

**MUSIC INDUSTRY SUPPORT PROGRAM OF THE PRIVATE INVESTMENT
PROMOTION PROJECT
JANUARY 28, 2007**

**LAW No. 2008-09 OF JANUARY 25, 2008 ON COPYRIGHT AND
NEIGHBORING RIGHTS IN SENEGAL**

Explanatory statement

The preliminary draft submitted to you takes an entirely original approach that has few precedents in the world and for which support has been expressed by all those involved in the Senegalese cultural world, who have become aware that the potential of cultural industries can be realized only within a secure legal environment that is conducive to the blossoming of creativity and the promotion of vital investment.

This preliminary draft embodies three basic ideas:

(1). First, Law No. 73-52 of December 4, 1973, which currently governs copyright, remains relevant in many respects. For this reason, a number of its provisions are found in the new text.

(2). Second, in order to comply with its international obligations, Senegal must bring its laws into line with certain conventions. In chronological order, these are the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of October 26, 1961; the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement - the intellectual-property-related annex to the Marrakesh Agreement Establishing the World Trade Organization of April 14, 1994); and the two World Intellectual Property Organization (WIPO) treaties of December 20, 1996 known as the Internet Treaties. Two sets of provisions have arisen from the aforementioned aim. First, the text is novel in that it introduces into Senegalese law the protection of neighboring rights to copyright that are afforded to those that assist in literary and artistic creation, namely performers, producers of phonograms and broadcasting organizations. It also includes some very important provisions, based essentially on the TRIPS Agreement, and relating to procedures and penalties, the purpose of which is to provide Senegal with a mechanism for effective prevention of the scourge of counterfeiting, in particular through the establishment of more severe penalties.

(3). The third central tenet of the preliminary draft is the personalized focus of the protection of authors and performers. In contrast to the philosophy underlying Anglo-American copyright, the interested parties are placed at the center of the legislation through a clear statement that they are the source of the intangible wealth which various users will then enjoy. Hence the choice to enshrine the rights of employed authors and officials; to relinquish the category of collective work, which, by granting rights to a legal entity, is incompatible with the personalized approach; to confirm the existence of strong and perpetual moral rights; to provide a broad and synthesized definition of the economic prerogatives granted to the various rights owners (eliminating any doubt as to whether such a definition includes digital exploitation); and to elaborate a contract law that can compensate for the financially disadvantaged position of authors and performers in comparison with those who exploit their work. This principled position, however, does not prevent consideration of the legitimate claims of those who, through their investment, make it possible to create this cultural wealth. Thus the employer benefits, in accordance with the company's needs, from a presumption of assignment of the rights in

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the work created by its employee, and the producer of an audiovisual work himself or herself is deemed to be an assignee. For the same reason, the concept of collective management – which, within a private law framework, must meet the dual challenges of effectiveness and transparency – has been updated.

Lastly, it has been deemed necessary, for the sake of consistency, to devote a separate part – part four – to the protection of folklore and the *domaine public payant*, which, from a legal point of view, are issues on the margins of copyright but which to date have been considered sufficiently closely connected to the subject of copyright to be dealt with in the same framework.

Such is the structure of the draft law submitted for your approval.

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Part one – Copyright**Title I. – Principles**

Article 1. Nature of copyright. – The author of a work of the mind shall enjoy in that work an exclusive incorporeal property right that shall be enforceable against all persons.

Article 2. Absence of formality. – 1. Copyright shall arise from the mere fact of creation.

2. A work shall be deemed to have been created, irrespective of any public disclosure or physical fixation, by the mere fact of realization of the author's concept, even if incomplete.

Article 3. Dual nature of copyright. – Copyright shall include attributes of both a moral and an economic nature.

Article 4. Relationship between corporeal property and incorporeal property. – 1. The incorporeal property right set out in Article 1 shall be independent of ownership of the physical object.

2. Ownership of such object shall not vest in the owner any of the rights afforded by the present Law.

3. Similarly, ownership of copyright shall not vest in the copyright owner any right of ownership of such object.

4. The copyright owner may be authorized by the courts, on terms determined by them, to access the physical object to the extent necessary for the exercise of his rights.

Title II. – Subject matter of copyright**Chapter I. – Protected works**

Article 5. Irrelevance of form of expression, merit or purpose. - The provisions of the present Law shall protect the rights of authors in all works of the mind, whatever their form of expression, merit or purpose.

Article 6. List of protected works of the mind. – Intellectual creations of a literary or artistic nature shall be considered works of the mind within the meaning of the present Law, in particular:

1. works using language, whether literary, scientific or technical, including computer programs, and whether written or oral;

2. dramatic works and other works intended for stage presentation and productions thereof;

3. choreographic works, circus acts and feats and dumb-show works;

4. musical works with or without words;

5. works consisting of sequences of moving images, with or without sound, known as audiovisual works;

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6. works of the visual arts, including works of drawing, painting, sculpture, architecture, engraving and lithography, photographic works and works of applied art such as creations of fashion, weaving, ceramics, woodwork, ironwork or jewelry;
7. geographical maps and plans, sketches and three-dimensional works relating to geography, topography, architecture and science.

Article 7. Originality. – 1. Works of the mind may enjoy protection only if they are original.

2. "Originality" means the stamp of the author's personality.

Article 8. Derivative works. – 1. A work derived from a pre-existing work shall give rise to copyright if it is original.

2. Translations and adaptations shall be protected under this Article.

3. The same shall apply to anthologies and collections of miscellaneous works or data, such as databases, whether in machine-readable or any other form, which, by reason of the selection or arrangement of their contents, constitute original works.

Chapter II. – Exclusions from copyright protection

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Article 10. Ideas. – Copyright protection under the present Law shall not extend to ideas, procedures, methods of operation or mathematical concepts as such.

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Title III. – Copyright owners

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Article 13. Effect of marriage arrangements. – Where the author is married in community of property, he shall retain moral rights and economic rights; royalties from the exploitation of his works shall become common property.

Article 14. Presumption arising from disclosure. – Authorship shall belong, unless proved otherwise, to the person under whose name the work is disclosed.

Article 15. Derivative works. – Copyright in a derivative work under Article 8 shall be exercised subject to the copyright arising from the pre-existing work.

Article 16. Anonymous and pseudonymous works. – 1. The authors of anonymous and pseudonymous works shall be represented in the exercise of their rights by the original editor or publisher, until such time as they reveal their true identity and prove their authorship.

2. The declaration of identity referred to in the previous paragraph may be made by will; however, any rights previously acquired by third parties shall be maintained.

3. The provisions of the previous two paragraphs shall not apply if the pseudonym adopted by the author leaves no doubt as to his true identity.

