

CONGO

**Law on Copyright and Neighboring Rights**

(No. 24/82 of July 7, 1982) \*

(Articles 1 to 48)

TITLE I

**General Provisions**

*Article 1.* Literary, artistic and scientific works of Congolese nationals, published in the People's Republic of the Congo or abroad, and works of foreign nationals first published in the Congo, shall enjoy the protection afforded by this Law.

*Article 2.* Subject to the implementation of the international conventions to which the People's Republic of the Congo is a party, works not falling within any of the categories referred to above shall not enjoy the protection afforded by this Law unless the country of which the original copyright holder is a national, or in which he has his domicile, affords equivalent protection to works of Congolese nationals. However, the integrity and the authorship of his works shall be respected.

The countries in respect of which the condition of reciprocity referred to in the preceding paragraph is deemed to have been satisfied shall be determined jointly by the Ministry responsible for culture and the Ministry of Foreign Affairs.

*Article 3.* The use of foreign works not enjoying protection under this Law shall be subject to a prior declaration filed with the regularly constituted professional body of authors referred to in Article 68 and to payment of royalties under conditions similar to those applied for protected works.

Such royalties shall be paid into a special fund that shall be reserved for and devoted to cultural

and social purposes for the benefit of Congolese authors. The public performance or reproduction of such works shall require authorization from that body. The authorization shall be granted, in the case of a profit-making event, against payment of a royalty calculated on the basis of the gross takings resulting from such exploitation; the rate of the royalty shall be equal to one half of that normally applied for works of the same category within the private domain or in accordance with usual practice.

*Article 4.* This Law shall apply to the rights of performers, producers of phonograms and to broadcasts, subject to the following conditions:

- (i) for performers, in cases where:
  - the performer is a Congolese national;
  - the performance takes place on Congolese territory;
  - the performance is fixed on a protected phonogram;
- (ii) for producers of phonograms, where:
  - the producer is a Congolese national;
  - the first fixation of the sounds was made in the People's Republic of the Congo;
  - the phonogram was first published in the People's Republic of the Congo;
- (iii) for broadcasts, where:
  - the headquarters of the broadcasting organization is situated on Congolese territory;
  - the broadcast was transmitted from a station situated on Congolese territory.

*Article 5.* This Law shall also apply to performances, phonograms and broadcasts protected under the international conventions to which the Congo is a party.

\* Entry into force on July 7, 1982. — WIPO translation.

## TITLE II

### **Protected Works, Derivative Works, Non-Protected Works and Works of National Folklore**

#### CHAPTER 1

##### **Protected Works**

*Article 6.* Authors of original literary, artistic and scientific works shall be entitled to protection of their works in accordance with the intellectual and moral rights and with the economic rights laid down by this Law.

*Article 7.* Literary, artistic and scientific works shall comprise:

- books, pamphlets and other writings;
- lectures, addresses, sermons, pleadings and other works of the same nature;
- works created for the stage or for broadcasting (sound or visual), including both dramatic and dramatico-musical and choreographic and mimed works, the acting form of which is fixed in writing or otherwise;
- musical works with or without words, whether in written form or not;
- works of drawing, painting, engraving and lithography;
- tapestries and objects created by artistic professions and the applied arts, including both drawings and models as well as the work itself;
- architectural works, including both plans and models as well as the construction itself;
- sculptures, bas-reliefs and mosaics of all kinds;
- photographic works of an artistic or documentary nature, to which are assimilated, for the purposes of this Law, works expressed by a process analogous to photography;
- cinematographic works, to which are assimilated works expressed by a process analogous to cinematography;
- maps, illustrations, plans, sketches and three-dimensional works relative to geography, topography, architecture and science.

*Article 8.* Works shall be protected irrespective of their quality, their purpose, their mode or their form of expression, without being subject to any formality.

#### CHAPTER 2

##### **Derivative Works, Non-Protected Works**

*Article 9.* A work shall be deemed to have been created, irrespective of any public disclosure, by the

mere fact of the author's concept being realized, even incompletely.

*Article 10.* For the purposes of this Law, the work shall mean both the work in its original form and in a form derived from the original.

