately, without prejudice, however, to the exploitation of the joint work.

Article 13 – A composite work shall be the property of the author who has created it, subject to the rights of the author of the pre-existing work.

Article 14 – In the absence of proof to the contrary, a collective work is the property of the natural person or legal entity in whose name it is disclosed. This person shall hold the copyright.

Article 15 – The authors of pseudonymous and anonymous works shall enjoy in those works the rights provided for in Article 1. In exercising these rights they shall be represented by the original editor or publisher, until such time as they reveal their identity and have proven their authorship.

The declaration provided for in the preceding paragraph may be made by testamentary means, provided any rights previously acquired by third parties are reserved.

The provisions of the second and third paragraphs shall not be applicable where the pseudonym adopted by the author leaves no doubt as to his identity.

Article 16 – The natural person or persons responsible for the intellectual creation of an audiovisual work shall be regarded as the author or authors of that work. In the absence of proof to the contrary, the following shall be regarded as the co-authors of a collaboratively produced audiovisual work:

1. The author of the screenplay;
2. The author of the adaptation;
3. The author of the spoken text;
4. The author of the musical compositions with or without words specially created for the work;
5. The director.

Where an audiovisual work is taken from a pre-existing and still protected work or screenplay, the authors of the original work shall be assimilated to the authors of the new work.

Article 17 – The natural person or persons responsible for the intellectual creation of a radiophonic work shall be deemed to be the author or authors of that work. The provisions of the final paragraph of Article 16 and those of Article 26 shall be applicable by analogy to radiophonic works.

Article 18 – The author of the musical compositions with or without words specially created for the work and the writer of the words shall be deemed to be the authors of a completed dramatic or dramatico-musical work. The provisions of the final paragraph of Article 16 and those of Article 26 shall be applicable by analogy to dramatic and dramatico-musical works.

Article 19 – Save as otherwise provided, copyright in software program created by one or more employees in the performance of their duties shall be enjoyed by the employer.

Any challenge to the application of this article shall be brought before the civil court in the place of the registered office of the employer.

The provisions of the first paragraph of this article shall also be applicable to agents of the State, of the public authorities and of public institutions of an administrative nature.

TITLE II THE RIGHTS OF AUTHORS

CHAPTER ONE Moral rights

Article 20 – Regardless of his proprietary rights and even after the assignment of said rights, the author of a work is entitled:

- to claim authorship of his work, in particular the right to have his name mentioned on the copies of his work and, insofar as this is possible and in the customary manner, in connection with any public use of his work;
- to remain anonymous or to use a pseudonym;
- to oppose any distortion, mutilation or other alteration made to his work or any other damage to the said work that would be prejudicial to his honour or reputation.

Article 21 – The rights referred to in Article 20 belong to the author in person. They are perpetual, inalienable and indefeasible. Upon the author's death they shall be transferrable to his heirs. Exercise of these rights may be conferred on a third party by virtue of testamentary dispositions.

Article 22 – Only the author shall be entitled to disclose his work. Subject to the provisions of Articles 9 and 10 of the Constitution, he shall decide on the procedure for disclosure and shall lay down the conditions for said disclosure. After his death, the right to disclose his posthumous works shall be exercised during their lifetimes by the executor or executors appointed by the author, in the following order: by his descendants, by a spouse who has not been declared legally divorced or who has not remarried, by the heirs other than the descendants who succeed to all or part of the inheritance and by the future residuary legatees or donees of the generality of assets. This right may be exercised even after the expiry of the exclusive exploitation right referred to in Article 52.

Article 23 – In the event of manifest abuse or non-use of the right of disclosure on the part of the representatives of a deceased author, referred to in Article 22, a civil court may order any appropriate measure. The same shall apply in the event of a conflict between the said representatives, where there is no known successor in title or in the event of vacant succession or escheat. Cases may be brought before the court in particular by the Minister for Culture and Communication.

Article 24 – Notwithstanding the assignment of his exploitation right, even after the publication of his work, an author is entitled to have second thoughts or to withdraw in relation to the assignee. He may exercise this right, however, only on condition that he first indemnifies the assignee for the damage these second thoughts or withdrawal may cause him. Where, after he has exercised his right to second thoughts or withdrawal, an author decides to have his work published, he is obliged to offer his exploitation rights first to the assignee he had originally chosen and on the conditions originally laid down.

Article 25 – An audiovisual work is deemed to be completed when the final version has been established by mutual agreement between, on the one hand the director or,

where appropriate, the co-authors, and, on the other hand, the producer. It is prohibited to destroy the master copy of this version. Any alteration to this version through the addition, removal or change of any element shall require the agreement of the persons mentioned in the first paragraph.

Any transfer of an audiovisual work to another type of medium with a view to exploiting it in a different way must be preceded by consultation with the director. The authors' personal rights, as defined in Articles 20 and 21, may be exercised only over the completed audiovisual work, except, where appropriate, in application of Articles 177 and 204 of Law No. 66-003 of 2 July 1966 on the general theory of obligations.

Article 26 – Where one of the authors refuses to complete his contribution to an audiovisual work or is unable to complete this contribution owing to a *force majeure*, he may not oppose the use, for the purpose of completing the work, of the already completed part of the said contribution. For this contribution he shall have the status of author and shall enjoy the rights deriving therefrom. Save as otherwise agreed, each of the authors of an audiovisual work may freely dispose of the part of the work that constitutes his personal contribution for the purpose of exploiting it in a different genre and within the limits laid down in Article 12.

Article 27 – Save as otherwise provided, an author cannot oppose the adaptation of a software program within the limits of the rights he has assigned, nor exercise his right to second thoughts or withdrawal.

Article 28 – Only the author shall be entitled to collect his articles and speeches in a collection and to publish them or authorize their publication in that form. For all works published in this way in a newspaper or periodical, save as otherwise provided the author shall retain the right to have them reproduced and to exploit them, in any form whatsoever, provided this reproduction or this exploitation is not liable to be in competition with this newspaper or this periodical.

Article 29 – Under all marital property schemes and on pain of all clauses to the contrary in the marriage contract being declared null and void, the right to disclose the work, to lay down the conditions for its exploitation and to defend its integrity remains that of the spouse who is the author or of the spouse to whom these rights have been transferred. This right cannot be given as part of a dowry, nor acquired through joint estate or a communal estate comprising property acquired after marriage. The financial income deriving from the exploitation of an intellectual work or the total or partial assignment of the exploitation right shall be subject to the rules applicable to the partners, depending on which marital property scheme was adopted, solely where they have been acquired during the marriage, and the same shall apply to any savings made accordingly. The provisions stipulated in the preceding paragraph shall not apply where the marriage has been celebrated prior to the entry into force of this Law. The legislative provisions relating to the spouses' contributions to household expenses shall be applicable to the financial income referred to in paragraph 2 of this article.

