

LAW No. 91-12 of June 10, 1991 on the protection of copyright, folklore and related rights

The National Assembly has deliberated and adopted

The President of the Republic hereby promulgates the following Law.

Article 1 – The object of this Law shall be the protection of copyright, folklore and related rights, namely the rights of performers, producers of phonograms and broadcasting organizations.

TITLE 1:

COPYRIGHT AND FOLKLORE

SECTION: 1

PROTECTION OF COPYRIGHT,

Art. 2 – The author of any original work of the mind (literary, artistic or scientific), purely as a result of its creation, shall enjoy an exclusive intangible property right (known as copyright) in the work that prevails against all others.

Art. 3 – Copyright shall have intellectual and moral attributes, as well as economic attributes that are determined by this Law.

Art. 4 – The protection provided for in Article 2 shall not be subject to any formality.

Art. 5 – Works shall be protected independently of their value and purpose.

SECTION II:

PROTECTED WORKS

Art. 6 – The following in particular shall be considered works of the mind under this Law:

- (1) books, pamphlets and other writings;
- (2) lectures, addresses, sermons and other works of the same nature;
- (3) works created for the stage, dramatic works and dramatico-musical works, choreographed, pantomime and comic works, with production fixed in writing or otherwise;
- (4) musical works, in written form or otherwise, with or without lyrics;
- (5) pictorial works and drawings, lithographs, etchings, woodcuts and others of the same nature;
- (6) sculptures, bas-relief and mosaics of all kinds;
- (7) architectural works, including both plans and models and the building itself;
- (8) tapestries and works created by artistic professions and by the applied arts, including both sketches and models and the works themselves, whether handicraft or produced on an industrial scale;
- (9) maps, illustrations and drawings and graphic and three-dimensional reproductions of a scientific or technical nature;
- (10) cinematographic, radiophonic and audiovisual works;
- (11) photographic works of artistic or documentary character, to which are assimilated, for the purposes of this Law, works expressed by a process analogous to photography;
- (12) translations, arrangements or adaptations of the above works;
- (13) collections of literary or artistic works such as encyclopedias or anthologies;

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- (14) computer programs;
- (15) folklore and works derived from folklore, such as they are described in Chapter II below.

Art. 7 – The title of a work shall enjoy the same protection as the work itself, and may not be used to distinguish a work of the same kind if such use is liable to create confusion.

Art. 8 – Under the terms of this Law:

- "Original work" means a work which, by its characteristic elements and its form, or by its form alone, enables its author to be identified.
- "Derivative work" means a work based on pre-existing elements.
- "Work of joint authorship" means a work, the creation of which is the result of contributions on the part of two or more authors, irrespective of whether it constitutes an indivisible whole or is composed of parts having independent creative character.
- "Composite work" means a new work in which a pre-existing work or elements thereof is/are incorporated without the collaboration of the author of that work.
- "Collective work" means a work created on the initiative of a natural person or legal entity who or which discloses it under his or its direction and name, where the personal contributions of the various authors who participated in its creation are merged in the whole for which they were made, so that it is impossible to attribute to each author a separate right in the whole work once completed.
- "Posthumous work" means a work made accessible to the public only after the death of its author.

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SECTION III:

CINEMATOGRAPHIC WORKS

Art. 9 – The cinematographic work shall be the property of the natural person who, or legal entity which, takes the initiative to produce it and the responsibility to exploit it.

This person, known as the producer, shall be assumed to be the holder of the copyright.

Art. 10 – The producer, before undertaking the production of a cinematographic work, shall be required to conclude written contracts with the intellectual creators of the cinematographic work, in particular:

- 1– screenplay writer;
- 2– adaptation writer;
- 3– author of musical compositions with or without lyrics produced specially for the work;
- 4– director;
- 5–scriptwriter.

These contracts, unless a clause states otherwise, and excepting those concluded with the authors of musical compositions with or without lyrics, shall effect the assignment of the right of cinematographic exploitation to the producer.

Art. 11 – The director of a cinematographic work shall be the natural person who assumes the artistic responsibility and direction for the transformation into sound and images, editing the work and its final cut.

Art. 12 – The cinematographic work shall be considered created when the first “standard copy” has been made by joint agreement between the director and the producer.

Art. 13 -If one of the intellectual creators of the cinematographic work refuses to finish his/her contribution to the work or finds it impossible to finish it, due to *force majeure*, he may not oppose the use of this completed part of the contribution for the purposes of finishing the work.

Art. 14 –Unless otherwise stated, the intellectual creators of a cinematographic work may dispose freely of their personal contribution with a view to its exploitation in a different genre, provided that this does not prejudice the exploitation of the work on which they collaborated.

#### SECTION IV:

##### DEFINITION AND CONTENT OF COPYRIGHT

##### - INTELLECTUAL AND MORAL RIGHTS

Art. 15 – The intellectual and moral rights shall consist in the author’s right to:

- defend his work;
- decide on the disclosure of the work;
- ensure respect for his name, capacity and the integrity of the work;
- claim authorship of his work and demand that his name be indicated when any of the acts mentioned in Article 18 are performed.