*Article 11.* The title of a work shall enjoy the same protection as the work itself in so far as it is original in character.

Even if the work is no longer protected under Articles 28 and 61 to 67, the title may not be used to distinguish a work of the same kind if such use is liable to create confusion.

*Article 12.* The following shall also be protected as original works:

- translations, adaptations, arrangements of music and other transformations of a literary, artistic or scientific work;
- collections of literary, artistic or scientific works, such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations;
- works derived from Congolese folklore.

*Article 13.* The protection enjoyed by the works referred to in Article 12 shall not prejudice any protection afforded to the pre-existing works that have been used.

*Article 14.* Notwithstanding Articles 6 and 7 above, laws, decisions of courts or of administrative bodies and official translations thereof, news of the day published, broadcast or communicated to the public shall not fall within the scope of this Law.

#### CHAPTER 3

##### **Works of National Folklore**

*Article 15.* Folklore shall belong originally to the national heritage. For the purposes of this Law, folklore shall mean all literary and artistic productions created on the national territory by authors presumed to be Congolese nationals or by Congolese ethnic communities, passed from generation to generation and constituting one of the basic elements of the national traditional cultural heritage.

*Article 16.* Works of national folklore shall be protected without limitation in time.

*Article 17.* The adaptation of folklore or the use of elements borrowed from folklore shall be declared to the body referred to in Article 68.

*Article 18.* The public performance, or reproduction by any means whatsoever, of national folk-

lore, with a view to exploitation for profit-making purposes shall be subject to prior authorization by the body referred to in Article 68, against payment of a fee of which the amount shall be fixed in accordance with the usual practice in each of the categories of creation involved.

The revenue from such fees shall be administered by the body referred to in Article 68 and shall be used for cultural and social purposes of benefit to Congolese authors.

*Article 19.* Article 18 shall not apply where works of national folklore are used by a public agency for non-profit-making purposes. However, such public agency shall be required to make a declaration to the body referred to in Article 68.

*Article 20.* Copies of works of national folklore and copies of translations, arrangements or other transformations of such works, manufactured abroad without authorization from the body referred to in Article 68, shall be neither imported nor distributed.

## CHAPTER 4

### **Cinematographic Works**

*Article 21.* In the case of a cinematographic work, the rights shall belong originally to the intellectual creators of the work.

Unless otherwise proved, the authors of a cinematographic work made jointly shall be the authors of the screenplay, of the adaptation, of the spoken text, of the musical compositions, with or without words, created for the making of the work, and the director of the work. Where a cinematographic work is based on a pre-existing protected work, the author of the original work shall be assimilated to the authors of the new work.

*Article 22.* The natural or legal person who takes the initiative and responsibility for making the work shall be deemed to be the producer of a cinematographic work.

*Article 23.* The natural person who assumes the direction of a cinematographic work and the artistic responsibility for its transformation into pictures and sound, for the cutting and the final editing shall be deemed to be the director of the cinematographic work.

*Article 24.* A cinematographic work shall be deemed to have been completed once the first master print has been established by common accord between the director and the producer.

*Article 25.* If one of the co-authors refuses to complete his contribution to a cinematographic work,

or is unable to complete it due to circumstances beyond his control, he shall not be entitled to object to the use of the part of his contribution already in existence for the purpose of completing the work.

Unless otherwise agreed, the co-authors of a cinematographic work may dispose freely of their personal contributions with a view to their exploitation in a different field, provided that this does not prejudice the exploitation of the work to which they have contributed.

*Article 26.* Prior to undertaking the production of a work, the producer shall be required to conclude written contracts with all those persons whose works are to be used in the production:

- (i) the author of the screenplay,
- (ii) the author of the adaptation,
- (iii) the author of the musical compositions, with or without words, specially made for the work,
- (iv) the director,
- (v) the author of the spoken text.

Unless otherwise agreed, the written contracts concluded with the intellectual creators of the work shall imply, to the benefit of the producer and for a limited period of which the term shall be laid down in the contract, a presumption of assignment of the necessary rights for a cinematographic exploitation of the work, but excluding any other rights. The presumption provided for above shall not apply to pre-existing works used in the making of the work nor to musical works, whether pre-existing or not, with or without words.