Chapter II. – Works created by an employee or an official

Section I. – Works created by an employee

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Article 18. Presumption of assignment. – Economic rights in a work created by an employee in the context of his employment shall be presumed to be assigned to the employer under the work contract, insofar as the employer's usual activities at the time of creation of the work give grounds therefor. An employer that exploits the rights thus assigned shall pay remuneration separate from salary. In the absence of agreement between the parties, the amount of such remuneration shall be determined by the competent court.

Section II. Works created by an official

Article 19. Initial ownership. – Copyright in a work created by an official shall be granted to that official.

Article 20. Legal assignment for public service needs. – Insofar as is strictly necessary to carry out a public service task, economic rights in a work created by an official in the performance of his functions or pursuant to instructions received shall, from the time of creation, be automatically assigned to the office for which the interested party works.

Chapter III. Works created in implementation of a commission contract

Article 21. Initial ownership. – The existence of a contract for hire, called a commission contract, pursuant to which the author undertakes to deliver a work in return for remuneration, shall in no way derogate from the enjoyment of copyright.

Article 22. Transfer of corporeal property. – Transfer of ownership of the physical medium of a work of the mind shall not in itself entail any assignment of the economic rights of the author.

Chapter IV. – Works of joint authorship

Article 23. Definition of a work of joint authorship. – A work that is the product of collaboration between two or more authors shall be deemed a work of joint authorship, irrespective of whether it constitutes an indivisible whole or consists of autonomously created parts.

Article 24. Rights in a work of joint authorship. – 1. The economic rights and moral rights in a work of joint authorship shall be owned jointly by all the authors.
2. The joint authors shall exercise said rights by common accord.
3. In the event of failure to agree, the courts shall decide.
4. Each of the joint authors shall be free to prosecute, on his own behalf and without the intervention of the others, any infringement of his economic rights or moral rights and to seek damages for himself.

Article 25. Rights in contributions. – Where a joint author's personal contribution is identifiable, he or she may, unless otherwise agreed, exploit it separately without, however, prejudicing the exploitation of the common work.

Article 26. Audiovisual work. – 1. An audiovisual work created by more than one author shall be a work of joint authorship.
2. Unless proved otherwise, the following shall be presumed to be the joint authors of such work:
(a) the author of the script;
(b) the author of the adaptation;
(c) the author of the dialogue;
(d) the author of the musical compositions, with or without words, specially composed for the work;
(e) the director.

Title IV. – Substance of copyright

Chapter I. – Moral rights

Article 27. Nature of moral rights. – 1. Moral rights, which are the expression of the link between the work and its author, shall attach to the person of the author.
2. However, moral rights may be transferred *mortis causa* in accordance with the rules set out in part one, title VII, of the present Law.
3. Moral rights shall be inalienable and shall subsist even after the assignment of economic rights. They may not be prematurely surrendered.
4. Moral rights shall be perpetual.

Article 28. Right of disclosure. – The author alone shall have the right to disclose his work.

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Article 29. Right to reconsider. – 1. Notwithstanding assignment of his right of exploitation, the author shall enjoy the right of reconsideration, even after publication of his work, with respect to the assignee.

2. However, the author may exercise that right only on condition that he indemnify the assignee beforehand for any prejudice which the reconsideration may cause him.

3. If the author decides to have his work published after having exercised the right to reconsider, he shall be required to offer his rights of exploitation in the first instance to the assignee whom he originally chose and under the conditions originally determined.

Article 30. Right to claim authorship. – 1. The author shall have the right to require that his name be indicated, to the extent and in a manner compatible with fair practice, on any copy of the work and whenever the work is made available to the public.

2. The author may demand to remain anonymous or to use a pseudonym.

Article 31. Right to respect for a work. – The author shall have the right to respect for the integrity and spirit of his work. No modification may be made to the work without the author's written consent. No one may make the work available to the public in a form or under circumstances that may alter the meaning or perception thereof.

Article 32. Audiovisual works. – 1. An audiovisual work shall be considered completed when the final edited version has been established by common consent between the director and the producer.

2. If one of the joint authors refuses to complete his contribution to an audiovisual work or is unable to complete it owing to circumstances beyond his control, he may not object to the use of that part of his contribution already in existence for the purpose of the completion of the work.

Chapter II. – Economic rights

Section I. – Right of exploitation

1. – Exclusive rights of the author

Article 33. Principles. – 1. The author shall enjoy the exclusive right to exploit his work in any form and to derive monetary profit therefrom.

2. The author's right of exploitation shall include the right of communication to the public, the right of reproduction, the right of distribution and the right of rental.

Article 34. Right of communication to the public. – 1. The author shall have the exclusive right to authorize the communication to the public of his work by any means, in particular broadcasting, distribution by cable or satellite, provision on demand in such a way that members of the public may access the work from a place and at a time individually chosen by them, and, for graphic or three-dimensional works, exhibition of the physical object.

Translated from French

2. This right shall apply whether the work is communicated in whole or in part and whether the work itself or a work derived therefrom, in particular by means of translation or adaptation, is communicated.

Article 35. Right of reproduction. – 1. The author shall have the exclusive right to authorize the fixation of his work, by any means, in a physical form that allows it to be communicated to the public.

2. This right shall apply whether the work is reproduced in whole or in part and whether the work itself or a work derived therefrom, in particular by means of translation or adaptation, is reproduced.

3. The right of reprographic reproduction shall be assigned, through publication of the work, to a collective management society approved by the Ministry of Culture, which shall have sole authority to conclude any agreement with users.

Article 36. Right of distribution. – 1. The author shall have the exclusive right to authorize the distribution, through sale or other means, of physical copies of his work.

2. This right shall be exhausted by the first sale or any other transfer of ownership of copies by the author or with his consent within the West African Economic and Monetary Union (UEMOA) region.

Article 37. Right of rental. – 1. The author shall have the exclusive right to authorize the rental of copies of his work. "Rental" means making available for use for a limited time and for direct or indirect economic or commercial advantage.

2. An author who assigns his right of rental shall retain the right to obtain equitable remuneration in respect of the rental. The right to remuneration may not be surrendered. The management thereof may be entrusted to a collective management society.

2. Exceptions to the right of communication to the public and the right of reproduction

A – Exceptions to the right of communication to the public

Article 38. Communication within the family circle. – The author may not prohibit communication of the work free of charge within a family circle.

Article 39. Communication during a religious service. – The author may not prohibit the communication of the work free of charge during a religious service in premises reserved for that purpose.

B – Exceptions to the right of reproduction

Article 40. Reproduction for private use. – 1. The author may not prohibit reproduction intended for strictly personal and private use.

2. The exception set out in paragraph 1 shall not apply to:

(a) the reproduction of architectural works in the form of buildings or other similar structures;

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- (b) the reprographic reproduction of works of visual art in limited editions, musical scores and textbooks;
- (c) the reproduction of an electronic database;
- (d) the reproduction of a computer program.