Art. 16 – The name of the author shall be indicated to the extent and in the manner that are required by proper usage on any copy reproducing the work and whenever the work is made available to the public.

No one shall subject the work to any alteration without the written consent of the author. No one shall make it accessible in a manner or under circumstances that would harm the author's honor or reputation.

Art. 17 – The rights recognized for the author under Articles 15 and 16 shall be inalienable and imprescriptible.

## II – ECONOMIC RIGHTS

Art. 18 – The author shall enjoy the exclusive right to exploit his work in any form and to gain financial profit from it. In particular, the author shall have the exclusive right to carry out or authorize another person to carry out any of the following acts:

- 1 – reproducing the work in any format, including in the form of cinema films and sound recordings, using any procedures that enable the work to be communicated to the public;
- 2 – performing or reciting the work in public by any means or procedure, including sound or visual broadcast;
- 3 – communicating the work to the public by cable, loudspeaker or any other procedure or means of transmitting sounds or images;
- 4 – producing a translation, adaptation, arrangement or any other transformation of the work.

Under the terms of this Article, the work shall include the work in its original form, as well as in a form derived from the original.

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Art. 19 – No third party may carry out one of the acts referred to in Article 18 above without the written authorization of the author, his successors or the copyright management body.

Any reproduction or partial or complete performance carried out without the consent of the author, his successors or the copyright management body shall be unlawful.

#### SECTION V:

##### GENERAL LIMITATIONS TO COPYRIGHT

Art. 20 – When the work has been lawfully made accessible to the public, the author may not prevent it from being used as follows:

1 - communication such as performance or broadcast:

(a) if these are private, carried out exclusively within the family circle, and give rise to no form of revenue:

(b) if these are carried out free of charge and for strictly educational or teaching purposes or during a religious service in premises reserved for that end;

2 –reproduction, translations and adaptations, designed for strictly personal and private use;

3 – parody, pastiche and caricature, taking account of the laws of the genre.

Art. 21 – Provided that the title of the work and name of the author are mentioned, the following shall be lawful: short quotations and analyses taken from a work already lawfully made available to the public, in accordance with the fair practice of the profession and to the extent justified by the scientific, critical, polemical, teaching or information purpose, including quotations from articles from newspapers and periodicals in the form of press reviews.

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

Art. 22 – Provided that the name of the author and the source are mentioned, and on the condition that the right of reproduction has not been explicitly reserved, the following may be reproduced by the press or broadcast for information:

- articles on political, social and economic news, published in the original version or in translation;
- speeches given in public in official ceremonies and in political, legal, administrative or religious meetings and assemblies.

Art. 23 –When a news event is reported using photography, cinematography or sound or visual broadcast, it shall be lawful, to the extent justified by the information purpose, to record, reproduce and communicate publicly literary, scientific or artistic works that may be seen or heard during that event.

Art. 24 -The reproduction in a film or television program or public communication of figurative works of art or architecture that are permanently located in a public place or included in the film or program in a way that is incidental to the main subject, shall be lawful.

#### SECTION VI:

##### LIMITATION OF RIGHTS OF TRANSLATION AND REPRODUCTION

Art. 25 –Notwithstanding the provisions of Article 18, it shall be lawful to translate a work into French and into the national languages and publish this translation in Togo, subject to an authorization from the competent authority, even in the absence of authorization from the author.

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Art. 26 –Notwithstanding also the provisions of Article 18, it shall be lawful to reproduce a work and to publish a specific edition of this work on Togolese territory, subject to a license granted by the competent authority, even in the absence of authorization from the author.

SECTION VII:

TEMPORARY RECORDINGS

Art. 27 –Still notwithstanding the provisions of Article 18, the broadcasting organization may use its own technical and artistic means to make a temporary recording in one or more copies of any works that it is authorized to broadcast, for those broadcasts that are delayed because of time or technical requirements. All the copies must be destroyed within a period of six months from their production or after any longer period agreed to by the author.

However, one copy of this recording may be kept in the official archives when it has an exceptional documentary character, without prejudice to the application of the provisions of Article 15.

SECTION VIII:

COPYRIGHT HOLDER

Art. 28 –The rights protected by this Law shall belong above all to the author or authors who created the work.

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Art. 29 –The author of the work shall, unless otherwise proven, be the person in whose name the work was disclosed.

Art 30 - The work shall be deemed created, regardless of any disclosure, by virtue of the mere fact that the author's concept has been put into practice, if only incompletely.

Art. 31 -The copyright in a collaborative work shall belong to the co-authors who shall exercise their rights by joint agreement. In the event of disagreement, it shall fall to the competent court to issue a ruling.

If the involvement of each of the co-authors relates to different genres, each one may, unless there is an agreement to the contrary, separately exploit his personal contribution, yet without causing harm to the exploitation of the joint work.