*Article 27.* In the case of a radio or television work, the rights shall belong originally to the intellectual creators of the work.

## TITLE III

### **Authors' Rights**

#### CHAPTER 1

### **Economic Rights**

*Article 28.* Subject to Articles 33 to 36, the author of a protected work shall have the exclusive right to do or to authorize the doing of any of the following acts:

- reproduction of the work in any material form whatsoever, including that of cinematograph films or of phonograms, by any means enabling it to be communicated to the public;

**General Limitations**

*Article 33.* Notwithstanding Article 28, the following uses of a protected work, either in the original language or in translation, shall be permissible without the author's consent:

1. In the case of a work that has been lawfully published:
  - (a) the reproduction, translation, adaptation, arrangement or any other transformation of such work exclusively for the user's own personal and private use;
  - (b) the inclusion, subject to the mention of the source and the name of the author, of quotations from such work in another work, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries;
  - (c) the utilization of the work by way of illustration in publications, broadcasts or sound or visual recordings for teaching, to the extent justified by the purpose, or the communication for teaching purposes of the work broadcast for use in schools, education, universities and vocational training, provided that such use is compatible with fair practice and that the source and the name of the author are mentioned in the publication, the broadcast or the recording.
2. In the case of an article published in newspapers or periodicals on current economic, political or religious topics, and in the case of a broadcast work of the same nature, the reproduction of such article or work in the press, or the communication of it to the public, unless the article when published, or the broadcast of a work when broadcast, is accompanied by an explicit statement prohibiting such uses, and provided that the source of the work when used in such manner is clearly indicated.
3. For the purposes of reporting on a current event by means of photography, cinematography or communication to the public, the reproduction or making available to the public, to the extent justified by the informatory purpose, of any work that can be seen or heard in the course of such current event.
4. The reproduction of works of art and of architecture, in a film or a television broadcast, and the communication to the public of the works so reproduced, if those works are permanently

- distribution of the work thus reproduced, in particular the public performance of the reproduction made by means of film or phonogram;
- translation, adaptation, arrangement or any other transformation of the work;
- communication of the work to the public by means of performance or recitation, by any means or process whatsoever, including sound or television broadcasting;
- communication of the broadcast or televised work to the public by wire, loudspeaker or by any other process for transmitting sounds or images, whatever the place of reception of the communication.

*Article 29.* No third party may do any of the above acts without prior authorization given formally in writing by the author. Any reproduction or performance, whether partial or whole, made without the authorization of the author or his successors in title shall be unlawful. The same shall apply to the translation, adaptation, arrangement or transformation of the work.

*Article 30.* Notwithstanding any assignment of the original work, the authors of graphic or three-dimensional works shall have an inalienable right to a share in the proceeds of sale of such works by public auction or through a dealer, whatever the methods used by the latter to carry out the operation. This provision shall not apply to architectural works or works of applied art. After the death of the author, this *droit de suite* shall subsist for the heirs or legatees, in accordance with Article 61.

The conditions for the exercise of this right shall be laid down in subsequent instruments.

## CHAPTER 2

**Moral Rights**

*Article 31.* The author may disclose his work, claim authorship, defend its integrity and require that his name be mentioned whenever one of the acts referred to in Article 28 is done.

Save where a work is included incidentally or accidentally when reporting current events by means of broadcasting, the author may object to any distortion, mutilation, modification or any other derogatory action in relation to his work where such acts are prejudicial to his honor or reputation.

*Article 32.* The rights referred to in Article 31 shall be perpetual, inalienable and imprescriptible. They may be transferred on the death of the author to his heirs, who may exercise them even after the expiry of the economic rights laid down in Article 28.

located in a place where they can be viewed by the public or are included in the film or in the broadcast only by way of background or incidental to the main subject.