Article 41. Backup copy of a computer program. – A legitimate user may make a backup copy of a computer program intended to replace the original.

C – Exceptions common to the right of communication to the public and the right of reproduction

Article 42. Use for the purposes of illustration for teaching. – Provided that the name of the author and the source are mentioned, the author may not prohibit the reproduction or communication of the work for the purposes of illustration for teaching, without the purpose of making a profit.

Article 43. Parody. – The author may not prohibit the reproduction or communication of the work in the form of a parody, where the rules of the genre are observed.

Article 44. Analyses and quotations. – Provided that the name of the author and the title of his or her work are mentioned, the author may not prohibit analyses of and short quotations from the work that are compatible with fair practice.

Article 45. Use for information purposes. – 1. Provided that the name of the author and the source are mentioned, the reproduction and communication for information purposes of articles on current political, social or economic topics, and of speeches intended for the public made at political, judicial, administrative or religious gatherings, or at public meetings of a political nature or official ceremonies, shall not be subject to the author's consent.

2. The reproduction and communication, for the purpose of reporting a current event, of works that may be seen or heard in the course of the event shall not, insofar as they are justified for information purposes, be subject to the author's consent.

Article 46. Use of graphic or three-dimensional works located in a public place. – The author may not prohibit the reproduction or communication of a graphic or three-dimensional work that is permanently located in a place open to the public, unless the image of the work is the main subject of such reproduction, broadcast or communication and is used for commercial purposes.

Section II. – *Droit de suite*

Article 47. Purpose. – Notwithstanding any assignment of the original work, the authors of original graphic and three-dimensional works and manuscripts shall have an inalienable right to a share in the proceeds of any sale of that work or manuscript at a public auction or through a dealer, after the first transfer of ownership.

Article 48. Rate. – The *droit de suite* shall be five per cent of the sale price.

Article 49. Exclusion of architectural works and works of applied art. – The *droit de suite* shall not apply to architectural works or works of applied art.

Article 50. Procedure for exercise of *droit de suite*. – The procedure for the exercise of the *droit de suite* shall be determined by decree.

Title V. – Duration

Article 51. Basic duration of economic rights. – The author's economic rights shall last for his or her lifetime and for 70 years after his death.

Article 52. Works of joint authorship. – The economic rights in a work of joint authorship shall last for the lifetime of the last surviving author and for 70 years after his death.

Article 53. Anonymous or pseudonymous works. – 1. The economic rights in a work published anonymously or under a pseudonym shall last for 70 years from publication or, if publication has not occurred within 70 years of creation of the work, for 70 years after such creation.

2. Where the author or authors of an anonymous or pseudonymous work reveal their identity, the duration of the exclusive right shall be that provided for in Articles 51 and 52.

Article 54. Posthumous works. – The economic rights in a posthumous work shall last for 70 years from the disclosure of the work.

Article 55. Calculation of period. – The periods provided for in Articles 51 to 54 shall expire at the end of the calendar year during which they would normally expire.

Article 56. Duration of moral rights. – As stated in Article 27, paragraph 4, moral rights shall be perpetual.

Title VI. –Transfer *mortis causa*

Article 57. Implementation of ordinary law of inheritance. – Moral rights and economic rights may be transferred to the author's heirs and legatees in accordance with the ordinary law of inheritance.

Article 58. Succession in the absence of heirs. – Where the author or his or her successor in title has no heirs, the economic rights shall belong to the State and shall be managed by an approved collective management society. Royalties from the exploitation thereof shall be used for cultural and social purposes, without prejudice to the rights of creditors and the execution of contracts for exploitation that may have been concluded by the author or his successors in title.

Article 59. Exercise of moral rights after the death of the author. – After the author's death, moral rights may be exercised not only by the heirs or legatees but also by an approved collective management society.

Title VII. – Exploitation of rights

Chapter I. – Rules common to all contracts

Article 60. Assignability of right of exploitation. – The right of exploitation may be assigned in whole or in part, in accordance with the rules set out below. These rules shall not be applicable to commission contracts, as referred to in Article 21.

Article 61. Future works. – The assignment in whole or in part of the right of exploitation in more than one future work may be revoked by either of the parties on expiry of a period of five years from the date of the contract.

Article 62. Proof. – In respect of the author, proof of assignment shall be in writing or an equivalent form.

Article 63. Formality. – The assignment of the author's rights shall be subject to each of the assigned rights being separately mentioned in the instrument of assignment and the assignment being defined as to its scope and purpose, as to place and as to duration.

Article 64. Interpretation. – 1. In the event of doubt, assignment shall be interpreted in favor of the author.
2. Assignment of the right of communication to the public shall not imply assignment of the right of reproduction.
3. Assignment of the right of reproduction shall not imply assignment of the right of communication to the public.
4. Where a contract includes the assignment in full of either of the rights referred to in the present Article, its effect shall be limited to the modes of exploitation specified in the contract.

Article 65. Remuneration of the author. – 1. Assignment may be granted free of charge or for a consideration.
2. Where assignment is granted for a consideration, it shall include, for the author, a proportional share of the revenue from exploitation of the work.
3. However, the author's remuneration may be calculated as a lump sum in the following cases:
(a) where the basis for calculating the proportional share cannot be practically determined;
(b) where the cost of monitoring would be disproportionate to the expected results;
(c) where the use of the work is only of an accessory nature in relation to the object exploited.

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4. With regard to payment of the royalties owed in return for assignment, the author shall enjoy a general privilege which shall be exercised immediately after employees' salaries have been guaranteed.

5. Where the proceeds of exploitation that are owed to the author of a work of the mind are the subject of a seizure order, the president of the court may order payment to the author, as an allowance for maintenance, of a certain sum or of a specified proportion of the sums seized.

Chapter II. – Rules specific to certain contracts**Section I. – Publishing contracts**

Article 66. Definition. – 1. A publishing contract shall be a contract under which the author of a work of the mind or his successors in title assign to a publisher, under specified conditions, the right to manufacture or have manufactured a number of copies of the work, whereby the publisher is required to effect publication and dissemination thereof.

2. A contract known as a contract at the author's expense shall not constitute a publishing contract; under such contract, the author or his successors in title shall pay to the publisher agreed remuneration against which the publisher manufactures a number of copies of the work in the form and according to the modes of expression specified in the contract and effects publication and dissemination thereof. Such contract shall constitute a contract for hire governed by convention, usage and the provisions of the Code of Civil and Commercial Obligations.

3. A contract known as a contract at joint expense shall not constitute a publishing contract; under such contract, the author or his successors in title shall commission a publisher to manufacture at his expense a number of copies of the work in the form and according to the modes of expression specified in the contract and to effect publication and dissemination thereof in accordance with the agreement reciprocally contracted to share profits and exploitation losses in the agreed proportion. Such contract shall constitute a joint undertaking.