Art. 32 - Copyright in a collective work shall belong to the natural person who, or legal entity that, took the initiative behind it and in whose name the work is disclosed.

Art. 33- The authors of pseudonymous or anonymous works shall enjoy in those works the rights provided for in this Law.

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 above provisions shall not be applicable where the pseudonym adopted by the author leaves no doubt as to his real identity.

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Art. 34 - Copyright in a composite work shall belong to the person who created it, subject to the copyright for the pre-existing work.

Art. 35 - The authors of translations, adaptations, transformations or arrangements of works of the mind shall enjoy the copyright protection conferred by this Law, without prejudice to the rights of the author of the original work as defined in section IV above.

The same shall apply to the authors of anthologies or collections of miscellaneous works that, by reason of the selection and arrangement of their contents, constitute new intellectual creations.

## SECTION IX

### TERM OF PROTECTION

Art. 36 – Copyright shall exist for the lifetime of the author and 50 calendar years from the end of the year of his death.

In the case of a collaborative work, the only date taken into account to calculate the term shall be the date of death of the last surviving collaborator.

Art. 37 – Copyright shall exist:

(a) for 50 calendar years from the end of the year during which the work was lawfully made available to the public in the case of:

(1) anonymous or pseudonymous works, unless the identity of the author of the work is revealed before the end of the period provided for in this Article, in which case the period provided for in Article 36 shall apply;

(2) cinematographic works;

(3) posthumous works;

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(4) collective works.

In the event of a staggered publication of a collective work, the period shall run from January 1 of the year following the publication of each part.

However, if the publication is completed within 20 years from the publication of the first part, the term of the exclusive right for the entire work shall cease to be only at the end of the fiftieth year following the year of publication of the final part.

(b) for 25 years from the end of the year of death of the author in the case of photographic works or applied arts.

Art. 38 - The economic rights of the author shall include a general preferential claim on the assets of a debtor. This claim shall be exercisable also after bankruptcy and a settlement by the court.

It shall be exercised immediately after the claim guaranteeing the wages of employees.

Art. 39 – In the case of posthumous works, the rights mentioned in Article 18 shall belong to the successors of the author for the period provided for in the first subparagraph of Article 36 above, if the work is disclosed during the period provided for in this Article.

Where the work is disclosed after that period has expired, the right shall belong to the owners of the manuscripts or originals in which the work is embodied if they publish them or have them published.

Posthumous works shall be published separately except where they constitute only a fragment of a work published previously. They may not be attached to previously published works by the same author unless the author's successors still enjoy the economic rights therein.

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Art. 40 – In any event, these periods shall run to the end of the year during which they are due to expire.

SECTION X:

*Transfer of copyright*

Art. 41 – The right of exploitation shall be partially or entirely transferable free of charge or at a price to a natural person or legal entity,

However:

- (1) assignment shall be certified by an authentic document or administrative formality, on pain of being rendered null and void;
- (2) assignment by the author of all or part of one right shall not involve the assignment of any of his other rights;
- (3) when a contract includes the assignment of one right, the scope of this shall be limited to the means of exploitation provided for in the contract;
- (4) the person to whom the exploitation right for a work has been assigned may not, unless otherwise agreed, transfer this right to a third party without the agreement of the original right holder;
- (5) the global assignment of future works shall be null and void if it is granted by the author to a professional authors' body.

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Art. 42 – The contract of exploitation shall specify the area of exploitation of the assigned rights in terms of their scope, place, period of exploitation, and also the remuneration for the author or his successors.

Art. 43 – Assignment in exchange for payment shall include a proportional share of all types of revenue for the author.

The remuneration of the author may, however, be assessed as a lump sum where:

- it is impossible in practice to determine the basis for calculating a proportional share accurately;
- there are no means of monitoring the application of the share;
- the nature or conditions of the exploitation make it too costly or impossible to apply the rule of proportional remuneration.

Art. 44 - Transfer of the ownership of the original copy of a work, or one or more copies thereof, shall not include transfer of the copyright relating to that work.

In the case of manifest abuse on the part of the owner preventing the exercise of the right of disclosure, the civil court may order any appropriate measures.

Art. 45 – It shall be lawful to conclude a contract commissioning three-dimensional works including temporary exclusivity not exceeding five years and with respect for the independence and freedom of expression of the author.

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Art. 46 –The rights of performance, reproduction, adaptation and translation shall be assignable free of charge or in exchange for payment.

The assignment by the author of these rights in his work may be total or partial. The assignment must include for the author a share in the revenues from the sale or exploitation.

#### SECTION XI:

#### RESALE ROYALTY RIGHT

Art. 47 –The authors of graphic, three-dimensional and handwritten works shall, notwithstanding any assignment of the original work, have an inalienable right to a share in the proceeds of the sale of that work at public auction or by a commercial intermediary. This right shall be known as the resale royalty right.

Following the death of the author, this resale royalty right shall continue for his heirs for the term of protection provided for in Article 36. This right shall be made up of a five per cent levy on the proceeds of the sale for the author or his heirs.