5. The reproduction, by photographic or similar process, by public libraries, non-commercial documentation centers, scientific institutions and educational establishments, of literary, artistic or scientific works which have already been lawfully made available to the public, provided that such reproduction and the number of copies made are limited to the needs of their activities, do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.
6. The reproduction in the press or the communication to the public of:
  - (a) any political speech or speech delivered during legal proceedings,
  - (b) any lecture, address, sermon or other work of the same nature delivered in public, provided that the use is exclusively for the purposes of current information,whereby the author shall retain the right to publish a collection of such works.

#### CHAPTER 4

##### **Ephemeral Recordings**

*Article 34.* Notwithstanding Article 28, the radio and television organization may make, for the purpose of its own broadcasts and by means of its own technical and artistic facilities, with a view to deferred broadcast on account of timing or technical necessities, an ephemeral recording, in one or more copies, of any work it is authorized to broadcast. All copies of it shall be destroyed within six months of their recording or within any longer term agreed to by the author. However, where such recording has an exceptional documentary character, one copy of it may be preserved in official archives. This shall be without prejudice to the application of Article 31.

#### CHAPTER 5

##### **Limitation of the Rights of Translation and of Reproduction**

*Article 35.* Notwithstanding Article 28, it shall be lawful, even without the author's authorization, to translate a work into French and to publish the translation on the territory of the People's Republic of the Congo under a license granted by the competent authority.

*Article 36.* Notwithstanding Article 28, it shall be lawful, even without the author's authorization, to reproduce a work and publish a given edition thereof on the territory of the People's Republic of the Congo under a license granted by the competent authority.

#### CHAPTER 6

##### **Ownership of Copyright**

*Article 37.* The rights protected by this Law shall belong originally to the author or authors who created the work.

In the absence of proof to the contrary, the author of a work shall be the person under whose name the work is disclosed.

The author shall have the right to respect for his name, his authorship and his work.

*Article 38.* The author of an intellectual work shall, by the mere fact of its creation, enjoy an exclusive incorporeal property right in the work which shall be exclusive and enforceable against all persons.

This right shall include attributes of an intellectual and moral nature together with attributes of an economic nature as specified in this Law.

*Article 39.* The authors of a work of joint authorship shall be co-owners of the rights. They shall exercise those rights by common accord. In the event of disagreement, the competent courts shall decide. Where the contribution of each of the co-authors is of a different kind, each shall be entitled, in the absence of an agreement to the contrary, to exploit separately his personal contribution, without, however, prejudicing the exploitation of the common work.

*Article 40.* Authors of pseudonymous and anonymous works shall enjoy in such works the rights afforded by this Law. They shall be represented in the exercise of those rights by the original publisher or editor, until such time as they declare their identity and prove their authorship. The declaration referred to in the preceding sentence may be by will. However, any rights previously acquired by third parties shall be maintained. The preceding provisions shall not apply where the pseudonym adopted by the author leaves no doubt as to his identity.

*Article 41.* A composite work shall be the property of the author who has made it, without prejudice to the rights of the author of the pre-existing work.

*Article 42.* In the absence of proof to the contrary, a collective work shall be the property of the natural or legal person in whose name it has been disclosed. The author's rights shall vest in that person.

*Article 43.* In the case of a work created by an author for a natural person or legal entity, private or public, under a contract of service in the course of his employment or of a work commissioned from the author by such person or entity, the copyright shall belong originally to the author, unless otherwise stipulated in writing in the contract. In the case of a three-dimensional work or of a commissioned portrait in painting, photography or any other medium, the author shall not have the right to exploit the work or the portrait by any means whatsoever without the express authorization of the person who has commissioned the work. In the event of evident abuse by the owner preventing exercise of the right of disclosure, the competent court may, at the request of the authors or of their successors in title or of the Ministry responsible for culture, order any appropriate measure. Where the work has been produced by students or trainees at a school or an artistic establishment, the proceeds deriving from disclosure of the work may be distributed in accordance with the special rules of that school or establishment.

## CHAPTER 7

### **Transfer of Authors' Rights**

*Article 44.* The rights referred to in Article 28 shall be transferable in whole or in part.

Transfer, other than by operation of law, of any right referred to in Article 28 shall be in writing. Transfer, in whole or in part, of any right referred to in Article 28 shall not imply the transfer of any of the other rights.