Article 67. Guarantee owed by the author. – 1. The author shall guarantee the publisher the undisturbed and, unless otherwise agreed, exclusive exercise of the right assigned.

2. He shall be required to ensure respect for that right and to defend it against any possible violation.

Article 68. Delivery of work for publication. - The author shall put the publisher in a position to manufacture and disseminate copies of the work. He shall deliver to the publisher, within the period of time stipulated in the contract, the work for publication in a form permitting normal manufacture. The work for publication furnished by the author shall remain the property of the author unless otherwise agreed or technically impossible. The publisher shall remain responsible for the work for publication for a period of one year after completion of manufacture.

Article 69. Statement of printing. - The publishing contract must state the minimum number of copies that constitute the first printing. However, this obligation shall not apply to contracts laying down minimum royalties guaranteed by the publisher.

Article 70. Manufacture of copies. - The publisher shall be required to manufacture copies or have them manufactured under the conditions, in the form and according to the modes of expression laid down in the contract. Unless there is a special agreement, manufacture shall take place within the period of time customary in the trade.

Article 71. Continuous and sustained exploitation. - The publisher shall be required to ensure continuous and sustained exploitation and commercial dissemination of the work, in accordance with the practices of the trade.

Article 72. Rendering of accounts. – 1. The publisher shall be required to furnish the author with all evidence required to establish the accuracy of his accounts.

2. In the absence of special terms stipulated in the contract, the author may require the publisher to produce, at least once a year, a statement of the number of copies manufactured during the period in question, specifying the date and size of the printings and the number of copies in stock, the number of copies sold by the publisher, the number of copies that are unused or have been destroyed by accident or owing to *force majeure*, and the amount of royalties owed or, where applicable, paid to the author.

3. Any contrary provision shall be deemed void.

Article 73. Transfer of contract. – 1. The publisher may not transfer the benefits of the publishing contract to a third party, free of charge or for a consideration, or as a contribution to the assets of a partnership, independently of the business, without first having obtained the authorization of the author.

2. In the event of transfer of the business in such a way as seriously to compromise the material or moral interests of the author, the author shall be entitled to obtain reparation even by means of termination of the contract.

3. Where the publishing business was run as a partnership or a joint enterprise, the allocation of the business to one of the former partners or joint owners as a result of liquidation or division shall in no case be considered an assignment.

Article 74. Termination of contract. – 1. The publishing contract shall be terminated, irrespective of the cases provided for by ordinary law or in the previous Articles, when the publisher completely destroys the copies of the work.

2. The contract shall be terminated automatically if, upon formal notice by the author fixing a reasonable period of time, the publisher has not effected publication of the work or, should the work be out of print, the republication thereof. The work shall be deemed out of print if two orders for delivery of copies addressed to the publisher have not been fulfilled within three months.

3. If, in the event of the author's death, the work is incomplete, the contract shall be terminated in respect of the unfinished part of the work, except as otherwise agreed between the publisher and the author's successors in title.

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4. In the case of a contract of fixed duration, the rights of the assignee shall lapse automatically on expiry of the term in question without need of any formal notice. However, for three years after expiry of that term, the publisher may continue to market at the normal price the copies remaining in stock, unless the author prefers to buy the copies at a price which, in the absence of an amicable agreement, shall be fixed according to expert opinion; this faculty afforded the first publisher shall not prevent the author from making a further publication within a period of 30 months.

Section II. – Performance contracts

Article 75. Definitions. – 1. A performance contract is a contract under which the author of a work of the mind or his successors in title authorize a natural or legal person to communicate the work to the public under conditions which they stipulate.

2. "General performance contract" means a contract under which a collective management society affords to an entertainment promoter the faculty of communicating to the public, during the term of the contract, the present or, notwithstanding Article 66, future works that constitute the repertoire of such body under the conditions laid down by the author or his successors in title.

Article 76. Duration. – 1. A performance contract shall be concluded for a limited duration or for a specified number of communications to the public.

2. The validity of the exclusive rights afforded by a playwright may not exceed five years; the interruption of performances for two consecutive years shall automatically terminate the contract.

Article 77. Exclusivity. - Unless exclusive rights are expressly stipulated, the performance contract shall not afford the entertainment promoter an exploitation monopoly.

Article 78. Transfer of contract. - An entertainment promoter may not transfer the enjoyment of his contract without formal consent given in writing by the author or his representative.

Article 79. Scope of authorization to broadcast. – Unless otherwise stipulated, authorization to broadcast the work shall cover all communications effected free of charge by a broadcasting organization using its own resources and under its own responsibility. Such authorization shall not extend to communications of programs in places open to the public or to any transmissions, through cable or wireless, by third parties.

Article 80. Obligations of the entertainment promoter. - The entertainment promoter shall be required to:

1. inform the author or his representatives of the exact program of performances;
2. furnish them with a certified statement of his takings;
3. pay them the amount of stipulated royalties;

4. effect the performance under technical conditions suitable to ensure the moral rights of the author.

Section III. Audiovisual production contracts

Article 81. Definition. – An audiovisual production contract shall be a contract under which several natural persons undertake, in return for payment, to create an audiovisual work for a natural or legal person called the producer, who or which takes the initiative and has the responsibility for creating the work.

Article 82. Presumption of assignment. – A contract binding the producer and the authors of an audiovisual work, other than the author of a musical composition with or without words, shall, unless otherwise stipulated, imply the assignment to the producer of exclusive exploitation rights in the audiovisual work.

Article 83. Guarantee owed by the authors. – Each of the joint authors shall guarantee to the producer the undisturbed exercise of the rights assigned.

Article 84. Exploitation in conformity with practices. - The producer shall be required to comply with the practices of the trade in the exploitation of the audiovisual work.

Article 85. Rendering of accounts. – 1. The producer shall, at least once a year, furnish the author and the joint authors with a statement of revenue from exploitation of the work in respect of each mode of exploitation.
2. At their request, he shall furnish them with all evidence necessary to establish the accuracy of the accounts, in particular copies of the contracts in which he assigns to third parties all or some of the rights which he enjoys.

Part two – Neighboring rights

Article 86. List of neighboring rights. – Neighboring rights to copyright shall be the rights afforded to:

1. performers;
2. producers of phonograms and videograms;
3. broadcasting organizations;
4. publishers, provided that, if the work is in the public domain, the provisions of Article 157 are respected.

Article 87. Relationship between copyright and neighboring rights. - Neighboring rights shall not prejudice copyright. Consequently, no provision in this part shall be interpreted in such a way as to limit the exercise of copyright by the owners thereof.

Title I. – Provisions common to all neighboring rights

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Article 88. Assignability. – With the exception of the moral rights of the performer and the right to remuneration set out in Articles 100 and 103, neighboring rights may be assigned in whole or in part.

