

**Decree No. 91-199 of August 16, 1991 on the organization and operation of the
Togolese Copyright Office (BUTODRA)**

THE PRESIDENT OF THE REPUBLIC,

Having regard to Article 15 of the Constitution of the Togolese Republic,

*Having regard to Law No. 91-12 of June 10, 1991 on the Protection of Copyright,
Folklore and Neighboring Rights,*

*Having regard to Decree No. 72-159 of July 7, 1972 establishing the Ministry of Youth,
Sports and Culture,*

*Having regard to Decree No. 91-110 of May 14, 1991 on restructuring of the
Government,*

The Council of Ministers heard,

HEREBY DECREES:

TITLE I – *General provisions*

CHAPTER I – *Definition and powers*

Article 1 – The present Decree establishes the procedure for implementation of the Law on the Protection of Copyright, Folklore and Neighboring Rights in Togo.

It determines the powers, organization and operation of the Togolese Copyright Office (BUTODRA).

Article 2 – The Togolese Copyright Office (BUTODRA) shall be a professional non-profit-making public establishment with legal personality and financial autonomy.

Article 3 – The Togolese Copyright Office (BUTODRA) shall have its headquarters in Lomé. It may open offices or agencies around the country. The headquarters may be transferred to any location in the national territory by order of the minister responsible for culture on the basis of a proposal of the governing board.

Article 4 – The Togolese Copyright Office shall have the following objectives:

- (a) to protect and defend, in the national territory and abroad, the professional and economic interests of authors of literary and artistic works, who are nationals of or resident in Togo or of their successors in title;
- (b) to contribute to the promotion of national creativity by all appropriate means within its competence.

In that connection, it shall have exclusive responsibility for administering, in the national territory and abroad, where appropriate through reciprocal agreements, all rights relating

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to public performance, broadcasting, television, communication to the public through cable or wireless, graphic or mechanical reproduction, translation, adaptation and any other process of reproduction in the Togolese Republic, and also the *droit de suite*.

To that end, it shall act as the exclusive intermediary for the conclusion of contracts between owners of copyright and the users of said works.

It shall have exclusive responsibility for administering said rights in the national territory on behalf of foreign authors, in implementation of reciprocal agreements concluded with their respective agents.

It shall receive and register all statements identifying works and their authors or successors in title.

It shall receive royalties on copyright and neighboring rights from the users of said works.

It shall distribute these royalties among the owners concerned or their successors in title.

It shall ensure that the specific conditions for the granting of compulsory licenses are fulfilled and complied with before granting such licenses.

It shall safeguard, enforce and administer rights relating to the use of Togo's folk heritage.

It shall produce standardized forms for contracts with the users of protected works or with organizations representing them.

It shall require users, on behalf of authors or their successors in title, to comply with the conditions for authorizing the use of protected works and, in the event of infringement, shall enforce all rights recognized by national law or by international conventions to which the Togolese Republic is a party, at its own initiative in the case of rights which it administers in any capacity, or at the express request of the interested parties in all other cases.

It shall give information or advice to authors or their successors in title on all questions relating to copyright.

It shall provide the competent authorities with information or advice on all legal or practical problems relating to copyright.

It shall establish and manage a social fund or any other similar body for social security, solidarity and mutual assistance for authors and their heirs. The terms of organization and operation of such fund or body shall be determined in separate regulations drawn up by the governing board.

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Article 5 – The Office's rules of procedure shall be established by the governing board in order to determine the terms on which the Office shall carry out operations in line with its objectives.

Article 6 – The terms and conditions for authors' membership of the Togolese Copyright Office (BUTODRA) shall be determined by order of the Minister responsible for culture on the basis of a proposal of the Governing Board.

CHAPTER II – *Administrative regime*

Article 7 – The organizational structure of the Togolese Copyright Office shall consist of:

1. the Governing Board;
2. the general management.

I – THE GOVERNING BOARD

Article 8 – The governing board of the Togolese Copyright Office (BUTODRA) shall have the following members:

- a person appointed by order of the Minister responsible for culture: the Chairman of the Board;
- the Director of Cultural Affairs at the Ministry responsible for culture;
- another representative of the Ministry responsible for culture;
- a representative of the Ministry of the Interior and Security;
- a representative of the Ministry of Information;
- a representative of the Ministry of National Education and Scientific Research;
- a representative of the Ministry of Justice;
- a representative of the Directorate of Industrial Property;
- eight representatives of authors, publishers, performers, phonogram producers and broadcasting organizations;
- two persons chosen by the Minister responsible for culture on account of their competence or qualifications or their interest in promoting national culture.