Where a contract requires the total transfer of one of the rights referred to in Article 28, its scope shall be limited to the uses set out in the contract. The transfer of ownership of the sole copy or of one or more copies of a work shall not imply the transfer of the copyright in the work. The total assignment of future works shall be void, except in the case of assignment by the author to a professional body of authors.

*Article 45.* Transfer against payment shall comprise, to the benefit of the author, a proportional share in the revenue of all kinds deriving from sale or exploitation, whereby there shall be a guaranteed

minimum. However, the author's remuneration may be evaluated arbitrarily in the following cases:

- (i) the basis for calculating the proportional share cannot be determined in practice;
- (ii) the means of verifying the application of the share is lacking;
- (iii) the nature and terms of exploitation make it impossible to apply the rule of proportional remuneration.

*Article 46.* Except as otherwise provided in this Law, a work may not be exploited without prior formal authorization in writing from the author or his successors in title.

Any full or partial performance made without the authorization referred to in the preceding paragraph shall be unlawful; the same is valid for the translation, arrangement, transformation or reproduction by any art or means.

*Article 47.* Unless otherwise provided, authorization for sound or television broadcasting shall cover all free communications, whether sound or television, made by the broadcasting organization using its own technical and artistic means, under its own responsibility.

In accordance with Article 28, such authorization shall not apply to communications made in public places such as cafés, restaurants, hotels, night clubs, church clubs, various shops, cultural centers or so-called private clubs, for which authorization must be requested.

*Article 48.* Reproduction by means of the sound or, simply, visual recording on physical mediums of protected works within the meaning of this Law, intended for strict personal and private use in accordance with Article 33, shall entitle the author to remuneration whose amount shall be proportional to the revenue from the sales on the national territory of blank mediums. The remuneration shall be calculated as a percentage of the selling price, including all taxation, of such blank physical mediums, and shall be payable to the professional body of authors referred to in Article 69; their use shall be the subject of an assignment authorizing the reproduction of protected works under the conditions and within the limits set out by this Law; the amount of such remuneration shall be deducted from the price of such assignment.

CONGO

**Law on Copyright and Neighboring Rights**

(No. 24/82 of July 7, 1982) \*

(Articles 49 to 107)

CHAPTER 8

**Authors' Contracts**

*Article 49.* Contracts by which an author or his successors in title authorize the performance or publication of his works shall be drawn up in writing, failing which they shall be void. The same shall apply to gratuitous authorizations to perform. Such contracts must state the type of exploitation and the mode of remuneration laid down by the author or his successors in title. They shall be subject to the law of civil and commercial contract. Transfer of authors' rights shall be subject to separate mention being made of each of the assigned rights in the instrument of assignment and to the field of exploitation of the rights being specified as to its scope, its purpose, the place and the duration.

*Article 50.* A publishing contract is a contract under which the author of a work or his successors in title assign to the publisher, under specified conditions, the right to manufacture or have manufactured sufficient number of copies of the work, on condition that the latter ensures publication and dissemination thereof.

*Article 51.* A publishing contract must be in writing. The form and mode of expression, the terms of execution, of publication and, where applicable, of the termination clauses shall be specified in the contract.

*Article 52.* The author shall be required to:

- guarantee the publisher the undisturbed and, except as otherwise agreed, exclusive exercise of the assigned right;

- have that right respected and defend it against any infringement;
- permit the publisher to fulfill his obligations and, in particular, deliver to him within the period of time stipulated in the contract the subject matter of the publication in a form permitting normal manufacture.

*Article 53.* The publisher shall be required to carry out or have carried out the manufacture of the work in accordance with the conditions stipulated in the contract, to effect no modification of the work without written authorization from the author, to have, unless otherwise agreed, the name, pseudonym or symbol of the author appear on each of the copies, to effect publication, unless agreed otherwise, within the period of time that is usual in the trade and to ensure permanent and sustained exploitation of the work and commercial distribution in accordance with the practices of the trade.

*Article 54.* The publisher shall also be required to provide accounts and appropriate proof to establish the accuracy of his accounts. Failing this, he shall be compelled to do so by the competent court.