CHAPTER II Proprietary rights

Article 30 – The exploitation right belonging to the author includes the right of exploitation in intangible form and the right of exploitation in tangible form, in particular the right of performance and the rights of reproduction, distribution and exhibition to the public.

Article 31 – Performance consists in particular of the communication of the work to the public using any procedure, public performance, radio broadcasting and rebroadcasting.

Article 32 – “Communication to the public” is transmission other than that defined in Article 34, of the image, the sound or a work in such a way that they can be perceived by persons outside of a family and its immediate circle who are in a place or places sufficiently distant from the place in which the transmission originates for the image or sounds not to be perceptible in this place or places without the transmission, it being of little significance in this context whether these persons can perceive the image or the sound in the same place at the same time, or in different places and at different times.

Article 33 – “Public performance” is the fact is reciting, acting, dancing, presenting or otherwise interpreting a work, either directly or by means of any mechanism or procedures, or in the case of an audiovisual work, showing its series of images or making public the sounds that accompany them, in one or more places where there are, or may be, persons outside of a family and its immediate circle, it being of little significance in this context whether they are or may be in the same place at the same time, or in different places and at different times, where the presentation or performance may be perceived without there necessarily being communication to the public within the meaning of the preceding within the meaning of the preceding article.

Article 34 – A “radio broadcast” is the wireless or cable transmission of a work to the public. “Rebroadcasting” is the redistribution by wireless or cable of a work broadcast by radio. Radio broadcast includes radio broadcasting by satellite which is radio broadcasting by transmitting a work to a satellite, including both ascent and descent phases, while it is not necessarily received by it.

Article 35 – “Reproduction” is the making of one or more copies of a work or part of it by any procedure in any tangible form whatsoever, including sound and visual recording. The making of one or more three-dimensional copies of a two-dimensional work and the making of one or more two-dimensional copies of a three-dimensional work, and the inclusion of a work or of part of it in a computer system (either in the internal information storage unit or in an external information storage unit of a computer) also constitute “reproduction”.

Article 36.— The “reprographic reproduction” of a work is the making of copies of the work in original facsimiles or copies of the work using means other than painting,

such as photocopying, for example. The making of facsimile copies that are reduced or enlarged is also regarded as “reprographic reproduction”.

Article 37 – Any performance or reproduction made in whole or in part without the consent of the author or his successors in title is illegal. The same applies to the translation, arrangement or reproduction by any method or procedure.

Article 38 – The author shall have the exclusive right to distribute copies of his work to the public by sale or by any other property transfer or by rental or public lending. Where the original or the copies of the work have been placed in circulation for the first time by sale by the holder of this right or with his consent on the territory of Madagascar, the original or the copies sold shall no longer be covered by the right of distribution without prejudice to paragraph 3. The exclusive right to rent and to lend to the public shall subsist, however, even after the original or a copy of the work has been put into circulation through sale.

Article 39 – The rights of exploitation in intangible form, such as the right of performance, and in tangible form, such as the right of reproduction, shall be assignable either free of charge or for a consideration. The assignment of the right of exploitation in intangible form shall not include the right of exploitation in tangible form. The assignment of the right of exploitation in tangible form shall not include the right of exploitation in intangible form. Where a contract implies the total assignment of either or both of the rights referred to in this article, its scope in this regard shall be limited to the modes of exploitation provided for in the contract.

Article 40 – Notwithstanding any assignment of the material ownership of an original work, the authors of the work shall have an inalienable right to ask the sellers for a share in the proceeds of any resale of this work by public auction or through the intermediary of a dealer. After the death of the author, this resale royalty right shall subsist for the benefit of his heirs to the exclusion of any legatees or successors in title, during the current calendar year and for the seventy following years. The rate of the right received shall be uniformly set at five per cent.

Article 41 – In the event of the manifest abuse or non-use of the right of disclosure on the part of the representatives of a deceased author referred to in Article 22, a civil court may order any appropriate measure. The same shall apply in the event of a conflict between the said representatives, where there is no known successor in title or in the event of vacant succession or escheat. Cases may be brought before the court in particular by the Minister for Culture and Communication.

CHAPTER III **Limitation of proprietary rights**

Article 42 – Notwithstanding the provisions of Title II, Chapter II, on proprietary rights, and subject to the provisions of paragraph 2 of this article and the provisions of Book III, Title I, it shall be permitted, without authorization from the author, to reproduce a work lawfully published exclusively for the private use of the user.

Paragraph 1 shall not apply:

1) to the reproduction of works of architecture in the form of buildings or other similar reconstructions;

- 2) to the reprographic reproduction of limited-edition works of fine art, to the graphic presentation of musical works (scores) or to exercise manuals that are used only once;
- 3) to the reproduction of the whole or large parts of databases;
- 4) to the reproduction of computer programs, save in the cases referred to in Article 51.

Article 43 – Where a work has been disclosed, the author cannot prohibit:

- 1) private performances given free of charge and exclusively within the family circle;
- 2) performances at official or religious ceremonies to the extent warranted by the nature of these ceremonies;
- 3) performances given in the context of the non-lucrative activities of teaching establishments, to the staff and students of such an establishment, where the audience is composed exclusively of the staff and students of the establishment or of parents and supervisors of the children or other persons directly connected with the activities of the establishment;
- 4) parody, pastiche or caricature, taking into account the laws of the genre.

Article 44 – Notwithstanding the provisions of Title II, Chapter II, on proprietary rights, it shall be permitted, without authorization from the author and without payment of remuneration, to use the analyses and short quotations lawfully published in another work, provided the source and the name of the author are given, and where this name features in the source, provided this quotation is in line with good practice and provided its length is no greater than that warranted by the goal to be achieved.

Article 45 – Notwithstanding the provisions of Title II, Chapter II, on proprietary rights, it shall be permitted, without authorization from the author and without payment of remuneration, but subject to the obligation to give the source and the name of the author, where this name features in the source:

- 1) to use a work lawfully published as an illustration in publications and in broadcasts of sound or visual recordings intended for teaching; and
- 2) to reproducing by reprographic means for teaching or examinations in teaching establishments whose activities are not directly or indirectly aimed at commercial profit, and to the extent warranted by the goal to be achieved, of isolated articles lawfully published in a newspaper or periodical, of short extracts from a work lawfully published or a work lawfully published, provided this use is in line with good practice.

Article 46 – Notwithstanding the provisions of Title II, Chapter II, on proprietary rights, it shall be permitted, without authorization from the author and without payment of remuneration, but subject to the obligation to give the source and the name of the author, where this name features in the source:

- 1) to reproduce and to distribute to the press, to broadcast on radio or to communicate by cable to the public, an economic, political or religious article published in newspapers or periodicals, or a broadcast work of the same nature, where the right to reproduce, to broadcast or to communicate in this way to the public is not expressly reserved;
- 2) to reproduce or to make accessible to the public, for the purpose of reporting topical using photography or cinematography or by means of broadcast or cable

communication to the public, a work seen or heard during an event, to the extent warranted by the informative purpose aimed at;

3) to reproduce by the press, to broadcast [on radio] or to communicate to the public political speeches, lectures, addresses, sermons and other works of the same nature delivered in public and speeches made at trials, for the purpose of giving information on current events, to the extent warranted by the goal to be achieved, while the authors retain their rights to publish collections of these works.