Article 89. Exceptions. – The exceptions to copyright set out in Articles 38 to 40 and 42 to 45 shall apply *mutatis mutandis* to neighboring rights.

Article 90. Duration. – With the exception of the moral rights of the performer, which shall be perpetual, the duration of neighboring rights shall be 50 years from January 1 of the calendar year following that of:

1. the performance, in the case of performers. However, where a fixation of the performance is published or communicated to the public during the period in question, the term shall not expire until 50 years after January 1 of the calendar year following the first of those;
2. the first fixation of a sequence of sounds, in the case of phonogram producers, and of a sequence of images with or without sound for videogram producers. However, where a phonogram or a videogram is published during said period, the term shall not expire until 50 years after January 1 of the calendar year following publication. In the absence of publication, the term shall expire 50 years after January 1 of the calendar year following the first communication to the public;
3. the first communication of programs to the public, in the case of broadcasting organizations;
4. publication of the work, in the case of publishers.

Article 91. Transfer *mortis causa*. – Neighboring rights enjoyed by natural persons may be transferred to their heirs and legatees in accordance with the rules of the ordinary law of inheritance.

Title II. – Provisions specific to performers

Article 92. Definition. – "Performers" means actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works, including variety, circus or puppet acts, or expressions of folklore.

Article 93. Moral rights. – 1. The performer shall enjoy moral rights that attach to his person, are inalienable and may not be prematurely surrendered.
2. Moral rights shall include the right to claim authorship, to which the provisions of Article 30 shall apply, *mutatis mutandis*.
3. Moral rights shall also include the right to respect for the performance, to which the provisions of Article 31 shall apply, *mutatis mutandis*. If a performer refuses to complete his participation in an audiovisual work or is unable to complete such participation owing to circumstances beyond his control, he may not object to the use of his contribution for the purpose of the completion of the work.

Article 94. Economic rights. – The performer shall have the exclusive right to authorize:

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1. the communication of his performance to the public by any means, in particular those referred to in Article 34, subject to the legal license provided for in Article 100;
2. the fixation of his performance;
3. the reproduction of such fixed performance;
4. the distribution, through sale or other means, of physical copies of his performance. This right shall be exhausted after the first sale or any other transfer of ownership of copies by the performer or with his consent within the UEMOA region;
5. the rental, within the meaning of Article 37, of copies of his performance. A performer who assigns his right of rental shall retain the right to obtain equitable remuneration in respect of the rental. The right to remuneration may not be surrendered. The management thereof may be entrusted to a collective management society.

- Article 95. Assignment of economic rights.** – 1. The assignment of the performer's economic rights shall be governed by the provisions of Articles 61 to 64.
2. However, a contract binding the producer and the performer for the creation of an audiovisual work shall, unless otherwise stipulated, imply the assignment to the producer of exclusive exploitation rights in the performer's performance.
 3. The performer's remuneration may be proportional or a lump sum. It shall be owed for each mode of exploitation.

Title III. Provisions specific to producers of phonograms and videograms

Article 96. Definition of phonogram. – "Phonogram" means the fixation of a sequence of sounds.

Article 97. Definition of videogram. – "Videogram" means the fixation of a sequence of animated images, with or without sound.

Article 98. Definition of producer. – "Producer of a phonogram or videogram" means the natural or legal person who or which takes the initiative and has the responsibility for the first fixation.

Article 99. Economic rights. – The producer of a phonogram or videogram shall have the exclusive right to authorize:

1. the communication of the phonogram or videogram to the public by any means, in particular those referred to in Article 34, subject to the legal license provided for in Article 100;
2. the reproduction of the phonogram or videogram;
3. the distribution, through sale or other means, of physical copies of the phonogram or videogram. This right shall be exhausted after the first sale or any other transfer of ownership of copies by the producer or with his consent within the UEMOA region;
4. the rental, within the meaning of Article 37, of copies of the phonogram or videogram.

Title IV. – Provisions common to performers and producers of phonograms and videograms

Article 100. Legal license for certain uses of phonograms and videograms. – 1.

Where a phonogram or videogram has been published for commercial purposes, the performer and the producer may not oppose the communication thereof to the public, except where it is made available on demand in such a way that members of the public may access the phonogram or videogram from a place and at a time individually chosen by them; nor may they oppose the reproduction thereof, where it is reserved strictly for that purpose.

2. In return for the legal license provided for in the previous paragraph, the user shall pay equitable remuneration, which shall be collected by one or more collective management societies and divided equally between performers and producers.

3. A commission called the Equitable Remuneration Commission is hereby established with responsibility for determining the amount of such remuneration. The membership of the Commission shall be laid down in regulations.

Title V. – Provisions specific to broadcasting organizations

Article 101. Economic rights. – Broadcasting organizations shall have the exclusive right to authorize:

1. the communication of their programs to the public by any means, in particular those referred to in Article 34;
2. the reproduction of their programs;
3. the distribution, through sale or other means, of fixations of their programs. This right shall be exhausted after the first sale or any other transfer of ownership of such fixations by them or with their consent within the UEMOA region;
4. the rental, within the meaning of Article 37, of fixations of their programs.

Title VI. – Provisions specific to publishers

Article 102. Economic rights. – 1. The neighboring right of publishers shall relate to the composition and layout of the published work.

2. That right shall include the exclusive right to authorize:

- (a) the communication of the publication to the public by any means, in particular those referred to in Article 34;
- (b) the reproduction of the publication;
- (c) the distribution, through sale or other means, of copies of the publication. That right shall be exhausted after the first sale or any other transfer of ownership of such copies by the publisher or with his consent within the UEMOA region.

Part three – Provisions common to copyright and neighboring rights**Title I. – Remuneration for private copying**

Article 103. Works, performances, phonograms and videograms for which remuneration is owed. – Remuneration shall be owed for the private copying, carried out under the conditions referred to in Article 40.1, of works and performances fixed on phonograms and videograms.

Article 104. Recipients. – Such remuneration shall be owed to authors, performers and producers of phonograms and videograms.

Article 105. Private Copying Commission. – 1. A commission called the Private Copying Commission is hereby established with responsibility for determining the basis of remuneration for private copying and the amount of and payment procedure for such remuneration.

2. The membership of the Commission shall be determined by means of regulations.

Article 105 (a). Basis. – Remuneration shall be based on the use of blank analog or digital recording media, whether removable or not, and on recording equipment. The list of such media and equipment shall be determined by the Commission referred to in Article 105.

Article 106. Payment amount and procedure. – 1. The amount of remuneration and the procedure for the payment thereof shall be determined by the Commission referred to in Article 105.

2. The amount of remuneration shall take account of the degree of use of the technological protection measures referred to in Article 125 and of their impact on practices under the exception for private copying.

Article 107. Debtors. – 1. Remuneration for private copying shall be paid by the manufacturer or the importer of blank recording media and recording equipment.