*Article 55.* Notwithstanding Article 44, it shall be unlawful for the author to give a publisher a right of preference for the publication of his future works of a given kind in excess of five new works for each kind as from the date of signature of the publishing contract concluded for the first work, or within a period of five years from that same date for the completed production.

*Article 56.* A publishing contract shall end, independently of the cases set out in general legal pro-

visions or in the preceding articles, when the publisher carries out the complete destruction of the copies.

Termination shall take place automatically when, upon formal notice by the author fixing a suitable period, the publisher has not effected publication of the work or, should the work be out of print, its republication.

A work shall be deemed out of print if two orders for the delivery of copies addressed to the publisher have not been met within six months.

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

*Article 57.* The following shall not constitute publishing contracts within the meaning of Article 50:

- a contract for publication at the author's expense ("*à compte d'auteur*"). Under such contract, the author or his successors in title pay to the publisher an agreed remuneration against which the latter manufactures copies of the work in the quantity, form and according to the modes of expression specified in the contract, and ensures its publication and dissemination. Such a contract shall constitute an agreement for work by contract;
- a shares contract ("*de compte à demi*"). Under such a contract, the author or his successors in title commission a publisher to manufacture, at his expense and in quantity, copies of the work in the form and according to the modes of expression specified in the contract, and to ensure their publication and dissemination in accordance with the agreement reciprocally contracted to share the profits and losses of exploitation in the agreed proportion. Such contract shall constitute a joint undertaking.

*Article 58.* A stage performance contract is a contract under which the author of a work or his successors in title authorize a natural or legal person to perform such work under the conditions they stipulate.

*Article 59.* A general performance contract is a contract under which the professional body of authors referred to in Article 68 grants to an entertainment promoter the right to perform, for the duration of the contract, the existing or future works constituting the repertoire of such body under the conditions stipulated by the author or his successors in title. In the case referred to above, the requirements of Article 44 may be waived.

*Article 60.* An entertainment promoter who performs or has performed works protected under this Law shall be required to obtain prior authorization under Article 58 and to settle the corresponding royalties.

The contract shall be concluded for a limited duration or for a specified number of communications to the public.

Save where exclusive rights are expressly stipulated, the contract shall not afford to the entertainment promoter any exploitation monopoly. The entertainment promoter may not transfer the benefit of his contract without the formal consent in writing of the author or his representative.

The entertainment promoter must ensure that the public performance takes place under technical conditions which guarantee respect for the author's intellectual and moral rights.

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

The entertainment promoter shall be required to inform the author, his successors in title, or the professional body of authors referred to in Article 68, of the exact program of public performances and to supply a documented statement of receipts and to pay to them, at the agreed times, the amount of the stipulated royalties.

## CHAPTER 9

### Duration of Economic Rights

*Article 61.* The rights referred to in Article 28 shall be protected for the lifetime of the author and for 50 years after his death.

*Article 62.* In the case of a work of joint authorship, the rights referred to in Article 28 shall be protected for the lifetime of the last surviving joint author and for 50 years after his death.

*Article 63.* In the case of a work published anonymously or under a pseudonym, the rights referred to in Article 28 shall be protected until expiry of a period of 50 years as from the date on which such work has been lawfully published for the first time. However, Article 61 shall apply where the identity of the author has been revealed or leaves no doubt prior to the expiry of such period.

*Article 64.* In the case of a cinematographic work, the rights referred to in Article 21 shall be protected until expiry of a period of 50 years as from the making of the work or, if the work is made available to the public with the consent of the author

during such period, 50 years from its communication to the public.

*Article 65.* In the case of a photographic work or a work of applied art, the rights referred to in Article 28 shall be protected for 25 years as from the making of the work.

*Article 66.* In the case of posthumous works, the rights referred to in Article 28 shall belong to the author's successors in title for the period laid down in Article 61 if the work is disclosed during the period provided for in that Article. If the work is disclosed after the expiry of that period, the rights shall belong to the owners of the manuscripts or originals relating to the work, who effect publication or have it effected.

Posthumous works must be published separately except where they constitute only a fragment of a work previously published. They may not be combined with works by the same author that have been previously published unless the author's successors in title still enjoy the economic rights therein.