Article 47 – Notwithstanding the provisions of Title II, Chapter II, on proprietary rights, it shall be permitted, without authorization from the author and without payment of remuneration, to reproduce a work intended for a judicial or administrative procedure, to the extent warranted by the goal to be achieved.

Article 48 – Notwithstanding the provisions of Title II, Chapter II, on proprietary rights, it shall be permitted, without authorization from the author and without payment of remuneration, to reproduce, to broadcast [by radio] or to communicate by cable to the public an image of a work of architecture, a work of fine art, a photographic work and a work of applied art that is permanently located in a place open to the public, save where the image of the work is the main subject of this reproduction, broadcast or communication and where it is not used for commercial purposes.

Article 49 – Notwithstanding the provisions of Title II, Chapter II, on proprietary rights, without the authorization of the author or any other copyright holder, a library or archive whose activities are not directly or indirectly aimed at commercial profit may use reprographic reproduction to make isolated copies of a work:

1) where the work reproduced is an article or a short work or a short extract from a written work other than a computer program with or without illustrations, published in a collection of works or in an issue of a newspaper or periodical, and where the aim of the reproduction is to meet the need of a natural person, provided:

a) the library or archive is assured that the copy will be used solely for the purpose of study or university or private research;

b) the act of reproduction is an isolated case occurring, if it is repeated, on separate, unrelated occasions; and

2) where the making of such a copy is designed to preserve it and, if necessary (in the event of its being lost, destroyed or rendered unusable) to replace it or, in the permanent collection of another library or another archive, to replace a copy that has been lost, destroyed or rendered unusable, on condition that:

a) it is impossible to procure such a copy under reasonable conditions, and

b) the act of reprographic reproduction is an isolated case occurring, if it is repeated, on separate, unrelated occasions.

Article 50 – Notwithstanding the provisions of Title II, Chapter II, on proprietary rights, it is permitted, without authorization from the author and without payment of remuneration by a library or archive whose activities are not directly or indirectly aimed at making a commercial profit, to lend copies of a written work, other than a computer program, to the public.

Article 51 – By way of an exception to Article 43(2), where a work is a software program any reproduction, other than the making of a backup copy by the user, and

any use of a software program not expressly authorized by the author or his licensees or successors in title is unlawful.

CHAPTER IV **Period of protection**

Article 52 – Throughout his lifetime an author shall enjoy the exclusive right to exploit his work in any way whatsoever and to make a financial profit from it. On the death of the author, this right shall subsist for the benefit of his successors in title during the current calendar year and the seventy following years. After this period, the moral rights which are unlimited in time may be exercised by a ministerial department responsible for the conservation and promotion of the national heritage.

Article 53 – For works of collaboration, the calendar year taken into account shall be that of the death of the last surviving collaborator.

Article 54 – For pseudonymous or anonymous works, the duration of the exclusive right shall be seventy years from the first of January of the calendar year following publication and shall be determined by any method of proof provided for in ordinary legislation, in particular copyright registration. Where the author or authors make themselves known, the duration of the exploitation right shall be that relevant to the category of the work in question and the period of legal protection shall start to run under the conditions set out in Article 52.

Article 55 – For staggered publications, Article 52 shall apply to each publication and not to the series as a whole.

Article 56 – For posthumous works, the duration of the exclusive right shall be seventy years from the first of January of the calendar year following the publication of the work. Where a posthumous work is disclosed during the period referred to in Article 52, the right to exploit the work shall belong to the author's successors in title. Where disclosure is made after the expiry of this period, it shall belong to the owners, by virtue of succession or on other grounds, of the work, who shall publish it or have it published. The posthumous works must be published separately, except where they constitute only a fragment of a work published previously. They may be added to previously published works by the same author only where the author's successors in title still have the exploitation right in relation to these works.

Article 57 – For a software program, the rights provided by this Law shall be extinguished on the expiry of a period of twenty years from the date on which it was designed.

Article 58 – During the period referred to in Article 52, a surviving spouse who has not been declared legally divorced shall, whatever the marital property scheme and regardless of any beneficial use he holds under Article 38 of Law No. 67-030 of 18 December 1967 on marital property schemes on the other property in the estate, enjoy the beneficial use of any exploitation right of which the author has not disposed, without prejudice to the right of maintenance of heirs who are minors or who do not have legal capacity in accordance with the conditions and proportions specified by Article 55 of Law No. 68-012 of 4 July 1968 on inheritance, wills and

voluntary settlements. This right shall be extinguished where the spouse contracts a new marriage.

Article 59 – After the death of the author, the royalty resale right mentioned in Article 40 shall subsist for the benefit of his heirs and for the beneficial right, referred to in Article 58, of his spouse, to the exclusion of any legatees and successors in title, during the current calendar year and the following seventy years.

TITLE III EXPLOITATION OF RIGHTS

CHAPTER ONE General Provisions

Article 60 – The global assignment of future works shall be null and void.

Article 61 – The performance, publishing and audiovisual production contracts referred to in this title must be in writing. The same applies to performance authorizations granted free of charge. In all other cases, the provisions of Articles 292 to 296 of Law No. 66-003 of 2 July 1966 on the General Theory of Obligations are applicable.

Article 62 – The transfer of copyright is subject to the condition that each of the rights assigned shall be mentioned separately in the deed of assignment and that the scope, purpose, place and duration of the exploitation of the rights assigned shall be defined. Where special circumstances demand, the contract may be validly entered into by an exchange of telegrams provided the sphere of exploitation of the rights assigned are delimited in compliance with the terms of paragraph 1 of this article. The assignment of the rights of audiovisual adaptation must be the subject of a written contract on a separate document from the contract on the publication as such of the printed work. The assignee shall undertake by this contract to seek an exploitation of the rights assigned in compliance with best practice in the profession and, in the case of an adaptation, to pay the author remuneration in proportion to the proceeds received.

Article 63 – The author may assign his rights in his work in whole or in part. This assignment must include a proportional share of the proceeds of the sale or exploitation for the benefit of the author. The remuneration of the author may, however, be assessed as a lump sum in the following cases:

- 1) Where it is impossible in practice to determine the basis for calculating a proportional share;
- 2) Where there are no means of monitoring the application of the share;
- 3) Where the calculation and monitoring costs would be disproportionate to the desired results;
- 4) Where the nature or conditions of the exploitation make it impossible to apply the rule of proportional remuneration, either because the author's contribution does not constitute one of the essential elements of the intellectual creation of the work or because the use of the work is merely incidental to the subject of the exploitation;
- 5) In the event of the assignment of a software program;

6) In the other cases provided for in this Law. It shall also be lawful for the parties, at the request of the author, to convert the rights deriving from the contracts currently in force into lump-sum annuities for periods to be decided on by the parties.

