

Law No. 94—36 of February 24, 1994, on Literary and Artistic Property*

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Chapter I General

1. Copyright shall subsist in all original literary, scientific or artistic works whatever their value, purpose, mode or form of expression, as also in the title of works. It shall apply equally to a work in its original form and in any form derived from the original.

The works in which copyright subsists shall include:

- written or printed works such as books, pamphlets and other written or printed works;
- works created for the theater or for broadcasting (sound or visual), whether dramatic, dramatico-musical, choreographic or of dumbshow;
- musical compositions with or without words;
- photographic works, to which shall be assimilated for the purposes of this Law works expressed by a process analogous to photography;
- cinematographic works, to which shall be assimilated for the purposes of this Law works expressed by a process producing visual effects analogous to those of cinematography;
- works executed by painting, drawing, lithography, etching or woodcutting and other works of like nature;
- sculpture of all kinds;
- works of architecture, comprising also designs, models and the mode of construction;
- tapestries and articles of artistic handwork, including both the drawings or models and the work itself;

— maps, as also drawings and graphic and three-dimensional reproductions of a scientific or artistic nature;

— lectures;

— works inspired by folklore;

— software;

— translations and arrangements or adaptations of the aforementioned works.

2. Copyright shall afford the exclusive right to carry out or authorize the carrying out of any of the following acts:

(a) reproduction of a work in any material form whatsoever, including phonograms, audiovisual recordings and the like;

(b) communication of the work to the public by any means, in particular by public performance such as performance in hotels, restaurants, land, sea or air means of transport, as in festivals and entertainment halls, by means of

— a medium for the diffusion of recorded works,

— broadcasting means,

— modes of transmission by cable or by telecommunication satellite or other similar means;

(c) communication of a broadcast work to the public by wire, loudspeaker or any other device that transmits signs, sounds or images;

(d) any translation or adaptation of a work.

3. No exploiter other than the owner of the work or his representative may carry out the work referred to in Article 2, above, unless he can produce prior authorization by the owner of the work or his representative in the form of a written contract setting out the following compulsory particulars:

(a) the name of the person responsible for exploitation;

(b) the mode of exploitation (form, language, place);

(c) the duration of exploitation;

(d) the amount of the remuneration due to the owner of the work.

4. Unless proved otherwise, the author of a work shall be the person under whose name the work has been disclosed.

However, where the work has been produced by the servants of a public or private legal person in the exercise of their duties, copyright shall belong to such servants unless otherwise stipulated in a contract between the two parties and with the exception of the producer of cinematographic and audiovisual works, who shall remain the owner of the copyright.

5. A work of joint authorship is a work in whose creation two or more natural persons have participated and whose contributions cannot be separated one from the other.

In such cases, copyright shall belong collectively to all those persons who have participated in the creation.

A composite work is a new work in which an existing work has been incorporated without the collaboration of the author of the latter work.

In such cases, copyright shall belong to the person who has made the composite work and account shall be taken of the rights of the owner of the original work that has been incorporated in the composite work.

A collective work is a work created at the initiative of a natural or legal person who discloses it under his direction and name and in which the personal contributions of the various authors who participated in its production are merged in the overall work for which they were conceived without it being possible to attribute to each author a separate right in the work as created.

Copyright shall belong to the natural or legal person who has ordered the production and publication of the work, unless otherwise provided in a written contract.

6. The authors of translations, adaptations, transformations or arrangements of literary, scientific or artistic works shall enjoy the protection afforded by this Law, without prejudice to the rights of the author of the original work.

The same shall apply to authors of anthologies or collections of various works, with account taken of the rights of the owner of the original work.

7. Folklore forms part of the national heritage and any transcription of folklore with a view to exploitation for profit shall require authorization from the Ministry responsible for culture against payment of a fee for the benefit of the welfare fund of the Copyright Protection Agency established pursuant to this Law.

Authorization from the Ministry responsible for culture shall also be required for the production of works inspired by folklore for the full or partial assignment of copyright in a work inspired by folklore or for an exclusive license with respect to such work.

Folklore within the meaning of this Law shall be any artistic heritage bequeathed by preceding generations and bound up with customs and traditions and any aspect of folk creation such as folk stories, writings, music and dance.