#### SECTION XII:

#### CONTRACTS

#### 1 –AUTHOR’S CONTRACT

Art. 48 - The contracts through which the author or his successors authorize the performance or publication of their works shall be in writing, on pain of being invalid. The same shall apply to

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free performance authorizations. These contracts shall mention the means of exploitation and the means of payment set by the author or his successors.

Art. 49 –The transfer of copyright shall be subject to the condition that each right assigned must be separately mentioned in the assignment document, and that the area of exploitation of the rights be defined in terms of scope, purpose, place and duration.

## II – PUBLISHING CONTRACT

Art. 50 – A publishing contract shall be one under which the author of the work or his successors assign to a publisher, under specific conditions, the rights to produce or have produced sufficient copies of the work and proceed with their publication and dissemination.

The publishing contract shall be written and shall determine the form and means of expression, arrangements for carrying out the publication and possibly the termination clauses.

Art. 51 - The publishing contract shall state the minimum number of copies that make up the first print run, except where provision is made for minimum royalties guaranteed by the publisher.

It shall provide for payment of remuneration proportional to the proceeds from exploitation of the work, except in the case of the lump-sum remuneration provided for in Article 43.

Art. 52 – The author shall be required to:

1. guarantee exclusive exercise to the publisher of the right granted, unless otherwise agreed;
2. enforce this right and defend it against any infringement;

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3. allow the publisher to fulfill his obligations and, in particular, to deliver to the publisher within the period provided for in the contract the work to be published in a form that allows for it to be produced normally.

The subject of the publication shall remain the author's property.

Art. 53 – The publisher shall be required to:

- manufacture or arrange manufacture, according to the conditions, form and means of expression provided for in the contract;
- not make any amendment to the work without written authorization from the author;
- unless otherwise agreed, indicate the name, pseudonym or mark of the author on each copy;
- unless specially agreed, carry out the publication in the period required and in accordance with the fair practice of the profession;
- ensure that the work is constantly and continually exploited, and commercially disseminated in accordance with the fair practice of the profession;
- return the subject of the publication to the author once manufacture has been completed.

Art. 54 - The publisher shall also be required to provide the author with all the evidence needed to establish the accuracy of his accounts. Unless otherwise stipulated in the contract, at least once a year the author may demand that the publisher produce a statement that mentions the following: number of copies produced during the financial year, indicating the date and size of the print run; and number of copies in stock.

Unless otherwise agreed, the statement shall also mention the number of copies sold by the publisher, the number of copies unusable or destroyed due to unforeseeable circumstances or *force majeure* and the sum of royalties due or already paid to the author.

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Any contrary clause shall be considered non-existent. Neither the bankruptcy of the publisher nor a settlement approved by the court shall terminate the contract.

The receiver may not remainder the copies manufactured or sell them out until at least 15 days have elapsed since he advised the author of his intention by registered letter with acknowledgement of receipt.

The author shall have a right of preemption over all or some of the copies. In the absence of an agreement, the purchase price shall be determined by expert opinion.

Art. 55 – It shall be lawful for the author 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 (5) 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 (5) years calculated from the same date.

Art. 56. - The publishing contract shall end independently of the cases provided for in ordinary law or the previous articles if the publisher destroys all 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 shall be deemed to be out of print where two requests for delivery of copies addressed to the publisher have not been met within six 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.

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Art. 57 - A contract for publication at the author's expense shall not constitute a publishing contract within the meaning of Article 50.

Under this kind of agreement, the author or his successors shall pay the publisher agreed remuneration, on condition that the publisher makes multiple copies of the work in accordance with the manner and modes of expression specified in the contract, and publishes and distributes them.

This type of agreement shall constitute a work contract governed by convention, custom and the provisions of the Civil Code.

Art. 58 -An agreement known as a "half-and-half" contract shall not constitute a publishing contract.

Under this kind of contract, the publisher shall be instructed by the author or his/her successors to make, at their expense, multiple copies of the work in the manner and in accordance with the forms 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 shall constitute a joint venture.

### III – PERFORMANCE CONTRACT

Art. 59 - A performance contract shall be one whereby the author of a work or his successors authorize a natural person or legal entity to present the said work on conditions decided on by them. A performance contract shall be entered into for a limited period or for a specific number of communications to the public.

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Save where exclusive rights are expressly provided for, it shall not confer on the entertainment manager any monopoly on exploitation.

The period of validity of the exclusive rights granted by a dramatist may not exceed five (5) years; the suspension of performances for one year shall automatically put an end to the contract.

Art. 60 - A general performance contract shall be one whereby a professional authors' organization confers on an entertainment manager 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.

Art. 61 - An entertainment manager shall be considered any natural person who, or legal entity that, occasionally or permanently, performs or arranges the performance in premises that admit the public and by any means, works protected under this Law.

Art. 62 - An entertainment manager shall be obliged to obtain prior authorization and pay the relevant royalties to the author.

The entertainment manager may not transfer the profit from his contract without the written consent of the author or his representative.