Article 64 – In the event of the assignment of an exploitation right, where the author has suffered loss or damage of over seven-twelfths as a result of damage or an underestimation of the anticipated proceeds from the work, he may prompt a review of the conditions in the contract relating to price. This request may be made only in cases where the work has been assigned for payment of a lump sum. The injury shall be estimated taking into consideration the full extent of the exploitation by the assignee of the works of the author who claims to have been adversely affected.

Article 65 – The clause in a deed of assignment intended to confer the right to exploit the work in a form unforeseeable or unforeseen on the date of the contract must be express and a correlative share of the profits from the exploitation must be stipulated.

Article 66 – In the event of a partial assignment, the successor in title shall substitute for the author in the exercise of the rights assigned, in the conditions, within the limits and for the period specified in the contract, and is obliged to provide a report.

Article 67 – With a view to the payment of the royalties and the remuneration due to them for the previous three years on the occasion of the assignment and the exploitation or use of their works, as defined in Article 5 of this Law, authors, composers and artists shall enjoy the privilege provided for in paragraph 4 of Article 2101 and Article 2104 of the Civil Code.

CHAPTER II

Provisions peculiar to certain contracts

SECTION I

Performance contract

Article 68 – A performance contract is one whereby the author of an intellectual work and his successors in title authorize a natural person or legal entity to represent the said work on conditions decided on by them. A general performance contract is one whereby the body referred to in Article 124 confers on an exploiting party the power to perform, for the period of the contract, the present or future works, constituting the repertoire of the said body on the conditions laid down by the author or his successors in title. In the situation provided for in the preceding paragraph, an exception may be made to the provisions of Article 60.

Article 69 – A performance contract is entered into for a limited period or for a specific number of communications to the public. Save where exclusive rights are expressly provided for, it shall not confer on the impresario any monopoly on exploitation.

The period of validity of the exclusive rights granted by a dramatist cannot exceed five years; the suspension of performances for two consecutive years shall automatically end it. An impresario cannot transfer the benefit of his contract without formal consent given in writing by the author or his representative.

Article 70 – Save as otherwise provided:

- 1) Authorization for the terrestrial broadcast of a work does not include distribution of this broadcast by cable, unless it is done simultaneously and fully by the body that has received this authorization and without any extension of the geographical area stipulated in the contract.
- 2) Authorization to broadcast a work is not the equivalent of authorization to communicate the broadcast of this work in a place accessible to the public.
- 3) Authorization for the terrestrial broadcast of a work does not include its broadcast to a satellite allowing this work to be received through the intermediary of third-party bodies, unless the authors or their successors in title have contractually authorized these bodies to communicate the work to the public; in this case, the broadcasting body shall be exempt from paying any remuneration.
- 4) The authorization to broadcast does not imply authorization to record the broadcast work using instruments that record sound and images. In exceptional cases, however, on account of the national interest they represent or their documentary nature, certain recordings may be authorized. The procedures for making these recordings and using them shall be laid down by the parties or, where there is no agreement, by a decision signed by the Minister for Culture and Communication. These recordings may be stored in the official archives.

Article 71 – An impresario is obliged to declare to the author or his representatives the exact programme of public presentations or performances and to provide them with documentary evidence of his takings therefrom. He must pay the amount of the royalties stipulated on the due dates specified, directly to the author or his representatives. Municipalities, however, for local public fairs, and community education associations approved by the Minister for Education, for sessions organized by them in the context of their work, must enjoy a reduction of these royalties.

Article 72 – An impresario must ensure that the public presentation or performance takes place in technical conditions that ensure respect for the intellectual and moral rights of the author.

SECTION II **Publishing contract**

Article 73 – A publishing contract is an agreement whereby the author of an intellectual work or his successors in title assign on specified conditions to a person known as the publisher the right to make or have made multiple copies of the work, on condition that he publishes and distributes them.

Article 74 – A contract for publication at the author's expense does not constitute a publishing contract within the meaning of Article 73. Under this kind of agreement, the author or his successors in title pay the publisher agreed remuneration, on condition that the latter makes multiple copies of the work in accordance with the modes of expression specified in the contract, and publishes and distributes them. This type of agreement constitutes a work contract governed by convention, custom and the provisions of Articles 1787 ff. of the Civil Code.

Article 75 – An agreement known as a “half-and-half” contract does not constitute a publishing contract within the meaning of Article 73. Under this kind of contract, the publisher is instructed by the author or his successors in title to make, at their expense, multiple copies of the work in the manner and in accordance with the form of expression specified in the contract, and to publish them, in return for a commitment mutually entered into to share the profits and losses from the exploitation, in the proportion stipulated. This kind of contract constitutes a joint venture pursuant to Articles 47 to 50 of the Commercial Code. It is governed by convention and custom.

Article 76 – It is lawful to specify that the author undertakes to grant a preferential right to a publisher for the publication of his future works in clearly defined genres. This right shall be limited for each genre to five new works, calculated from the date of signing of the publishing contract entered into for the first work or on the production achieved by the author within a period of five years calculated from the same date. The publisher must enjoy the right granted to him by informing the author in writing of his decision, within a period of three months from the date on which the latter delivers each definitive manuscript. Where a publisher enjoying the preferential right has successively refused two new works submitted by the author in the genre specified in the contract, the author may immediately and as of right regain his freedom in relation to any future works he produces in this genre. Where he has received advances for his future works from the first publisher, however, he must first refund them.

Article 77 – A contract may provide either for remuneration proportional to the proceeds of exploitation or, in the cases referred to in Articles 63 and 78, for remuneration in a lump sum.

Article 78 – Where book publishing is concerned, the author’s remuneration may be a lump-sum remuneration for the first edition, with the formally expressed agreement of the author, in the following cases:

- 1) Scientific or technical works;
- 2) Anthologies and encyclopaedias;
- 3) Prefaces, annotations, introductions, presentations;
- 4) Illustrations to a work;
- 5) Limited de luxe editions;
- 6) Prayer books;
- 7) At the request of the translator, for translations;
- 8) Low-priced popular editions;
- 9) Low-priced albums for children.

Lump-sum remuneration may also be paid for the assignment of rights to or by a person or undertaking established abroad. Where intellectual works published in newspapers or periodicals of any kind, or by press agencies, are concerned, the remuneration of the author, who is bound to the news publishing company by a contract for the provision of services, may also be fixed as a lump sum.

Article 79 – The personal, written consent of the author is compulsory. Without prejudice to provisions governing contracts entered into by minors and persons of full age under temporary guardianship (persons deprived of legal capacity), consent is even required in the case of an author without legal capacity, save where he is

physically incapable of giving his consent. The provisions the preceding of the preceding paragraph shall not be applicable where the publishing contract is signed by the author's successors in title.