Article 9 – The two persons chosen by the minister responsible for culture on account of their competence or qualifications or their interest in promoting national culture shall be appointed for a non-renewable term of two years.

The eight members of the governing board who represent authors and their auxiliaries shall serve for a term of two (2) years that may be renewed once. The members of the governing board shall be entitled to fees for the performance of their functions, the amount of which shall be determined by the Governing Board and approved by the supervising Minister.

The term of office of any member who fails to attend three (3) consecutive board meetings shall be terminated automatically, except in cases of *force majeure*, proof of which must be provided to the supervising Minister.

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Article 10 – The Director-General and the Auditor shall attend meetings of the Governing Board in an advisory capacity.

Article 11 – The Governing Board shall meet in regular sessions convened by the chairman at least once every six months. It shall also meet in special sessions at the request of the supervising authority, the Director-General or two thirds of its members.

Article 12 – The deliberations of the Governing Board shall be recorded in minutes entered in a special register and signed by the Chairman and the Director-General. These minutes shall mention the members present.

Article 13 – A certified copy of the minutes of each meeting shall be submitted to the supervising authority within a month of the holding of the meeting.

Article 14 – The Governing Board of the Togolese Copyright Office shall be responsible for drafting the Office's general policy and ensuring that it is implemented and monitored.

It shall hear the Director-General's reports on the operation of the Office. It shall consider and approve the following:

- the advance operating accounts produced by the general management;
- the year-end documents (inventory, income statement, balance sheet accounts, auditor's report);
- guarantees to be given;
- loans to be taken out;
- shares to be taken;
- the Office's rules of procedure and financial rules;
- social and professional issues of interest to the producers of works;
- the staff regulations;
- acquisitions, sales, exchanges and renting of buildings, which may take place only with the approval of the supervising Minister;
- agreements between the Togolese Copyright Office and other organizations pursuing the same goals;
- the establishment of committees and appointment of their members;
- the establishment or closure of agencies or offices around the country;
- donations or bequests to the Togolese Copyright Office, subject to the approval of the supervising Minister.

Article 15 – The members of the Governing Board may not be employed by the Togolese Copyright Office.

Article 16 – The deliberations of the Governing Board shall be valid only if at least two thirds of its members are present. If there is no quorum, another meeting shall be convened within 15 days, at which the board shall deliberate irrespective of the number of members present.

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If the Chairman is absent, the Governing Board shall appoint a presiding officer from among its members.

Decisions shall be taken by a majority of the members present or with valid representation; such majority shall be recorded in the minutes entered in a special register and signed by the presiding officer.

In the event of a tie, the chairman shall have the deciding vote.

Article 17 – The agenda for each meeting shall be drawn up by the Chairman of the Governing Board on the basis of a proposal by the Director-General of the Office.

Notifications of meetings, together with the agenda, shall be issued at least eight days before the date of the meeting, except in cases of emergency.

II – *The general management*

Article 18 – The Director-General shall be appointed by decree on the basis of a proposal by the minister responsible for culture. His term of office shall be terminated in the same way.

The Director-General may not be an author, successor in title or assignee of works of the mind.

Article 19 – The Director-General shall be responsible for the management and administration of the Togolese Copyright Office under the supervision of the Governing Board, which shall delegate to him all powers to that end. He shall be accountable to the Board and the supervising authority.

Subject to the inalienability of buildings and fixed equipment provided by the State as an endowment, the Director-General shall have the powers listed in the following paragraphs, which are illustrative and non-exhaustive.

He shall take decisions on all purchases, rentals, exchanges and disposals of movable and immovable property and on all withdrawals, transfers, concessions and disposals of the Office's securities.

With the approval of the Governing Board and the supervising authority, he shall take decisions, in line with and subject to the necessary administrative authorizations, on the establishment of all societies or support for the establishment thereof.

With the approval of the Governing Board and the supervising authority, he shall take shares in all business or societies established or to be established by subscription or other means.