Art. 63 - An entertainment manager shall be obliged to:

- (1) - declare to the author or his representatives the exact program of public performances;
- (2) - provide them with documentary evidence of his revenue therefrom;
- (3) - pay the amount of the royalties stipulated;

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(4) - ensure that the public performance takes place in technical conditions that ensure respect for the intellectual and moral rights of the author.

### SECTION XIII

#### *“DOMAINE PUBLIC PAYANT”*

Art. 64 - On expiration of the terms of protection referred to in this Law, the author's works shall enter the public domain.

The right of exploitation of works in the public domain shall be administered by the Copyright Office of Togo (BUTODRA), set up by Article 73 of this Law.

Art. 65 - The public performance and reproduction of such works shall require authorization by the said body. That authorization shall, in the case of an event held for profit-making purposes, be granted against payment of a royalty calculated according to the gross revenue from the exploitation.

The amount of the royalty shall be equal to half of that usually payable for works in the same category of the private domain for the period of protection. The proceeds from that royalty shall be used for cultural and social purposes for the benefit of Togolese authors.

### CHAPTER II:

#### WORKS OF NATIONAL FOLKLORE

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Art. 66 - Folklore shall belong originally to the national cultural heritage. For the purposes of this Law, "folklore" shall mean all literary and artistic productions created in Togo by anonymous, unknown or forgotten authors presumed to be of Togolese nationality or from ethnic Togolese communities, passed from generation to generation and constituting one of the basic elements of the Togolese cultural heritage.

Art. 67 – There shall be no time limit on the protection of works of national folklore.

Art. 68 – The adaptation of folklore or the use of elements inspired by folklore shall be declared to the Copyright Office of Togo (BUTODRA).

Art. 69 – The public performance and reproduction by any means whatsoever of national folklore with a view to exploitation for profit-making purposes shall be subject to prior authorization by the Copyright Office of Togo (BUTODRA), against payment of a royalty, the amount of which shall be determined according to the conditions customary for each of the categories of creation considered.

The proceeds from that royalty shall be managed by the body referred to in the subparagraph above and used for cultural and social purposes for the benefit of Togolese authors.

Art. 70 – The provisions of Article 69 above shall not apply when the works of national folklore are used by a public person for non-profit purposes. However, this public person shall be obliged to make a statement to the Copyright Office of Togo (BUTODRA).

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Art. 71 –Copies of works of national folklore, and the copies of translations, arrangements and other transformations of these works, manufactured without the authorization of the Copyright Office of Togo (BUTODRA), may not be imported, exported or distributed.

Art. 72 - The royalties payable for the collecting of a work of folklore shall be distributed as follows:

(1) Collecting without personal arrangement or contribution:

- 50 per cent to the person who did the collecting;
- 50 per cent to the Copyright Office of Togo (BUTODRA).

(2) Collecting with arrangement or adaptation:

- 75% to the author;
- 25% to the Copyright Office of Togo (BUTODRA).

These royalties shall be set by the Decree provided for in Article 76 below.

### CHAPTER III:

#### NATIONAL COPYRIGHT MANAGEMENT BODY

Art. 73 – A public professional body known as the Copyright Office of Togo (BUTODRA) is hereby created under the supervision of the Ministry of Culture. This Office with legal personality shall be responsible for managing and protecting rights as defined in this Law.

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Art. 74 - The Copyright Office of Togo (BUTODRA) alone, to the exclusion of any natural person or legal entity, shall be entitled to act as intermediary between the author or his successors and the users of protected works for the issue of authorizations and the receipt of royalties and related matters.

Art. 75 - The Copyright Office of Togo (BUTODRA) shall manage in Togo the interests of the various societies of foreign authors in the framework of conventions or agreements that it will be called upon to sign.

Art. 76 – The organization and the functioning of the Copyright Office of Togo (BUTODRA) shall be determined by decree.

#### CHAPTER IV:

#### PROCEDURES AND SANCTIONS

Art. 77 - The Copyright Office of Togo (BUTODRA) shall be entitled to institute legal proceedings to defend the interests within its remit.

Art. 78 – At the request of any author of a protected work, the author's successors or the Copyright Office of Togo (BUTODRA), the President of the Civil Court or its individual sections may issue the following interim orders:

- the seizure from all premises of copies of an unlawfully reproduced work that have been or are being manufactured, as well as the equipment used for these purposes;
- the seizure of proceeds from any unlawfully implemented public reproduction or communication;

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- the suspension of any manufacture or public performance that is ongoing or announced that constitutes an infringement or a preparatory act to infringement;
  - the President of the Civil Court may order the distrainer to provide a security deposit.

The above provisions, except for the security deposit, shall be applicable in the event of unauthorized exploitation of folklore or a work in the public domain.

Art. 79 – At the request of any author of a work protected by this Law, his successors or the Copyright Office of Togo (BUTODRA), and also in exceptional circumstances, bailiffs or court officers may be ordered by the President of the Court to seize copies that constitute an unlawful or unlawfully used reproduction, in any premises including outside the times provided for in the Code of Civil Procedure and immediately to draft a statement of the fact.