Article 80 – The author must guarantee the publisher peaceful and, save as otherwise agreed, exclusive enjoyment of the right assigned. He is obliged to ensure respect for this right and to defend it against any infringements.

Article 81 – The author must put the publisher in a position to make and distribute the copies of the work.

He must hand over the material to be published to the publisher, within the period specified in the contract, in a form that makes normal production.

Save as otherwise agreed or where it is technically impossible, the material for publication supplied by the author shall remain the property of the author. The publisher shall be responsible for it for a period of one year after production has been completed.

Article 82 – A publishing contract must indicate the minimum number of copies constituting the first print run. This obligation shall not apply, however, to contracts providing for a minimum number of copyrights guaranteed by the publisher.

Article 83 – The publisher is obliged to carry out or effect production under the conditions, in the form and in accordance with the modes of expression stipulated in the contract.

Without the written consent of the author he cannot make any alterations to the work. Save as otherwise agreed, he must ensure that the author's name, pseudonym or mark features on each one of the copies.

In the absence of a special agreement, the publisher must effect publication within a period set in keeping with the practice within the profession.

In the event of a fixed-term contract, the rights of the assignee are automatically extinguished on expiry of the time limit without the need for formal notice. In the three years after this expiry the publisher may, however, sell off, at the normal price, the copies remaining in stock, unless the author prefers to buy these copies for a price that shall be set according to expert opinion or evidence, in the absence of an amicable agreement. This option, open to the first publisher, shall not prevent the author from proceeding with a new publication within a period of thirty months.

Article 84 – The publisher is obliged to give the work steady, ongoing exploitation and commercial distribution, in keeping with professional practice.

Article 85 – The publisher shall be obliged to render accounts. In the absence of special procedures laid down in the contract, the author may require the publisher to produce, at least once a year, a statement indicating the number of copies produced during the financial year and specifying the date and size of the print runs and the number of copies in stock. Save where contrary to normal practice, or otherwise agreed, this statement shall also indicate the number of copies sold by the publisher, the number of copies that are unusable or have been destroyed by unforeseeable circumstances or force majeure, and the amount of any royalties payable or paid to the author.

Article 86 – The publisher shall be obliged to provide the author with any supporting documents suitable for establishing the accuracy of his accounts. Where the publisher fails to provide the necessary supporting documents, he shall be obliged to do so by the court, pursuant to Article 15 of the Commercial Code.

Article 87 – Entry into bankruptcy reorganization proceedings by the publisher does not lead to the termination of the contract. Where a business continues to be operated by a receiver, under the conditions stipulated in Articles 61 ff. of Decree No. 55-583 of 20 May 1955, the receiver is bound by all the obligations on the publisher. Where the business is sold, pursuant to Article 62 of Decree No. 55-586 of 20 May 1955, the purchaser is likewise bound by the obligations on the seller. Where the business does not continue to be operated by the receiver and the said business has not been assigned within a period of one year from the court declaration of bankruptcy, the publishing contract may, at the request of the author, be terminated. The receiver may not undertake the remaindering or other disposal of copies that have been manufactured under the conditions laid down in Articles 61 and 62 of Decree No. 55-586 of 20 May 1955 until at least fifteen days after he has notified the author of his intention, by registered letter with a request for advice of receipt. The author shall have a right of first refusal on all or some of the copies. In the absence of agreement, the buyback price shall be set by expert opinion.

Article 88 – The publisher may not transfer the benefit of publishing contract to third parties, independently of his business concern, either free of charge or for a consideration, or by means of a transfer to company, without first having obtained the authorization of the author. In the event of the disposal of the business, if such disposal is liable to be seriously detrimental to the material or moral interests of the author, the latter is entitled to obtain reparation even in the form of the termination of the contract. Where the publishing business was operated by a company or was in co-ownership, the award of the business to one of the former partners or one of the co-owners as a result of the liquidation or division shall under no circumstances be deemed to be an assignment.

Article 89 – A publishing contract shall come to an end regardless of the situations provided for in ordinary legislation or by the preceding articles when the publisher proceeds to destroy all the copies. The contract shall be terminated as of right where, when the author has formally notified him of a suitable time limit, the publisher has not proceeded to publish the work or, where stocks have run out, to republish it. A publication is deemed to be out of print where two requests for the delivery of copies addressed to the publisher have not been met within three months. In the event of the death of the author, where a work is incomplete the contract shall be rescinded with respect to the unfinished part of the work, save as agreed between the publisher and the author's successors in title.

SECTION III

Contract for audiovisual production

Article 90 – The producer of an audiovisual work shall be the natural person or legal entity who takes the initiative and the responsibility for producing the work.

Article 91 – In addition to the author of the musical composition with or without words, a contract binding a production to the authors of an audiovisual work shall, save as otherwise provided and without prejudice to rights granted to the author by the provisions of Articles 2, 24, 25, 30, 39, 59, 61, 66, 76 and 79, imply the assignment of the exclusive exploitation rights in the audiovisual work to the producer. A contract for audiovisual production shall not involve the assignment to the producer of the graphic or theatrical rights in the work. The contract shall specify a list of the elements used in the production of the work that have been kept and the procedures for keeping them.

Article 92 – Remuneration is payable to the authors for each form of exploitation. Subject to the provisions of Article 63, where the public pays a price to receive the communication of a specified and identifiable audiovisual work, the remuneration shall be proportional to this price, taking into account any decreasing rates granted by the distributor to the operator, and it shall be paid to the authors by the producer.

Article 93 – The author shall guarantee the producer the peaceful enjoyment of the rights assigned to him.

Article 94 – The producer shall be obliged to ensure that the audiovisual work is exploited in accordance with professional practice.

Article 95 – At least once a year the producer shall provide the author and co-authors with a statement of the proceeds derived from the exploitation of the work for each form of exploitation. At their request he shall supply them with all supporting documents suitable for establishing the accuracy of the accounts, in particular a copy of the contracts whereby he assigns to third parties all or part of the rights at his disposal.

Article 96 – Save as otherwise agreed, each of the authors of an audiovisual work may freely dispose of the part of the work that constitutes his own personal contribution with a view to its exploitation in a different genre within the limits fixed by Article 12.

Article 97 – Entry into entry into bankruptcy reorganization proceedings by the producer does not lead to the termination of a contract for audiovisual production. Where the production or exploitation of the work is continued by the receiver under the conditions specified in Articles 61 ff. of Decree No. 55-583 of 20 May 1955, the receiver is bound by all the producer's obligations, in particular with regard to the co-authors. In the event of the assignment of all or part of the undertaking, or liquidation, the administrator, the debtor or the liquidator, as the case may be, is obliged to establish a separate lot for each audiovisual work that may be assigned or auctioned. He is obliged to notify each of the authors and co-producers of the work by registered letter, one month before any assignment or sale by public auction, on penalty of invalidity. The purchaser is likewise bound by the obligations of the assignor. The author and co-authors have right of first refusal on the work, save where one of the co-producers declares himself a purchaser. In the absence of agreement, the purchase price shall be set by expert opinion. Where the activity of the undertaking has ceased more than three months previously, or where liquidation has been

declared, the author and co-authors may request the rescission of the contract for audiovisual production.