*Article 67.* In all cases, such periods shall run until the end of the year during which they would otherwise expire.

## CHAPTER 10

### Body of Authors

*Article 68.* The administration of the rights referred to in Article 28 and the defense of the moral interests referred to in Article 31 shall be entrusted to a professional body of authors of which the tasks and operation shall be laid down by decree issued by the Council of Ministers.

*Article 69.* This body shall be empowered, to the exclusion of any other natural or legal person, to act as an intermediary between the author or his successors in title and the users of literary and artistic works as regards the grant of authorizations and the collection of the relevant royalties.

This body shall administer on the national territory the interests of the various foreign societies of authors under treaties or agreements it shall be required to conclude with them. This body shall be answerable to the Ministry responsible for culture.

## CHAPTER 11

### Procedure and Sanctions

*Article 70.* Any dispute arising from the application of this Law shall be subject to the following provisions of this Chapter.

The professional body of authors referred to in Article 68 shall be empowered to take legal action to defend the interests that are its statutory responsibility, particularly as regards any litigation directly or indirectly concerning the reproduction or communication to the public of works covered by this Law.

*Article 71.* At the request of any author of a work protected by this Law, of his successors in title or of the professional body of authors, the examining magistrate taking cognizance of the infringement or the presiding judge of the *Tribunal de Grande Instance* (First Instance Court) shall be empowered in all cases, including where the author's rights are in imminent danger of infringement, to order seizure, at any place and even at times other than those specified in the Code of Civil Procedure, of the copies that constitute an unlawful reproduction of the work, already manufactured or being manufactured, and of the revenue from any unlawful reproduction, performance or dissemination of the work. He may also order suspension of any manufacture, reproduction or public performance, in progress or announced, that constitutes infringement or preparation for an infringement.

*Article 72.* Article 71 shall apply in the case of improper exploitation of national folklore or of a work in the public domain.

*Article 73.* The presiding judge of the *Tribunal de Grande Instance* may order, as part of the above acts, the prior deposit by the distrainer of an appropriate guarantee.

*Article 74.* Within 30 days of the making of the report of the seizure under Article 71, or of the date of the order referred to in that same Article, the distrainee or the garnishee may request the presiding judge of the *Tribunal de Grande Instance* to end the seizure or to limit its effects, or to authorize resumption of manufacture or of exploitation.

The presiding judge of the *Tribunal de Grande Instance*, acting in summary procedure, may, if he allows the petition of the distrainee or garnishee, order the petitioner to deposit a sum to be used as a guarantee for damages to which the author might be entitled.

*Article 75.* If the distrainer fails to submit the matter to the competent court within 30 days of the seizure, the ending of the seizure may be ordered by the presiding judge of the *Tribunal de Grande Instance*, acting in summary procedure, upon the demand of the distrainee or the garnishee, except where criminal proceedings have been instituted.

*Article 76.* Where the proceeds of an exploitation which are due to the author of an intellectual work

have been the subject of a seizure, the presiding judge of the *Tribunal de Grande Instance* may order payment to the author, as an allowance for maintenance, of a certain sum or of a specified proportion of the amounts seized.

*Article 77.* Unlawful reproduction on Congolese territory of works published in the Congo or abroad shall be punishable by a fine of between 100,000 and 250,000 CFA francs. The exportation and importation of unlawful copies shall be subject to the same penalty.

*Article 78.* The natural or legal person who fails to obtain prior authorization from the professional body of authors shall be deemed responsible for the unlawful reproduction or communication to the public and shall be liable to a fine of twice the due fees.

*Article 79.* Any reproduction, performance or dissemination by any means whatsoever of an intellectual work that infringes the rights of the author, as defined and governed by the law, shall also be deemed an infringing offense.

*Article 80.* The penalty shall be of between three months and two years imprisonment and between 250,000 and 500,000 CFA francs if it is proved that the guilty party has undertaken the acts referred to in the preceding article in an habitual manner. In the event of a further offense following a sentence given under the preceding sentence, the temporary or permanent closure of the establishments operated by the habitual infringer or his accomplices may be ordered.