2. Such remuneration shall be refunded where the recording medium or equipment is acquired for their own use or production by:

(a) broadcasting organizations;

(b) phonogram or videogram producers;

(c) legal persons or organizations, the list of which shall be determined by the Minister of Culture, that use recording media or equipment for the purpose of assisting persons with sight or hearing disabilities.

Article 108. Collection. - Remuneration for private copying shall be collected on behalf of the entitled persons by one or more approved collective management societies.

Article 109. Distribution. – 1. Remuneration for private copying shall be distributed among the entitled persons by the societies referred to in Article 108, depending on what private reproductions of each work, performance, phonogram or videogram have been made.

2. After deduction of the percentage referred to in Article 122, the remuneration shall be distributed equally among each of the three categories of authors, performers and producers.

Title II. – Collective management

Article 110. Purpose. – Collective management societies may be established by owners of copyright and neighboring rights for the purpose of:

1. negotiating with users of the repertoires which they are responsible for managing;
2. collecting the relevant royalties and distributing them among their members;
3. financing social action for the benefit of their members;
4. organizing and financing cultural activities;
5. taking legal action to defend the interests for which they are responsible under their statutes, including the collective interests of their members.

Chapter I. – Constitution

Article 111. Form. – Collective management societies shall be constituted in the form of civil law societies.

Article 112. Plurality of societies. – 1. Subject to the approval provided for in Article 117, a collective management society may be established for each repertoire of works protected by copyright, for performers, phonogram producers, videogram producers and publishers. Such societies may, for management purposes, establish joint societies among themselves.

2. As an exception to the previous paragraph, a single society shall be established for the purpose of managing all the rights recognized by the present Law for a period of at least five years from the date of its entry into force.

Article 113. Society members. – The members shall be authors, performers, phonogram or videogram producers and publishers, or their successors in title.

Article 114. Optional nature of collective management. – Unless otherwise provided by law, owners of copyright and neighboring rights shall not be required to belong to a collective management society. Provided that they give sufficient notice, they may withdraw from the society after joining it.

Article 115. Legal nature of transfer. – The management of rights may be entrusted to a collective management society by appointing the society as agent or by assignment.

Article 116. Extent of transfer. – Membership of a society may be subject to the transfer of all economic rights that shall reasonably be deemed essential to effective collective management.

Article 117. Approval of the society. – 1. The societies referred to in Article 112 shall be approved by decree on the basis of a proposal of the Minister of Culture.

2. Approval shall be given subject to consideration of:

- (a) the professional qualifications of the directors of the society;
- (b) the human and material resources which the society is able to deploy to ensure the exercise of rights and the exploitation of its repertoire;
- (c) the equitable representation of rights owners among the members and within the management authorities;

- (d) the equitable nature of the terms envisaged for distribution of the sums collected.
3. The terms for granting and withdrawing such approval shall be determined by decree.

Chapter II. Operation

Article 118. Principles applicable to distribution. – 1. The collective management society shall be required to establish distribution rules, taking into account the actual use of its repertoire. It shall employ all reasonable means to determine the actual use thereof, such as putting in place an effective documentation system and carrying out appropriate polls.

2. It shall respect the principle of equal treatment of its members, particularly with respect to national treatment, as referred to in Article 154.

3. Actions seeking the payment of remuneration owed to rights owners shall be subject to a time limit of 10 years from the date on which the sums in question were credited to their accounts.

Article 119. Management costs. – Management costs deducted by the collective management society shall be compatible with generally recognized good governance practices and shall, to the extent possible, be proportional to the actual cost of managing the rights in the work, performance, phonogram or videogram.

Article 120. Statutory deductions. – The collective management society may make deductions in accordance with its statutes in order to finance social action and cultural activities, provided that the amount of such deductions remains within the limits allowed by generally recognized good governance practices.

Article 121. Non-distributable amounts. – Sums which, for practical or legal reasons, cannot actually be distributed may be shared among the owners of rights in the category concerned, on terms approved by a two-thirds majority of the society's general assembly.

Article 122. Allocation for cultural purposes of a percentage of remuneration for private copying. – 1. Collective management societies shall use 15 per cent of the sums obtained from remuneration for private copying for action to assist creation and promote live entertainment and for training schemes for rights owners.

2. The distribution of the corresponding sums, which shall not be to the benefit of only one single body, shall be subject to a vote at the society's general assembly, which shall decide on the basis of a two-thirds majority. In the absence of such majority, a further general assembly, convened specifically for that purpose, shall take a decision on the basis of a simple majority.

Article 123. Auditing by members of the society. – 1. The members of the collective management society shall have the right to obtain communication, at least once a year, of the society's books and documents, and to submit questions in writing about the management of the society, to which written replies shall be provided within one month. However, a member may not obtain communication of the amount of royalties distributed

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on an individual basis to any right-holder other than himself. The terms for the exercise of that right shall be determined by decree.

2. Any group of members representing at least one tenth of the membership may take legal action for the appointment of one or more experts to be responsible for submitting a report on one or more management operations. The report shall be addressed to the requestor, to the public prosecutor and to the organs of the society. The report shall be annexed to the report drawn up by the auditor(s) for the purposes of the first general assembly.

Article 124. Administrative auditing. – 1. A standing committee shall be established to oversee collective management societies, consisting of five members appointed by decree for a term of five years:

(a) a judge in the Court of Audit, who shall be chairman, appointed by the First President of the Court of Audit;

(b) a Councilor of State, appointed by the President of the Council of State;

(c) a judge of the Court of Cassation, appointed by the First President of the Court of Cassation;

(d) a member of the General Inspectorate of Finances, appointed by the Minister of Finance;

(e) a representative appointed by the Minister of Culture.

2. The committee may seek the assistance of experts appointed by its chairman. It shall audit the accounts and the management of the collective management societies. To that end, the directors of those societies shall be required to assist the committee, communicate any documents to it and respond to any request for information necessary for the performance of its tasks. For operations involving information technology, the right of communication shall imply access to software and data, as well as the right to request the transcription thereof by any suitable processing method in documents directly usable for auditing purposes. The committee may carry out its audit on the basis of documents or on site.

3. Failure by any director of a collective management society to respond to information requests made by the committee, the obstruction in any way of the committee's performance of its tasks or the intentional communication to it of inaccurate information shall be punishable by a prison term of six months to one year and a fine of one million CFA francs.

4. The committee shall submit an annual report to the President of the Republic, the National Assembly, the Government and the general assemblies of the collective management societies.

5. The organization and operation of the committee, and the procedures applicable before it, shall be determined by decree.