SECTION IV Advertising contract

Article 98 – In the case of a commissioned work contract used for advertising, save as otherwise provided the agreement between the producer and the author shall involve the assignment to the producer of the exploitation rights in the work, provided this contract specifies the separate remuneration payable for each form of exploitation of the work, in particular on the basis of the geographical area, the period of exploitation, the size of the print run and the nature of the medium.

BOOK II RIGHTS RELATED TO COPYRIGHT

SINGLE TITLE

CHAPTER ONE General Provisions

Article 99 – Related rights shall not interfere with authors' rights. Consequently, no provision in this title may be construed in such a way as to limit the exercise of copyright by copyright-holders.

Article 100 – In the absence of a person with an interest in instituting proceedings, the Minister for Culture and Communication may refer a case to the judicial authorities, in particular where there is no known successor in title or in the event of vacant succession or escheat.

CHAPTER II Performers' rights

Article 101 – To the exclusion of supporting performers regarded as such in professional practice, performers shall be authors, singers, musicians, dancers and other persons who present, sing, recite, declaim, act or in any other way perform literary or artistic works, a puppet show or expressions of folklore.

Article 102 – A performer is entitled to respect for his name, his occupation and his performance.
This inalienable and inderogable right shall belong to him personally. It is transferable to his heirs for the protection of the performance and of the memory of the deceased.

Article 103 – Written authorization from the performer is required for the fixation, reproduction and communication to the public of his performance, and for any separate use of the sound and image of the performance, where they have been fixed, and for the distribution to the public by sale or any other transfer of property or by rental or public lending. Except with regard to a lending right, Article 38(2) and (3)

shall apply by analogy. This authorization and the remunerations arising from it shall be fixed by a contract signed by the producer and the performer.

The duration of a performer's proprietary rights is fifty years from the first of January of the calendar year following that of the performance, in the case of performances that are not fixed on phonograms or videograms, or, for performances fixed on the latter, the calendar year following that of the fixation.

Article 104 – This contract shall set separate remuneration for each form of exploitation of the work.

Article 105 – Where neither the contract nor a collective agreement mentions remuneration for one or more forms of exploitation, the level of said remuneration shall be fixed by reference to rates established by means of specific agreements entered into, in each sector of activity, between the performers' organizations and producers representing the profession.

Article 106 – Any dispute between two or more parties to a contract concerning the application of Article 103, which is not settled by negotiation, shall, at the request of one of the parties to the dispute, be referred to a civil court for a ruling on it.

CHAPTER III **Rights of producers of phonograms**

Article 107 – The producer of a phonogram is the natural person or legal entity who takes the initiative and the responsibility for the first fixation of a sound sequence. Authorization from the phonogram producer shall be required before any direct or indirect reproduction, distribution to the public by sale, or by any other property transfer, or by rental or public lending, or communication to the public of his phonogram other than those referred to in Article 108. Except in relation to the lending right, Article 38(2) and (3) shall apply by analogy to distribution rights. The duration of a phonogram producer's rights shall be fifty years from the first of January of the calendar year following that of the fixation.

CHAPTER IV **Provisions common to performers and to the producers of phonograms and videograms**

Art. 108 – Where a phonogram or videogram has been published for commercial purposes, the performer and the producer cannot oppose:

- 1) its direct or indirect communication in a public place, provided it is not used in entertainment;
 - 2) its broadcast, or the full, simultaneous distribution of this broadcast by cable.
- These uses for commercial purposes of public phonograms and videograms fixed in Madagascar, subject to agreements and treaties signed, entitle performers and producers to remuneration.

This so-called equitable remuneration shall be paid by the persons who use the phonograms and videograms published for commercial purposes under the conditions laid down in paragraphs 1 and 2 of this article. It shall be based on the proceeds from the exploitation or, failing that, shall be assessed as a lump sum in the

situations provided for in Article 63. It shall be divided in half between the performers and the producers of phonograms or videograms.

Article 109 – The rate of remuneration shall be established by specific agreements for each branch of activity between the organizations representing performers, the producers of phonograms and videograms and the persons using the phonograms and videograms under the conditions stipulated in Article 108.

These agreements must specify the procedures whereby the persons using the phonograms and videograms under these same conditions must discharge their obligation to provide the copyright fee collection society with the exact programme of the uses they are making of these phonograms and videograms and all the documentary elements essential to the allocation of the fees.

The signing of these agreements may be made compulsory for all those concerned by order of the Minister for Culture and Communication. The period of validity of these agreements shall be between one and five years.

Article 110 – The application of Article 109 shall be fixed by order of the Minister for Culture and Communication.

Article 111 – The remuneration specified in Article 108 shall be paid for and on behalf of the author's successors in title and shared out among them by the body referred to in Article 124.

CHAPTER V

Rights of producers of videograms

Article 112 – A producer of videograms is a natural person or legal entity who takes the initiative and the responsibility for the first fixation of a sequence of images, with or without sound. Authorization from the videogram producer is required before any direct or indirect reproduction, distribution to the public by sale or by any other property transfer, or by rental or public lending, or communication to the public, of his videogram. Article 38(2) and (3) shall apply by analogy. The rights of a producer of a videogram recognized by virtue of the preceding paragraph, the rights of an author and the rights of the performers at his disposal in the work fixed on this videogram cannot be assigned separately. The duration of a videogram producer's rights shall be twenty years from the first of January of the calendar year following that of the fixation.

CHAPTER VI

Rights of audiovisual communication companies

Article 113 – The fixing and reproduction of its programmes, together with the distribution to the public by sale or by any other property transfer of their television programmes or by rental or public lending, their rebroadcasting and their communication to the public in a publicly accessible place against payment of an entry fee, are subject to the authorization of an audiovisual communication company. Article 38(2) and (3) shall apply by analogy to the distribution rights. The duration of an audiovisual communication company's rights shall be twenty years from the first of January of the calendar year following that of the broadcast.

CHAPTER VII

Limitation of the rights of the holders of related rights

Article 114 – Performers cannot prohibit the reproduction or public communication of their performance where this is incidental to an event constituting the main subject of a sequence of a work or of an audiovisual document.

Article 115 – The beneficiaries of rights granted in this title cannot prohibit:

- 1) private performances given free of charge and exclusively within the family circle;
- 2) reproductions strictly reserved for the private use of the person making them and not intended for collective use;
- 3) subject to sufficient elements to allow the identification of the source:
 - analyses and short quotations warranted by the critical, polemical, pedagogical, scientific or informative nature of the work into which they are incorporated;
 - reviews in the press;
 - the dissemination, even in full, by way of giving information on current events, of speeches intended for the public in political, administrative, judicial or academic assemblies, or in public meetings of a political nature or official ceremonies;
- 4) parody, pastiche or caricature, taking into account the laws of the genre.