8. The name of the author shall be given on each copy that reproduces a work and each time that a work is made available to the public, to the extent and in the manner that is customary.

A work may not undergo any modification without the author's consent given in writing.

No person shall be entitled to make a reproduced work available to the public in a form or under circumstances that are materially and morally detrimental to the author.

Chapter II Authors' Rights

9. Authors' moral rights shall include, in particular:

(a) a right of authorship: this right implies that an author shall maintain the right to claim authorship of his work and to have his name given on each copy;

(b) a right of non-authorship: this is the author's right to remain anonymous at the time his work is made available to the public;

(c) a right to assume a pseudonym: an author shall enjoy the right to assume a pseudonym in place of his own name;

(d) a right to oppose any modification or distortion or mutilation of his work;

(e) a right of disclosure: by virtue of this right the author alone shall be entitled to present his work to the public by any means or process;

(f) a right to reconsider: an author shall enjoy the right to withdraw his work from circulation or to seize it.

10. The author of a work that is lawfully made available to the public may not prevent:

(a) the making available to the public of the work if done for private purposes and free of charge or if done for educational, teaching or cultural purposes;

(b) reproductions, translations and adaptations intended for strictly personal and private use. However, the organizers of theatrical performances, whether free of charge or against payment, shall be required to inform beforehand either the author, his successors in title or the Copyright Protection Agency.

11. Quotations and borrowings from a work already lawfully made available to the public shall be authorized on condition that they are compatible with fair practice and are justified by a scientific, educational or informational purpose, including quotations and borrowings from articles in the form of press summaries.

Such quotations and borrowings may be used in their original version or in translation and shall be accompanied by identification of the source and of the name of the author if his name is given in the source.

12. Sound or audiovisual recordings and reproductions of broadcast literary, scientific or artistic works shall be lawful if such recordings or reproductions are made for educational or cultural purposes.

13. The Ministry responsible for culture may authorize as required the public libraries, the non-commercial documentation centers, the scientific institutes and teaching establishments, the youth centers and culture centers, to reproduce literary, scientific or artistic works in the necessary quantity and limited to the needs of their activities in return for remuneration to be laid down, failing amicable agreement between the parties, by the Tunisian Copyright Protection Agency.

14. If it is not expressly stated in the source that the right of reproduction is reserved, articles concerning political, social or economic current events may be reproduced in the press or be broadcast.

However, the source must in all cases be identified.

15. The recording, reproduction and broadcasting of literary, scientific or artistic works referred to as part of information relating to current events shall be lawful whatever the means used, within the limits justified by the intended purpose of the information.

16. Works of figurative or architectural art permanently shown in a public place may be reproduced for the purposes of cinematography or of television on condition that their insertion in a cinematographic film or television broadcast is of an incidental or secondary nature in relation to the main subject of the film or broadcast.

17. It shall be permissible to preserve works created by radio and television production establishments operating in the Tunisian Republic, using their own means and for their own broadcasts, in accordance with an authorization given by the authors themselves. However, such establishments may not exploit the works concerned beyond a period of one year unless they obtain a new authorization from the authors or from the Copyright Protection Agency and, in such case, in the absence of a contract for the benefit of a radio or television establishment for the right to exploit the work. A copy of recordings of a cultural nature, made by radio or television, shall be kept in the official archives designated to that end by the Minister responsible for culture.

A list of the types of recordings that shall be kept shall be drawn up by decision of the Ministry responsible for culture.

18. Copyright shall subsist for the lifetime of the author and for 50 Gregorian years counted from January 1 of the year following the author's death or of the date determined in a finding of presumed death in the event of absence or disappearance.

In the case of works of joint authorship, the date of the death of the last surviving author or of the date determined in a finding of presumed death in the event of absence or disappearance alone is taken into consideration for calculating the duration.

In the case of anonymous or pseudonymous works, copyright shall subsist for 50 years as from the date on which the work has been lawfully made available to the public.

Where a pseudonym does not hide the identity of the author, the term of protection shall remain as provided in the first paragraph of this Article.

Where the author of an anonymous or pseudonymous work reveals his true identity during the above-mentioned period, the term of protection shall be that provided in the first paragraph of this Article.

19. In the case of photographic works, copyright shall only subsist for 25 Gregorian years as from the year during which the work was made.