6. In addition, the collective management society shall communicate its annual statement of accounts to the Minister of Culture and shall bring to his attention, at least two months before consideration by the general assembly, any draft amendment to its statutes or to the rules for collection and distribution of royalties. It shall address to the Minister of Culture, at the Minister's request, any document relating to the collection and distribution of royalties and copies of agreements concluded with third parties. The Ministry of

Culture may gather, from documents or on site, the information referred to in the present Article.

Title III. – Implementation of rights

Chapter I. – Technological protection and information measures

Article 125. Technological protection measures. – 1. Owners of copyright and neighboring rights may, in the exercise of their rights, use technological measures with a view to preventing or limiting acts, in respect of their works, performances, phonograms, videograms or programs, which they have not authorized and which are not permitted by law.

2. Circumvention of the technological measures referred to in the previous paragraph shall be punishable by the criminal penalties provided for in Article 145.

Article 126. Rights management information. – 1. Electronic rights management information relating to a work, performance, phonogram, videogram or program shall be protected in the cases provided for in the present Article, where an item of information, number or code is attached to the reproduction or appears in connection with the communication to the public of the work, performance, phonogram, videogram or program in question.

2. "Electronic information" means any information provided by a rights owner that identifies a work, performance, phonogram, videogram, program or rights owner, any information about the terms and conditions of use of a work, performance, phonogram, videogram or program, and any number or code that represents all or part of such information.

3. The following acts shall be unlawful where they are carried out without the authorization of the owner of the copyright or neighboring right in question, and in the knowledge or with reasonable grounds to believe that they will induce, enable, facilitate or conceal an infringement of copyright or of a neighboring right:

(a) the removal or alteration of any item of electronic information;

(b) the distribution, import for distribution or communication to the public in any form of a work, performance, phonogram, videogram or program, where an item of electronic information has been removed or altered.

4. Where the perpetrator of one of the acts listed in paragraph 3 knows that the act will induce, enable, facilitate or conceal an infringement of copyright or of a neighboring right, he shall incur the criminal penalties provided for in Article 145.

Chapter II. – Procedure

Section I. – General rules

Article 127. Capacity to act. – 1. Any owner of copyright or of a neighboring right shall have capacity to take legal action in the event of a violation of his rights.

2. Collective management societies shall have capacity to take legal action pursuant to Article 110.5.

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3. Regularly constituted professional associations of right-holders shall have capacity to take legal action in order to defend the collective interests of their members.

4. In the event of an infringement of an economic right that has been fully or partially assigned and that confers exclusivity on the assignee, action shall be taken, insofar as the transferred right allows, by the assignee.

Article 128. Competent courts. - All disputes relating to the application of the provisions of the present Law shall be brought before the competent courts, without prejudice to the right of the injured party to institute criminal proceedings under ordinary law.

Article 129. Evidence. – 1. Apart from evidence under ordinary law, evidence of the existence of any infringement of a right recognized under the present Law may take the form of statements by sworn agents who are appointed by a collective management society and approved subject to conditions established by decree.

2. The court hearing the case may order the defendant to produce the evidence under his control, including banking, financial or commercial documents, provided that confidential information is protected.

Article 130. Right of information. – At the defendant's request, the competent court may order the defendant or any other person found in possession of offending goods to provide information on the origin and distribution networks of goods and services that infringe copyright or a neighboring right.

Section II. Provisional and precautionary measures

1. – Infringement seizure

Article 131. Competence. – Infringement seizure shall be ordered by the president of the regional court at the request of one of the persons referred to in Article 127.

Article 132. Measures that may be ordered. – The president of the court may order:

1. the suspension of any manufacturing in progress for unauthorized reproduction;
2. the seizure, irrespective of the day and time, and even outside the hours laid down in Article 831 of the Code of Civil Procedure, of copies constituting an unauthorized reproduction, whether already manufactured or in the process of being manufactured, of revenue obtained and of copies unlawfully used;
3. the suspension of any unauthorized communication to the public;
4. the seizure of revenue from any unauthorized reproduction or communication to the public.

Article 133. Release of seizure. – 1. Within 30 days of the date of the order, the distrainee or the garnishee may request the president of the court to order the release of the seizure, limit its effects or authorize resumption of manufacture or of communication to the public, under the authority of an administrator appointed as custodian, for the

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benefit of whomsoever it may concern, of the proceeds of such manufacture or communication to the public.

2. The president of the court, acting in chambers, may, if he allows the request of the distrainee or garnishee, order the plaintiff to deposit a sum as a guarantee for any damages to which the right owner may be entitled.

Article 134. Summons on the merits. - If the distrainer fails to refer the matter to the competent court within 30 days of seizure, the president of the court, acting in chambers, may order the release of the seizure at the request of the distrainee or the garnishee.

2. Ordinary law proceedings

Article 135. Principle. – Irrespective of infringement seizure proceedings, the persons referred to in Article 127 may have recourse to all ordinary law remedies, in accordance with the provisions of the Code of Civil Procedure.

Article 136. Preservation of evidence. – 1. The president of the court, acting in chambers, may order in particular any measure for the preservation of relevant evidence of alleged infringements, without prejudice to the protection of confidential information.
2. The measure referred to in the previous paragraph may be subject to the deposit by the plaintiff of an adequate sum. It shall cease to have effect if the plaintiff has not issued a summons on the merits within 30 days.

Article 137. Seizure of goods suspected of being infringing goods. – 1. The president of the court, acting in chambers, may order the seizure of goods that are suspected of infringing copyright or a neighboring right in order to prevent their entry into or circulation on the market.
2. The seizure referred to in the previous paragraph may be subject to the deposit by the plaintiff of an adequate sum. It shall cease to have effect if the plaintiff has not issued a summons on the merits within 30 days.

Section III. – Border measures

Article 138. Right of inspection. – The persons referred to in Article 127 may request the customs authorities to have all goods which they are holding inspected in order to substantiate their allegations. The importer shall have the same right.

Article 139. Conditions for detention at customs. – 1. The customs administration may, at the written request of the persons referred to in Article 127 accompanied by proof of their rights, detain during customs inspection any goods claimed by such persons to infringe those rights.
2. Where the goods are suspected of being infringing goods, they shall be detained ex officio.

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Article 140. Provision of information by the customs service. - The Public Prosecutor, the right owner and the party declaring or in possession of the goods shall be informed without delay by the customs service of the detention that it has carried out.

Article 141. Lifting of detention measure. – 1. The detention measure shall be lifted automatically where the right owner fails, within 10 working days following notification of the detention of the goods, to prove to the customs service either that precautionary measures under Article 132 have been taken or that he has instituted proceedings before the civil or criminal courts and has provided the necessary guarantees to cover his liability in the event of the infringement claim subsequently being rejected.

2. For the purpose of institution of the legal proceedings referred to in the previous paragraph, the right owner may require the customs administration to communicate the names and addresses of the sender, the importer and the consignee of the goods detained, or of the holder thereof, and also the quantity thereof.