Art. 80 – Within thirty (30) days of the date of the order provided for in Article 78 or the seizure statement provided for in Article 79, the distrainee or garnishee may request that the President of the Court pronounces the lifting of the seizure or to limit the effects thereof, set a deposit or authorize the resumption of production or exploitation.

The President of the Court may, if the request of the distrainee or garnishee is granted, issue an interim order for the deposit of a sum, on the requestor's responsibility, to guarantee against any damages that might be claimed by the author.

Art. 81 - Where the person making the seizure fails to bring the case before the appropriate court within 30 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, unless criminal proceedings are under way.

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The Court or the Court of Appeal, as applicable, shall hand down a ruling within 30 days; otherwise the seizure shall be null and void.

Art. 82 – When the proceeds from exploitation which are due to the author of a work of the mind have been the subject of a seizure, the President of the Court may order payment to the author, as an allowance for maintenance, of a certain sum or at least 25 per cent of the amounts seized.

Art. 83 - A person, whether natural person or legal entity, shall be considered responsible for unlawful reproduction or communication to the public, where he has allowed the reproduction or communication to the public in his establishment of protected works, or has failed to obtain prior authorization from the Copyright Office of Togo (BUTODRA). The person shall be liable for a fine equal to twice the amount of the royalties due.

Art. 84 - Any publication, reproduction, performance or dissemination by any means whatsoever, or the import and dissemination for commercial purposes in Togo, of a protected work in violation of this Law, shall be prohibited and shall constitute the offense of infringement.

Art. 85 – The penalty shall be three months to two years' imprisonment and a fine of 500,000 to 1,000,000 francs, if it is established that the perpetrator repeatedly carried out the acts referred to in the previous Article.

Should the offense be repeated, following a sentence that has been handed down under the previous subparagraph, a ruling may be made temporarily or permanently to close the establishments used by the habitual infringer or his accomplices.

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Art. 86. – The perpetrators shall also be sentenced to the confiscation of the sums equal to the amount of the share of proceeds from the unlawful reproduction, performance or dissemination, as well as the confiscation of any equipment specially installed for the purposes of unlawful reproduction and all the infringing copies or objects.

Art. 87 – The infringing equipment and copies, as well as the revenue or share of the revenue that gave rise to confiscation, shall be handed to the author or his successors as compensation for the harm suffered.

The remaining compensation, if there has been no confiscation of infringing equipment or objects or proceeds, shall be settled through the usual channels.

Art. 88 – At the request of representatives of the Copyright Office of Togo (BUTODRA), the police and military police authorities shall be required to provide their assistance and protection.

Art. 89 – The Copyright Office of Togo (BUTODRA) shall be authorized to appoint sworn representatives entitled to check the enforcement of the guidelines for this Law throughout Togo.

Art. 90 – The material evidence of infringement of the rules on copyright protection may be the result of statements by criminal police officers or agents or sworn agents of the Copyright Office of Togo (BUTODRA).

Art. 91 - In the case of infringement of the provisions of Article 47, the purchaser, seller and the person responsible for the public auction may be jointly sentenced to pay damages to the beneficiaries of the resale royalty right.

Art. 92 – Any user of a work of the mind (hoteliers, restaurant owners, bar owners, nightclub owners, shops playing music, advertising vehicles) who fails to pay the royalty due under a contract with an author or the general performance contract concluded between him and the Copyright Office of Togo (BUTODRA) shall be issued with an interim order for the suspension of the musical performance in his establishment and the seizure of the equipment used.

#### CHAPTER V:

#### SCOPE OF APPLICATION OF TITLE I

Art. 93 - The provisions of this Law shall not apply to current contracts, the implementation of which shall continue until the time provided for when the agreement was made.

Art. 94 – This Law shall apply to:

- the works of Togolese nationals;
- the works of foreign nationals which are published for the first time in Togo;
- the works of foreign nationals domiciled in Togo;
- works of architecture erected in Togo, and to any artistic work incorporated in a building located on Togolese territory.

Works which do not fall into one of the categories referred to above shall only enjoy the protection provided by this Law on condition that the country of which the original copyright owner is a resident or national grants equivalent protection to the works of Togolese nationals.

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However, no derogatory action may be undertaken with respect to the integrity or the authorship of such works. The royalties for these works shall be paid to the Copyright Office of Togo (BUTODRA).

The countries for which the reciprocity condition provided for in the second paragraph of this Article is deemed to be fulfilled shall be decided upon jointly by the Minister for Culture and the Minister for Foreign Affairs.