BOOK III

GENERAL PROVISIONS

TITLE ONE

REMUNERATION FOR PRIVATE COPYING AND REPROGRAPHY

SINGLE CHAPTER

Article 116 – The authors and performers of works fixed on phonograms or videograms, and the producers of these phonograms or videograms, are entitled to remuneration for the reproduction of the said works carried out under the conditions specified in Article 43(4) and Article 115(2). Authors are entitled to remuneration for the reprographic reproduction of their works carried out under the conditions specified in Article 43(4).

Article 117 – Subject to international agreements, the right to remuneration referred to in Articles 108 and 116 is shared between the authors, performers and producers of phonograms or videograms for phonograms and videograms fixed for the first time in Madagascar.

Article 118 – Remuneration for private copying and reprography, under the conditions specified below, shall be assessed in accordance with the lump-sum method provided for in Article 63(2).

Article 119 – The remuneration specified in Article 118 shall be paid by the manufacturer or importer of reproduction machines, including reproduction machines and recording media that can be used for the reproduction for private use of works and objects protected by related rights fixed on phonograms or videograms, at the time of entry at the border for importers and at the time of putting into circulation in Madagascar for local manufacturers. The amount of the remuneration shall be based

on the type of the reproduction machine, including reprographic machines, and for phonograms and videograms it shall be based on the medium and the length of the recording it allows.

Article 120 – The types of medium, the remuneration rates and the procedures for paying the remuneration shall be determined by a commission presided over by the Minister for Culture and Communication and composed in addition as follows:

- half shall consist of persons appointed by organizations representing the beneficiaries of the remuneration right,
- one-sixth shall consist of persons representing the body administering copyright and related rights,
- one-sixth shall consist of persons appointed by the organizations representing the manufacturers or importers of the machines and media referred to in the first paragraph of the preceding article,
- one-sixth shall consist of persons appointed by organizations representing consumers.

Article 121 – The remuneration provided for in Article 116 shall be paid for and on behalf of the author's successors in title by the body referred to in Title II of this book. It shall be shared out among the successors in title by the body referred to the preceding paragraph, on the basis of the private reproductions made of each work.

Article 122 – Remuneration for the private copying of phonograms shall be shared out as follows:

- half to the authors,
- one quarter to the performers, and
- one quarter to the producers as reimbursement under the conditions set out in Article 123 below. Remuneration for the private copying of videograms shall be distributed in equal shares to the authors, performers and producers as reimbursement under the conditions set out in Article 123. Remuneration for reprography shall be shared out as follows:
 - three-quarters to the authors, and
 - one quarter for the subsidy fund for the publication of literary works. The aforementioned remuneration and the administration of the reimbursement fund shall be allocated to the body referred to in Article 124 which shall establish the operating rules.

Article 123 – Remuneration for private copying shall give rise to a reimbursement where the recording medium is acquired for their own use or production by:

- 1) legally constituted audiovisual communication companies;
- 2) legally constituted producers of phonograms or videograms and the persons who reproduce these phonograms or videograms for or on behalf of their producers;
- 3) legal entities or bodies, a list of which shall be drawn up by the Minister for Culture and Communication, that use the recording media for the purpose of assisting visually or aurally impaired persons.

TITLE II COLLECTING SOCIETIES

Article 124 – The collection and sharing out of copyright fees and the defence of the material interests of authors shall be entrusted to a public body comprising authors and holders of related rights, which shall be created by decree and shall be the only one allowed to operate on the territory of the Republic of Madagascar. This body shall substitute as of right for any professional body of authors and holders of related rights in the execution of outstanding contracts with users or users' associations on the territory of the Republic of Madagascar.

Article 125 – This body shall have its own legal personality, its own board of management and its own independent budget. The State shall have merely a supervisory role in relation to it, in other words, its control shall be strictly legal and not expedient.

Article 126 – The above-mentioned body shall exclusively administer the proprietary rights of authors and of the holders of related rights.

Article 127 – The rules relating to the establishment and operation of the collective administration organization shall be the subject of an implementation decree drawn up by the Minister for Culture and Communication.

Article 128 – Contracts entered into by the body representing authors or the holders of related rights, provided for in Article 124, to enforce those rights, with the users of all or part of their repertoire, are civil deeds.

Article 129 – The collecting society must keep the full repertoire of the Madagascan and foreign authors and composers it represents available to any users. It must make available to authors and holders of related rights an annual report on its activities and information on the contracts it has entered into on their behalf.

TITLE III PROCEDURES AND SANCTIONS

CHAPTER ONE General Provisions

Article 130 – Any challenges to the application of the provisions of this Law falling under the jurisdiction of the judiciary shall be brought before the appropriate court, without prejudice to the right of the injured party to bring proceedings before the criminal court pursuant to the ordinary rules of law.

Article 131 – The public body responsible for safeguarding the copyright and related rights referred to in Article 124 shall be empowered to institute legal proceedings to defend the rights for which it is responsible.

Article 132 – In addition to statements by police detectives or officials of the judicial police, proof of the factual nature of any infringement of the provisions of Books I, II or III of this Law may result from the reports of sworn agents from the body

responsible for safeguarding the copyright and related rights referred to in Article 124.

CHAPTER II

Confiscation of works infringing copyright

Article 133 – Police commissioners and, in places where there is no police commissioner, the court with territorial jurisdiction, is obliged, at the request of any author of a work or holder of a related right protected by Books I and II of this Law, or his licensees or successors in title, to seize the copies constituting an unlawful reproduction of this work or of an object protected by the related rights. Where the seizure must have the effect of delaying or suspending presentations or public performances that are already underway or have been announced, special authorization must be obtained from the president of the civil court, by an order issued on request. The president of the civil court may also, in the same manner, order:

- 1) the suspension of any manufacturing currently underway to reproduce unlawfully a work or an object protected by the related rights;
- 2) the seizure, whatever the day or the hour, even outside the provisions of Article 143 of the Code of Civil Procedure, of copies constituting an unlawful reproduction of the work or object protected by related rights that has been or is being produced and of the proceeds achieved, together with the machines or tools used for the unlawful reproduction;
- 3) the seizure of the proceeds from any exploitation provided for in this Law by any means whatsoever, of an intellectual work or an object protected by related rights, effected in violation of the copyright or related rights referred to in Article 426 of the Penal Code. In the orders referred to above the president of the civil court may order the person making the seizure first to require suitable security.

Article 134 – Within thirty days of the date of the record of the seizure provided for in the first paragraph Article 133 or of the date of the order provided for in the same article, the distrainee or garnishee may request the president of the civil court to lift the attachment or to limit its effects, or to authorize the resumption of the manufacture or of the presentations or public performance, under the authority of an administrator appointed receiver for and on behalf of the person to whom the products of this manufacture or this exploitation belong. Where he agrees to the request from the distrainee or garnishee, the president of the civil court, issuing an interim order, may order the applicant to pay a sum allocated for surety for the damages that may be claimed by the author or the holder of a related right.