20. The authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right to authorize:

(1) the public performance and execution of their works, including public performance and execution by all means and processes;

(2) public transmission by all means of the performance or execution of their works.

The authors of dramatic and dramatico-musical works shall enjoy the same rights in respect of the translation of their works during the whole term of their rights in the original work.

21. The authors of literary works shall enjoy the exclusive right to authorize the public recitation of their works, including public recitation by all means or processes and public transmission by all means of the recitation of their works. The same shall apply to the translation of their works.

Chapter III

Assignment of Copyright

22. The partial or full assignment of copyright as provided by this Law shall be permitted.

23. Assignment of the right to communicate a work to the public shall not imply the right to reproduce the work on a physical medium such as recording on tape, for example; likewise a work recorded on a physical medium may not be communicated to the public without the authorization of the author.

24. Overall assignment of works not yet created shall be null and void except where assigned to the Tunisian Copyright Protection Agency.

Where copyright is assigned to the State, by succession, copyright shall be deemed assigned to the Copyright Protection Agency and the proceeds of sale deriving from such right shall be paid to the welfare fund of that Agency.

25. The authors of manuscripts and of three-dimensional works shall have an inalienable right, despite any assignment of the original work, to participate in the proceeds of any sale of the work made at auctions or through a dealer. After the death of the author, this resale royalty right shall subsist for the remainder of the current Gregorian year and for the following 50 years. Five percent of the proceeds of the sale shall be levied for the benefit of the author or his heirs.

26. Authorization to broadcast a work by radio or television shall cover all broadcasts made by the radio and television establishments operating in Tunisia by their own means and under their own responsibility, except where clearly stipulated to the contrary in a contract concluded between them and the author. Works of advertising exploited by a radio or television establishment shall be the subject of a specific contract setting out the conditions of exploitation and the percentage of royalties due to the authors.

Chapter IV

Publication of Graphic Works

27. A graphic publication contract is a contract by which the author of a work or his successors in title assign to the publisher, in accordance with the conditions set out, the right to manufacture or have manufactured a specific number of copies of the work, with the obligation for the publisher to undertake publication and distribution.

The contract shall be in writing.

28. Unless otherwise provided, the contract shall stipulate remuneration that is proportional to the proceeds of exploitation for the benefit of the author or his successors in title; such remuneration shall be due on signing of the contract.

29. The publisher shall be required to furnish to the author all the documents required to establish the correctness of his accounts.

The author may require the publisher to furnish at least once a year a statement comprising:

(a) the number of copies manufactured during the current period, stating the date and size of prints. The printing of a number of copies greater than that set out in a contract shall

be deemed unlawful. The author may claim the royalties relating to those rights. He may further claim damages;

(b) the number of copies held in stock;

(c) the number of copies sold by the publisher, the number of copies unused or destroyed fortuitously or by *force majeure*;

(d) the amount of royalties due and, as appropriate, the amount of royalties paid to the author. Any clause to the contrary shall be deemed not to have been written.

30. A publishing contract may be terminated by the author or his successors in title if the publisher has not carried out publication of the work.

An author may also terminate a publishing contract if his work is not republished once the printing is exhausted.

The publication shall be considered exhausted if a request for supply of copies addressed to the publisher has not been satisfied within three months.

31. A publisher may not publish a work that does not belong to the public domain without concluding a contract with its author.

In the event of infringement, the publisher shall be required to pay damages to the author in addition to the royalties for exploiting the work in accordance with usual practice.

Where an author is bound to a publisher by a contract duly concluded for a given work and a specified date, he may not conclude a second contract with a further publisher for the same work unless he has the authorization of the first publisher in accordance with the contract between the two parties.

In the event of infringement, the author shall be required to pay damages.

Chapter V

Manufacture of Recorded Copies

32. No person may manufacture or have manufactured, for commercial purposes, a given number of copies of a protected work by means of mechanical recording on disks or magnetic tapes (phonograms) or audiovisual tapes (videograms) or by any other recording process unless he has concluded a written contract with the author of the work or his representative.

33. A contract concluded with the Tunisian Copyright Protection Agency shall necessarily comprise:

(a) the prior authorization referred to in Article 2 of this Law, setting out the term of validity;

(b) the conditions of exploitation in accordance with the standards laid down in agreement with the parties;

(c) the percentage due to the beneficiaries deriving from the proceeds of exploitation, stating the minimum royalties for each work;

(d) the times and forms of payment;

(e) the means of verification enabling authors and composers to claim their entitlements.