## TITLE II:

### RELATED RIGHTS

#### CHAPTER I:

#### DEFINITIONS

Art. 95 – Under the terms of this Law:

1. "performers" means actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works;
2. "fixation" means the embodiment of sounds, images, or both in a material form sufficiently permanent or stable to permit them to be perceived, reproduced, or otherwise communicated, during the period provided for under Article 27(1) of this Law;
3. "phonogram" means any exclusively aural fixation of sounds from a performance or other sounds;
4. "copy of a phonogram" means any medium containing sounds taken directly or indirectly from a phonogram and incorporating all or a substantial part of the sounds fixed on this phonogram;

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5. “producer of phonograms” means the natural person who, or the legal entity which, first fixes the sounds from a performance or other sounds;
  6. “publication” means the offering of sufficient copies of a phonogram to the public;
  7. “distribution to the public” means any act whose purpose is to offer a phonogram or copies thereof, directly or indirectly, to the general public or any part thereof;
  8. “broadcasting” means the transmission of sounds or of sounds and images by means of radioelectric waves for public reception;
  9. “rebroadcasting” means the simultaneous broadcasting by one broadcasting organization of a broadcast by another broadcasting organization;
  10. “reproduction” means the making of a copy or copies of a fixation or a substantial part of that fixation.

## CHAPTER II:

### ACTS SUBJECT TO AUTHORIZATION FROM PERFORMERS

Art. 96 - Without the authorization of the performers, no person shall perform any of the following acts:

(a) broadcasting of their performance, except when the broadcast:

- (1) is made from a fixation of the performance other than a fixation made pursuant to Article 111 below;
- (2) is a rebroadcast authorized by the broadcast organization that transmitted the first performance;

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(b) communication to the public of their performance, except where this communication is made:

- (1) from a fixation of the performance;

- (2) from a broadcast of the performance;

(c) fixation of their non-fixed performance;

(d) reproduction of a fixation of their performance in any of the following cases:

- (1) when the performance had initially been fixed without authorization;

- (2) when the reproduction is made for purposes other than those for which the artists have given their authorization;

- (3) when the performance had initially been fixed in accordance with the provisions of Articles 109 and 111 but then reproduction is made for purposes other than those referred to in those articles.

Art. 97 – Unless otherwise agreed or in the absence of usual employment conditions that state otherwise:

(a) authorization to broadcast shall not imply authorization to allow other broadcast organizations to transmit the performance;

(b) authorization to broadcast shall not imply the authorization to fix the performance;

(c) authorization to broadcast and fix the performance shall not imply authorization to reproduce the fixation;

(d) authorization to fix the performance and reproduce this fixation shall not imply authorization to broadcast the performance using the fixation or reproductions thereof.

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Art. 98 –As soon as performers have authorized the inclusion of their performance in a fixation of images or of images and sounds, the provisions of Articles 96 and 97, (c) and (d) above shall no longer apply.

Art. 99 – No provisions in this Chapter shall be interpreted as taking away from performers the right to conclude agreements that regulate the conditions of any use of their performance in a way that is more favorable to them.

Art. 100 – The protection of performers under the terms of this Law shall last for a period of twenty-five years from the end of the year in which the performance has taken place.

Art. 101 –The authorizations required by Article 96 may be given by the performer or a representative who is duly authorized to issue such authorizations, or by the Copyright Office of Togo (BUTODRA).

Art. 102 –Any authorization issued by a performer declaring that he has retained the relevant rights, or by a person claiming to be a duly authorized representative of the performers, or by the Copyright Office of Togo (BUTODRA) shall be considered valid unless the recipient knew or had good reason to believe that the proxy was not valid.

### CHAPTER III:

#### ACTS SUBJECT TO THE AUTHORIZATION OF PRODUCERS OF PHONOGRAMS

Art. 103 - Without the authorization of the phonogram producers, no person shall perform any of the following acts:

- (a) direct or indirect reproduction of his phonogram;
- (b) importation of unauthorized copies of the phonogram with a view to distributing them to the public;

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(c) distribution to the public of those copies.

Art. 104 –In order to benefit from the protection provided for in Articles 96, 97, 100 and 103, all copies of the phonograms brought to market or their packaging shall bear the symbol (P) (capital letter P in a circle), and an indication of the year of the first publication to show clearly that protection is reserved. If the copies or their packaging do not make it possible to identify the producer or holder of the license granted by the producer by means of a name, mark or any other appropriate sign, the notice must also include the name of the holder of the producer's rights. Finally, if the copies or their packaging do not make it possible to identify the main performers, the notice shall also include the name of the person who, in the country where the fixation was made, owns the rights of the performers.

Art. 105 – The protection of phonogram producers under the terms of this Law shall last for a period of twenty-five (25) years from the end of the year in which the phonogram was first made.

Art. 106 - If a phonogram published for commercial purposes, or a reproduction of such a phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the Copyright Office of Togo (BUTODRA), which shall distribute it as follows:

- 50 per cent for the performers;
- 50 per cent to the phonogram producer if the producer is covered by Article 116 of this Law. Failing this, it shall be paid to a national fund designed to assist and train Togolese performers;
- the sum received from the Copyright Office of Togo (BUTODRA) shall be shared among the performers used, in accordance with existing agreements between them;

- the right to fair remuneration under the terms of this Article shall continue for a period of twenty-five (25) years from the end of the year when the phonogram was first made.