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He shall contribute to all societies established or to be established such portions of the corporate assets as he sees fit that do not entail risks of dissolution or restriction for the Togolese Copyright Office.

He shall receive, as representative, all securities, shares, bonds, social rights or remuneration.

He shall, except in cases of incompatibility, as set out in the present Article, accept all functions or mandates of manager, administrator or others in all societies and may delegate a person of his choosing to carry them out. He shall ensure that all delegated persons establish and sign all statutes, statements of subscriptions and payments and other necessary instruments.

He shall grant, accept and terminate all leases and rentals with or without an undertaking to sell.

With the approval of the Governing Board, he shall be responsible for any mortgaging of the Office's buildings, the granting of all pledges, delegations and charges of any kind, and the granting of all subrogations with or without guarantee.

He shall accept as payment all annuities and delegations and shall accept all charges, mortgages and other guarantees, subject to the restriction mentioned in the second paragraph of the present Article.

He shall request, accept, surrender, modify and terminate all concessions, take part in all adjudications and provide or withdraw all securities.

He shall take out loans with the approval of the Governing Board and the authorization of the Government.

He shall authorize all treaties, settlements, transactions, acquiescences and waivers; all delegations, precedents and subrogations with or without guarantee; and all releases of mortgages, seizures or attachments before or after payment, subject to the provisions of the second paragraph of the present Article.

He shall close the accounts and prepare reports on the activities and situation of the Office; these documents shall be submitted to the supervising minister after approval by the Governing Board.

The Director-General shall appoint and dismiss, in compliance with the regulations in force, all officers and staff of the Office except for the management staff, and shall determine their functions and conditions of admission.

In matters of staff recruitment and dismissal, he shall seek the advice of the Governing Board and the supervising minister.

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The Director-General may delegate authority for the day-to-day management of the Office to members of staff.

Article 20 – The general management of the Togolese Copyright Office shall also include:

- the directorate of collection, monitoring and computing;
- the directorate of documentation, distribution and statistics;
- the directorate of legal affairs and international relations;
- the directorate of the cultural promotion fund, social work and training;
- the directorate of public affairs.

The internal structures of the various directorates shall be determined by order of the Minister responsible for culture.

Article 21 – Other central directorates and departments may be established subsequently on the basis of the Office's needs.

Article 22 – The heads of the various directorates shall be appointed by order of the Minister responsible for culture.

Their terms of office shall be terminated in the same way.

Article 23 – The salaries and other benefits of the Director-General and the directors and heads of central departments shall be determined by the Governing Board and approved by the supervising minister.

TITLE II – *Operation*

CHAPTER I – *Staff*

Article 24 – The staff of the Togolese Copyright Office may not under any circumstances be authors of works of the mind or their successors in title or assignees.

Article 25 – The staff of the Togolese Copyright Office may be:

- recruited from among civil servants, in accordance with the applicable regulations;
- hired directly by the Office. In such cases they shall be subject to the general rules under the Labor Code with regard to their rights and obligations.

Article 26 – The Togolese Copyright Office, in accordance with the Law on the Protection of Copyright, Folklore and Neighboring Rights, shall appoint officers to be sworn in with the approval of the Minister responsible for culture.

CHAPTER II – *Financial management*

Article 27 – The income of the Togolese Copyright Office shall consist of:

- copyright royalties collected on behalf of authors or their successors in title;

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- royalties collected on behalf of performers, phonogram producers and broadcasting organizations;
- royalties collected on the use of works based on national folklore;
- royalties collected on the use of works that have fallen into the *domaine public payant*;
- proceeds of penalties and compensation, and damages arising from legal action;
- interest on investments;
- grants, donations and bequests.

Article 28 – The expenses of the Togolese Copyright Office shall include:

- general operating, equipment, investment and staff costs;
- legal and other costs incurred in the defense of copyright and neighboring rights;
- the amount of royalties on copyright and neighboring rights distributed among authors and their auxiliaries or successors in title.

Article 29 – The Office's expenses shall be deducted from all royalties collected. The proportion levied to cover costs shall be determined in advance each year by the Governing Board on the basis of a proposal by the Director-General and shall be approved by the Minister responsible for culture.