Any contract contrary to the provisions of this Article shall be deemed null and void.

34. A manufacturer of copies recorded on phonograms or videograms or on any other recording medium shall be required to furnish to the Copyright Protection Agency all elements of his accounts and shall also be required to furnish to the agents referred to in Article 54 of this Law all documents relating to exploitation each time a request is addressed to him.

35. It shall be prohibited to make recorded copies, in the form of phonograms or videograms or in any other form, of a protected work for commercial purposes unless entitled under a contract concluded with the author or with the Copyright Protection Agency.

It shall also be prohibited to make false representations in the accounting of revenue from sales of recordings furnished by the manufacturers who enjoy an authorization to record.

36. Each recorded copy shall be required to bear:

- A. — the sign of the legally responsible manufacturer, together with his full address;
- B. — the sign of the authorization given by the Copyright Protection Agency;
- C. — the title of the work and the serial number allocated to it;
- D. — the names of the authors.

37. Manufacturers and importers of blank magnetic tapes or cassettes intended for making recordings shall be required to pay to the Tunisian Copyright Protection Agency 2% of the retail selling price of all cassettes, whether manufactured or imported.

The royalties shall be allocated equitably for the benefit of the welfare fund of that Agency and for the benefit of its members amongst the authors.

The royalties referred to above shall be refunded to the payer if he has already paid the royalties due on recorded cassettes.

Chapter VI

Cinematographic and Audiovisual Works

38. Copyright in cinematographic and audiovisual works shall belong to the producer.

The producer of a cinematographic or audiovisual work is the natural or legal person who takes the initiative for production and the responsibility for exploiting the work.

39. The producer shall be required to conclude contracts, before undertaking production of a cinematographic and audiovisual work, with all those whose works are conceived for the production.

All contracts, with the exception of those concluded with the authors of musical compositions, with or without words, shall stipulate, unless otherwise agreed, assignment of the exclusive right of exploitation to the producer.

The persons who have contributed to the work shall retain their moral rights in all cases.

40. A cinematographic and audiovisual work shall be deemed to have been completed when the first master copy has been established by common accord between the director and the producer.

The director of a cinematographic work is the natural person who undertakes the direction and assumes the artistic responsibility for transforming the work into images and sound, for its cutting and for its final mounting.

41. If any contributor to a cinematographic work refuses to complete his contribution to the work or is unable to do so due to circumstances beyond his control, he shall not be entitled to oppose use of that part of his contribution already in existence for the purpose of completing the work.

If the producer of a cinematographic and audiovisual work refuses to produce the work or is unable to produce it or to complete it due to circumstances beyond his control, the contributors to that work may request the competent court to cancel the contracts that bind them to the producer whilst maintaining their pecuniary rights under such contracts.

Unless otherwise agreed, the contributors to a cinematographic or audiovisual work may dispose freely of their personal contribution for exploitation in a different field on condition that they do not prejudice exploitation of the work to which they have contributed.

42. The persons exploiting cinematographic and audiovisual works, the distributors of cinematographic films or video films by means of sale, lending or hiring, as also the owners of cinema or audiovisual projection theaters, shall conclude contracts with the authors or their successors in title for the payment of the royalties relating to the authors' rights.

Chapter VII Software

43. Unless otherwise agreed, software created by one or more employees in the course of their duties shall belong to the employer to whom all the rights afforded to authors shall also belong.

The provisions of the first paragraph of this Article shall also apply to servants of the State, of public local authorities and of public establishments.

Any dispute concerning application of this Article shall be submitted to the court with competence for the registered offices of the employer.

44. Unless otherwise agreed by contract, software created on a commission and the documentation having served to create it shall remain the property of the producer.

45. Unless otherwise agreed, an author may not oppose adaptation of his software by third parties within the limits of the rights he has assigned to them.

46. Unless otherwise agreed, any reproduction other than the making of a backup copy by the user or any other use of software not explicitly authorized by the author or his successors in title shall be prohibited.

However, the author of software may not oppose any reproduction from an original acquired of his work that is made by scientific and cultural institutions or by teaching and research establishments and non-commercial documentation centers, limited to the needs of their activities in accordance with Article 13 of this Law.