Article 135 – Where the person making the seizure fails to bring the case before the appropriate court within thirty days of the seizure, at the request of the distrainee or garnishee an interim order for the lifting of this seizure may be issued by the president of the civil court.

Article 136 – In the case of a software program, the confiscation of works infringing copyright shall be ruled out by virtue of an order issued on request by the president of the civil court. Where appropriate, the president shall authorize the attachment of real property. The process server or police commissioner may be assisted by an expert appointed by the applicant. In the absence of a writ of summons or a summons within

a fortnight of the seizure, the confiscation of the works infringing copyright shall be invalid. In addition, the police commissioners are obliged, at the request of any designer of a software program protected by this Law or his successors in title, to effect a seizure-description of the pirated software program. This seizure-description may be carried out using a copy.

CHAPTER III Garnishment

Article 137 – Where the proceeds from exploitation due to the author of an intellectual work or the holder of a related right have been garnished, the president of the civil court may order the payment, as maintenance, to the author or holder of the related right respectively, of a certain sum or of a specified portion of the sums seized.

Article 138 – Insofar as they are intended for maintenance, it shall not be possible to seize the sums due, for the financial exploitation or the assignment of copyright in literary or artistic works, to all authors, composers or artists or to their surviving spouse who has not been declared legally divorced, or to their under-age children in their capacity as successors in title.

Article 139 – The unseizable proportion of these sums cannot under any circumstances be lower than four-fifths where they are at most equal annually to the highest amounts provided for in application of Chapter V, Title IV, Book I of the Labour Code.

Article 140 – The provisions of this chapter shall not obstruct garnishments effected by virtue of the provisions of the Civil Code concerning maintenance claims.

CHAPTER IV Royalty resale right

Article 141 – In the event of a violation of the provisions of Article 140, the purchaser and ministry officials may be ordered, jointly and severally, to pay damages to the beneficiaries of the royalty resale right.

CHAPTER V Penal provisions

Article 142 – Once the infringements referred to in Article 145 of this Law have been ascertained, competent officers of the judicial police may seize unlawfully produced phonograms and videograms, copies and objects unlawfully produced or imported, and materials specially installed with a view to such misconduct.

Article 143 – Any publication of writings, of a musical composition, a drawing, a painting or any other production, printed or engraved, in whole or in part, and any other production covered by related rights such as videograms and phonograms, in defiance of the laws and regulations on the ownership of authors and the holders of related rights, is an infringement of copyright and every infringement of copyright is an offence. The infringement, on Madagascan territory, of the copyright on works and

objects protected by the related rights published in Madagascar or abroad shall be punished with a fine of between FMG 100,000 and FMG 10,000,000 and/or imprisonment of between six months and five years. The exporting and importing of infringing works or objects protected by the related rights shall be punishable by the same sanctions.

Article 144 – Any exploitation referred to in Title II, Chapter II of the law on literary and artistic property or Book II concerning related rights, by any means whatsoever, of an intellectual work or of an object protected by related rights in violation of copyright or related rights as defined and regulated by law, also constitutes an infringement of copyright.

Article 145 – Any fixation, reproduction, communication or distribution to the public, whether free of charge or for a consideration, or any broadcast of a performance, of a phonogram, of a videogram or of a programme made without the authorization, where it is required, of the performer, the producer of the phonograms or videograms or of the audiovisual communication company, shall be punished by imprisonment of between six months and five years and/or a fine of between FMG 100,000 and FMG 10,000,000. Any importing or exporting of phonograms or videograms made without the authorization of the producer or the performer, where such authorization is required, shall be punished by the same penalties. Failure to pay the remuneration due to the author, the performer or the producer of phonograms or videograms, for private copying or for public communication, or for the broadcasting of phonograms, shall be punished by the fine referred to in the first paragraph.

Article 146 – Where it is established that the guilty party has habitually performed the acts referred to in the three preceding articles, the penalty shall be two to five years' imprisonment and/or a fine of between FMG 1,000,000 and FMG 20,000,000.

Article 147 – In the event of a repetition of the offences referred to in the four preceding articles, the penalties incurred shall be doubled. In addition, the court may order the definitive or temporary closure of the establishment operated by the convicted person. Where this closure has been ordered, the staff must reserve compensation equal to their salary, supplemented by all benefits in kind, during the period of the closure, up to a maximum of six months. Where collective or individual agreements provide for a higher amount of compensation after redundancy, that is the sum that shall be payable. Any violation of the provisions of the two preceding paragraphs shall be punished by imprisonment of between one and six months and/or a fine of between FMG 75,000 and FMG 750,000. In the event of repeat offending, the penalties shall be doubled.

Article 148 – In all the situations provided for in the five preceding articles, moreover, the confiscation shall be imposed on the convicted persons of sums equal to the amount of the share in the proceeds obtained by the infringement and that of all the pirated or unlawfully reproduced phonograms, videograms, objects or copies and the material specially installed for the commission of the offence.

At the request of the complainant the court may order the publication of the conviction and sentence, either in full or extracts thereof, in the newspapers of his choice and the posting of said judgments in the places indicated by him, in particular

on the doors of the domicile and of all the premises or theatres of the persons convicted, at the expense of the latter, while the cost of this publication shall not, however, exceed the maximum amount of the fine incurred. Where posting is ordered the court shall fix the dimensions of the poster and the typographic characters that must be used for printing it. The court must set the period during which this posting is to be kept up, a period that must not exceed fifteen days. The removal, concealment or tearing up of posters, in whole or in part, shall be punished by a fine of between FMG 5,000 and FMG 15,000. In the event of repeat offending, the fine shall be increased to between FMG 20,000 and FMG 100,000, and imprisonment of between eleven days and one month may be ordered. Where the removal, concealment or tearing up of the posters, in whole or in part, has been done voluntarily by the convicted person, at his instigation or on his orders, the judgments relating to the posting of notices at the expense of the convicted person shall again be fully enforced.

Article 149 – In all the situations provided for in the six preceding articles, the infringing material and the proceeds that have given rise to confiscation shall be returned to the victim or his successors in title to compensate them for the damage done to them; the surplus from their compensation or the full compensation, where there is no confiscation of material or of proceeds, shall be settled in the ordinary way. Infringing objects shall be publicly destroyed.

Article 150 – Where the penalty handed down for the offences referred to in Articles 143 to 149 is a fine, judges must at the same time hand down a prison sentence as a substitute for the fine, lest the latter should fail to be paid.

Article 151 - This law shall be published in the Official Gazette of the Republic.

It will be enforced as State Law.

Promulgated in Antananarivo,
18 September 1995

Pr ZAFY Albert