Chapter III. – Penalties

Section I. – Criminal penalties

Article 142. Infringement of the right of exploitation. – Infringement of the right of communication to the public, the right of reproduction, the right of distribution or the right of rental shall be punishable by a prison term of six months to two years and a fine of one million to five million CFA francs.

Article 143. Dissemination, import and export of illegal copies. – The dissemination, import and export of illegal copies shall be punishable by the same penalties.

Article 144. Infringement of moral rights. – Infringement of the moral rights of the author and the performer shall be punishable by the same penalties.

Article 145. Interference with technological measures. – 1. The circumvention of the technological protection measures referred to in Article 125 shall be punishable by a prison term of one to three months and a fine of 500,000 CFA francs.

2. Interference with rights management information by means of one of the acts listed in Article 126.3, where it is carried out knowingly, shall be punishable by the same penalties.

Article 146. Failure to pay equitable remuneration and remuneration for private copying. – Failure to pay the equitable remuneration referred to in Article 100 and the remuneration for private copying referred to in Articles 103 to 109 shall be punishable by the fine provided for in the previous Article.

Article 147. Repeat offenses. – In the event of repetition of the offenses set out in Articles 142 to 145, the penalties incurred shall be doubled.

Article 148. Confiscation. – In the event of conviction for one of the offenses set out in Articles 142 to 146, the court shall order the destruction of all illegal copies and the confiscation of equipment specifically installed for the purpose of committing the offense.

Article 149. Posting and publication of the judgment. – The court may also order, at the expense of the convicted person, the posting of the judgment declaring the conviction and the publication of the whole judgment or extracts thereof in such newspapers or online public communication services as it may designate, provided that the costs of such publication do not exceed the maximum amount of the fine incurred.

Article 150. Closure of establishment. – 1. In the event of a repeat offense after a conviction pursuant to Article 142, 143 or 144, the permanent or temporary closure of establishments used by the offender and his accomplices may be ordered.
2. Any infringement of the provisions of the previous paragraph shall be punishable by a prison term of one to six months and a fine of 500,000 CFA francs.

Section II. - Civil penalties

Article 151. Cessation of unlawful act. – The court may, subject to a penalty for non-compliance, order a party to cease an act infringing one of the rights conferred by the present Law, in particular with a view to preventing the entry into the market of imported goods that infringe copyright or a neighboring right.

Article 152. Compensation for damage. – 1. The plaintiff may claim compensation for all damage caused by an infringement of his rights, calculated on the basis of his loss of earnings and moral damage and the profits unjustly obtained by the defendant. He may also claim payment of costs occasioned by the infringement, including legal costs.
2. In the event of the sale of equipment that has been confiscated, the proceeds of the sale shall be put towards the compensation for the damage referred to in paragraph 1.

Title IV. – Private international law

Chapter I. – Status of foreigners

Article 153. Reciprocity. – 1. Foreign nationals and legal persons whose main establishment is situated outside Senegalese territory shall enjoy the rights recognized by the present Law only if the law of the country of which they are nationals or in which they have their main establishment affords equivalent protection to that provided for under this Law. Countries which are considered to fulfill the requirement of reciprocity shall be determined jointly by the Minister of Culture and the Minister of Foreign Affairs.
2. However, neither the integrity nor the authorship of works and performances may be infringed.

Article 154. National treatment. – The reciprocity provided for in Article 153 shall not apply where the natural or legal person who or which seeks enjoyment of copyright or of

a neighboring right may claim national treatment under an international agreement to which Senegal is a party.

Chapter II. – Applicable law

Article 155. Law of country of protection. – Unless otherwise provided by an international agreement to which Senegal is a party, the law applicable to copyright and neighboring rights shall be that of the country for which protection is sought.

Part four – Folklore and the *domaine public payant*

Article 156. Definition of folklore. – "Folklore" means all literary and artistic productions created by authors deemed to be of Senegalese nationality that are passed from generation to generation and constitute one of the basic elements of the traditional cultural heritage of Senegal.

Article 157. Exploitation of folklore and works in the public domain. – 1. The exploitation of folklore or of works derived from folklore, and of works that have fallen into the public domain on expiry of the periods provided for in Articles 51 to 55, shall be declared to the collective management society approved for that purpose and shall be subject to payment of a royalty.

2. The amount of the royalty shall be determined by the Minister of Culture. It may not exceed 50 per cent of the rate of remuneration usually paid to authors in accordance with current contracts or practices.

Article 158. Allocation of royalties. – 1. The royalties provided for in the previous paragraph shall be distributed as follows:

- (a) collection without arrangement or personal input: 50 per cent to the person who carried out the collection, 50 per cent to the approved collective management society;
- (b) collection with arrangement or adaptation: 75 per cent to the author, 25 per cent to the approved collective management society.

2. Sums paid to the collective management society shall be used for social and cultural purposes.

Article 159. Proceedings. – In the event of illegal exploitation of folklore or of works that have fallen into the public domain, the State Judicial Officer, at the request of the Minister of Culture, shall have the capacity to take legal action. The infringement seizure proceedings provided for in Articles 131 et seq. of the present Law shall apply.

Article 160. Penalties. – The illegal exploitation of folklore or of works that have fallen into the public domain shall be punishable by a fine equal to 500,000 CFA francs, without prejudice to the damages that may be allocated to the civil claimant.

Part five – Final provisions

Translated from French

Article 161. Application in time. – 1. The provisions of the present Law shall apply also to works that were created, performances that took place or were fixed, phonograms or videograms that were fixed, programs that were broadcast and publications that were published before its entry into force, provided that such works, performances, phonograms, videograms and programs have not yet fallen into the public domain owing to expiry of the term of protection to which they were subject under prior legislation or in the legislation of their country of origin.

2. The terms set out in the previous paragraph shall not apply to posthumous works under Article 54.

3. The legal effects of instruments and contracts concluded before the entry into force of this Law shall not be called into question.

Article 162. Miscellaneous repeals. – 1. The following are hereby repealed:

- Law No. 72-40 of May 26, 1972 establishing the Senegalese Copyright Office, from the date of approval of the single society referred to in Article 112, paragraph 2;
- Law No. 73-52 of December 4, 1973 on Copyright Protection;
- Law No. 86-05 of January 24, 1986 repealing and replacing Articles 22, 46, 47 and 50 of Law No. 73-52 of December 4, 1973 on Copyright Protection;
- Decree No. 77-703 of August 10, 1977 establishing regulations for the organization and operation of the Senegalese Copyright Office;
- Articles 397-401 of the Penal Code.

2. All earlier provisions contrary to the present Law are also hereby repealed.

The present Law shall be enforced as the law of the land.

Done at Dakar, JANUARY 25, 2008

(signed)

Abdoulaye WADE
President of the Republic

(signed)

Cheikh Hadjibou SOUMARÉ
Prime Minister