47. The rights afforded by this Chapter shall terminate on expiry of a period of 25 years as from the date on which the software was created.

Chapter VIII Exercise of Copyright

48. There is established under the terms of this Law a public establishment of an industrial and commercial nature enjoying legal personality and financial autonomy with the name Tunisian Copyright Protection Agency.

The Agency shall report to the Ministry responsible for culture.

The Agency shall be subject to the rules of commercial accounting except where this Law derogates from such rules.

Its headquarters shall be in Tunis and suburbs.

49. The tasks of the Tunisian Copyright Protection Agency shall be:

(a) to safeguard authors' rights and to defend their material and moral interests;

(b) to represent, with regard to users of works, its members or foreign associations of authors or the members of such associations in accordance with either its terms of reference or a reciprocal agreement;

(c) to lay down the appropriate royalties payable for any work.

The functions and organization of the Agency shall be laid down by decree.

Chapter IX Procedures and Sanctions

50. It shall be prohibited to import onto the territory of the Tunisian Republic copies of a work that constitute an infringement of copyright within the meaning of this Law and of the international copyright treaties.

51. Any person who infringes recognized copyright in any protected work as set out in Article 2 of this Law shall be required to pay to the owner of such right damages of which the amount shall be determined by the competent court.

Infringement of copyright shall be deemed proven where the user of the work is unable to furnish the authorization referred to in Article 2 of this Law.

52. Any person who has knowingly done or caused to be done any act whatsoever that infringes Articles 29, 31, 32, 34, 35, 36, 37, 39, 44, 46 and 50 of this Law shall be liable to a fine of between 500 and 5,000 dinars.

In the event of a repeated offense, the fine may be increased to 10,000 dinars, to which may be added a term of imprisonment of between one and six months or one only of these two penalties.

53. The owner of an establishment open to the public in which an infringement of the provisions of this Law has been committed, either by showing to the public protected works or by the sale or rental of copies, shall be deemed jointly liable for making good the material and moral prejudice caused by the exploitation of those works in the event of it being proved that the owner of the establishment concerned acted knowingly.

54. Ascertainment of infringements of this Law and the drafting of reports shall be entrusted to the judicial police authorities and to agents authorized by the Minister responsible for culture from among the category A agents of the Ministry of Culture and who shall be sworn for that purpose.

55. The competent court may order *ex officio* or at the request of an author or of the Tunisian Copyright Protection Agency, the confiscation or destruction of copies or the temporary or definitive closure of the establishment in which the infringement has been ascertained.

Chapter X Miscellaneous

56. This Law shall apply, in particular:

A. — to all works whose original owner is of Tunisian nationality or is domiciled on the Tunisian territory of the Tunisian Republic or is a stateless person or a refugee having his habitual place of residence therein, in the case of a natural person, or subject to Tunisian law, in the case of a legal person;

B. — to works published for the first time on the territory of the Tunisian Republic or published on such territory within 30 days of first publication in a foreign country;

C. — to works of architecture erected on the territory of the Tunisian Republic and to any work of art incorporated in a building located on the territory of the Tunisian Republic;

D. — to all works that have not become available to the public at the time of the entry into force of this Law.

In the case of a work of joint authorship, it shall be sufficient for the application of this Law if one of the joint authors meets the condition set out in the first paragraph of this Article.

57. The works referred to in Article 56 of this Law may enjoy protection on condition that the country concerned affords equivalent protection to works of Tunisian nationals.

The Ministry responsible for culture shall determine the countries for which this condition is deemed to have been met.

58. The Tunisian Copyright Protection Agency shall be responsible for initiating negotiations with the foreign societies of authors concerned, with the aim:

(a) of safeguarding, for the benefit of authors, the welfare advantages acquired by them with those societies;

(b) of signing reciprocal agreements with such foreign societies.

59. All earlier provisions contrary to those of this Law are hereby repealed, in particular:

— Law No. 66-12 of February 14, 1966, on Literary and Artistic Property.

- * *Official French title:* Loi n° 94-36 du 24 février 1994 relative à la propriété littéraire et artistique.
Entry into force: March 1, 1994.
Source: *Journal Officiel de la République Tunisienne*, of March 1, 1994.
- ** Added by the International Bureau of WIPO.