#### CHAPTER IV

##### ACTS SUBJECT TO THE AUTHORIZATION OF BROADCASTING ORGANIZATIONS

Art. 107 - Without the authorization of the broadcasting organization, no person shall perform any of the following acts:

- rebroadcast of its broadcast programs;
- fixation of its broadcast programs;
- reproduction of a fixation of its broadcast programs:

(a) when the fixation on which the reproduction is based was not authorized;

(b) when the broadcast program was initially fixed in accordance with the provisions of Articles 109 and 110 but the reproduction was made for purposes other than those referred to in this Article.

Art. 108 - The protection of broadcasting organizations under the terms of this Law shall last for a period of twenty-five (25) years from the end of the year in which the broadcast program was initially made.

#### CHAPTER V

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LIMITS OF PROTECTION

Art. 109 – The provisions concerning the protection of related rights in this Law shall not be applicable when the acts referred to in these provisions are carried out:

- (a) for private use;
- (b) for reports of news events, provided that only short fragments of a performance of a phonogram or broadcast program are used;
- (c) for single usage for teaching or scientific research purposes in conditions laid down by Article 110 below;
- (d) for quotations in the form of short fragments of a performance, phonogram or broadcast program, provided that such quotations are in accordance with proper practice and are justified by their information purpose;
- (e) for any other purposes constituting exceptions relating to copyright-protected works pursuant to this Law.

Art. 110 – The Minister for Culture shall issue licenses for the production of copies of phonograms when such reproduction is intended for the exclusive use of teaching or scientific research, is carried out and distributed in Togo to the exclusion of any export of copies, and includes for the phonogram producer fair remuneration set by that Ministry, taking particular account of the number of copies to be made and distributed.

Art. 111 – The authorizations required by Articles 96, 103, 106 and 107 to make fixations of performances and broadcast programs and reproduce these fixations and phonograms published for retail shall not be required when the fixation or reproduction is carried out by a broadcast organization using its own means and for its own broadcasts, provided that:

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- (a) for each transmission of a fixation of a performance or its reproductions made pursuant to this subparagraph, the broadcast organization shall have the right to broadcast that performance;
- (b) for each transmission of a fixation or reproduction of such a fixation, made pursuant to this subparagraph, the broadcast organization shall have the right to broadcast the transmission;
- (c) for any fixation made pursuant to this subparagraph or its reproductions, the fixation and its reproductions shall be destroyed within a period equal to that applied to fixations and reproductions of copyright-protected works in Article 27 of this Law, with the exception of a single copy kept exclusively as an archive.

## CHAPTER VI:

### PROCEDURE AND SANCTIONS

Art. 112 – Any natural person or legal entity whose rights under this Law have been infringed may request the recovery of damages suffered as a result of the infringement, including the payment of all profits made by the perpetrators and, where appropriate, damages.

Art. 113 – Any person who issues authorizations on behalf of performers without being duly entitled to do so or any person who knowingly acts under the cover of such an unlawful authorization, shall be punished with a fine of between 100,000 and 500,000 francs.

Art. 114 – Independently of the means of recourse provided for in Article 112, any person who knowingly infringes or causes infringement of the rights protected under Title II of this Law shall be liable to a fine of between 500,000 francs and 1,000,000 francs. Repeat offenses shall be punishable by a fine of between 1,000,000 and 2,000,000 francs and one to three years' imprisonment, or only one of these penalties.

CHAPTER VII

SCOPE OF APPLICATION OF TITLE II

Art. 115 – This Law shall protect:

- (1) performers who are Togolese nationals;
- (2) foreign artists or performances domiciled in Togo;
- (3) performances carried out in Togo;
- (4) performances fixed on a phonogram protected under the terms of Article 116;
- (5) performances not fixed on a phonogram but included in a broadcast program protected under the terms of Article 117.

Art. 116 – This Law shall protect phonograms when:

- (1) the producer is a Togolese national;
- (2) the foreign producer is domiciled in Togo;
- (3) the first sound fixation was made in Togo;
- (4) the phonogram was first published in Togo.

Art. 117 – This Law shall protect broadcast programs when:

- (1) the headquarters of the organization is located in Togo;
- (2) the broadcast program has been retransmitted from a station in Togo.

Art. 118 – This Law shall not in any way affect the right of natural persons or legal entities to use, subject to the conditions stipulated above, fixations and reproductions made in good faith before the date of its entry into force.

The provisions of Title II on the protection of performers, phonogram producers and broadcast organizations shall not in any way be interpreted as limiting or infringing upon the protection otherwise provided to any natural person or legal entity under any other copyright protection law or any international agreement ratified by Togo.

#### FINAL PROVISIONS

Art. 119 – Any provisions that contradict this Law are hereby repealed.

Art. 120 – This Law shall be published in the **Official Gazette** of the Togolese Republic and shall be implemented as a State Law.

Lomé, June 10, 1991

General Gnassingbe EYADEMA