Article 30 – The royalties on copyright and neighboring rights collected by the Togolese Copyright Office shall be distributed, after deduction of actual expenditure, among authors in accordance with the scales adopted by the Office.

Article 31 – At the end of each financial year, the Director-General shall establish for that year:

- a management account that includes income and expenditure as defined in Articles 25 and 28 of the present Decree;
- a management account that includes income and expenditure connected with the social security fund;
- a balance sheet showing the Office's situation on the last day of the year in question.

For the purposes of implementation of the present Article, the accounting year shall begin on January 1 and end on December 31.

CHAPTER III – *Cultural promotion fund*

Article 32 – The Togolese Copyright Office shall be authorized to open a special appropriation account called the Cultural Promotion Fund.

Article 33 – The following amounts shall be paid annually into the Cultural Promotion Fund:

- Three per cent of royalties collected by the Togolese Copyright Office on copyright and neighboring rights;
- Five per cent of income from theatres managed by the Ministry responsible for culture;
- 15 per cent of amounts collected by the Office from folklore and the *domaine public payant*;

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- Five per cent of amounts collected from the identification and evaluation of *objets d'art* and handicrafts intended for export;
- voluntary contributions from any commercial establishment operating in the national territory whose main area of activity relates to artistic and cultural productions or cultural goods (companies publishing books or records, bookshops, sales outlets for musical instruments and equipment, toys, *objets d'art* and handicrafts, or any other similar establishment);
- any other public or private contributions.

The aforementioned percentages may be revised by the Governing Board on the basis of a proposal by the Director-General of the Togolese Copyright Office.

Article 34 – Expenditure shall be governed by the normal regulations for special appropriation accounts and may be used in particular for the:

- construction of cultural infrastructure;
- purchase of cultural equipment;
- organization of cultural events;
- establishment of cultural industries.

Article 35 – The Director-General of the Togolese Copyright Office shall be responsible for managing the Cultural Promotion Fund under the supervision of the Minister responsible for culture, who shall determine by order the fund's *modus operandi*.

CHAPTER IV – *Auditors*

Article 36 – An auditor for the Togolese Copyright Office shall be appointed by order of the Minister of Finance.

The auditor shall carry out his tasks in accordance with the regulations in force.

He shall carry out an in-depth audit of the cash accounts at least twice a year and of all the Office's accounts at least once a year.

The auditor's report shall be submitted to the Governing Board. In the event of the death, resignation or incapacity of the auditor, a new auditor shall be appointed as a matter of urgency, subject to the conditions set out above.

The auditor shall be entitled to remuneration determined by the Government on the basis of a proposal by the Governing Board.

CHAPTER V – *Supervising authority*

Article 37 – The supervising authority for the Togolese Copyright Office shall be the Minister responsible for culture, in accordance with Article 73 of the Law on the Protection of Copyright, Folklore and Neighboring Rights.

The supervising minister may convene a meeting of the Governing Board at any time. In such cases, he shall propose an agenda.

The supervising minister shall receive the minutes of all deliberations of the Governing Board.

He may, within 15 days of receipt of the minutes of the Board's deliberations, request further deliberation on the issue discussed.

The supervising minister may also, within 15 days of such further deliberation by the Board at his initiative, request deferral of the enforcement of decisions taken.

In such cases, he shall immediately report his intervention to the Government, which shall take a decision.

CHAPTER VI – *Closure of the Togolese Copyright Office*

Article 38 – In the event of closure of the Office approved by decree, the Government shall determine the procedure to be followed.

TITLE III – *Transitional and final provisions*

CHAPTER I – *Transitional provisions*

Article 39 – The State shall support the Togolese Copyright Office by providing it with a substantial subsidy to cover its requirements during the start-up period. This subsidy may be withdrawn on the basis of a report by the Minister responsible for culture when the Office's financial situation so permits.

Article 40 – Togolese nationals who are members of societies already accredited for the exploitation and protection of copyright in works of the mind shall automatically be members of the Togolese Copyright Office.

CHAPTER II – *Final provisions*

Article 41 – All earlier provisions contrary to the present Decree are hereby and shall remain repealed.

Translated from French

Article 42 – The Minister responsible for culture shall be responsible for the implementation of the present Decree, which shall be published in the *Official Gazette*.

Lomé, August 16, 1991

General Gnassingbé EYADÉMA