*Article 81.* The guilty parties shall be further sentenced to confiscation of amounts equal to that portion of the receipts deriving from the reproduction, performance or unlawful dissemination, and to the confiscation of any equipment specifically installed for the unlawful reproduction and of all infringing copies or objects.

*Article 82.* The equipment or the infringing copies, as well as the receipts or the portion of the receipts subject to confiscation, shall be handed over to the author or his successors in title in order to indemnify them proportionately for the damages they have suffered. The remaining indemnity shall be settled by the ordinary channels where there has been no confiscation of equipment, infringing objects or receipts.

*Article 83.* In addition to the reports of the judicial police officials or policemen, the proof of the existence of a performance, or dissemination of any kind, or of any offense against Article 60, may be furnished by the statement of an agent designated by the professional body of authors referred to in Article 68.

## CHAPTER 12

### Public Domain

*Article 84.* On the expiry of the terms of protection laid down by this Law, the authors' works shall fall into the public domain. The right of exploitation of works in the public domain shall be administered by the professional body of authors referred to in Article 68.

*Article 85.* The public performance and reproduction of such works shall require authorization from that body. The authorization shall be granted, in the case of a profit-making event, against payment of a royalty calculated on the gross revenue from exploitation. The rate of such royalty shall be equal to one-half that normally applied for works in the same category in the private domain. The provisions of Article 54 shall apply. The product of such royalties shall be devoted to cultural and social ends for the benefit of Congolese authors.

## TITLE IV

### Neighboring Rights

#### CHAPTER 1

##### Authorization of Performers

*Article 86.* Without the authorization of the performers, no person shall do any of the following acts:

- the broadcasting of their performance, except where the broadcast is made from a fixation under Article 99 or is a rebroadcast authorized by the organization initially broadcasting the performance;
- the communication to the public of their performance, except where the communication is made from a fixation of the performance;
- the fixation of their unfixed performance;
- the reproduction of a fixation of their performance, in any of the following cases:
  - (i) where the performance was initially fixed without their authorization;
  - (ii) where the reproduction is made for purposes different from those for which the performers have their authorization;
  - (iii) where the performance was initially fixed in accordance with Articles 97 to 99, but the reproduction alone is made for purposes different from those referred to in the said Articles.

*Article 87.* In the absence of any contractual agreement to the contrary or of circumstances of

employment from which the contrary would normally be inferred, the authorization to broadcast does not imply the right to permit other broadcasting organizations to broadcast or fix the performance, or to reproduce the fixation thereof.

The authorization to fix the performance and to reproduce the fixation does not imply the right to broadcast the performance from the fixation or any reproduction thereof.

*Article 88.* Once the performers have authorized the incorporation of their performance in an audiovisual fixation, Articles 86 and 87 shall have no further application.

*Article 89.* The protection under this Law shall subsist for 20 years computed from the end of the year during which the performance took place.

*Article 90.* The authorizations required by Article 86 may be given by the performer or by a duly appointed representative to whom he has granted in writing the right to give such authorization.

*Article 91.* Any authorization given by a performer claiming that he has retained the relevant rights or by a person claiming to be the duly appointed representative of a performer shall be considered valid unless the recipient knew or had good reason to believe that the delegation of powers was not valid.

*Article 92.* Any person who gives authorizations on behalf of performers without being a duly appointed representative, or any person who knowingly proceeds under such unlawful authorization, shall be guilty of a criminal offense punishable by a fine of between 100,000 and 150,000 CFA francs.

## CHAPTER 2

### Authorization of Producers of Phonograms

*Article 93.* Without the authorization of the producer of the phonogram, no person shall do any of the following acts:

- the direct or indirect reproduction of copies of his phonogram;
- the importation of such copies for the purpose of distribution to the public or the distribution to the public of such copies.

The protection under this Law shall subsist for 20 years computed from the end of the year during which the phonogram was published for the first time or, failing that, was initially made.

*Article 94.* As a condition of protecting phonograms under Articles 86 and 93, all copies in com-

merce of the published phonogram or of its container shall bear a notice consisting of the symbol  $\text{\textcircled{P}}$  (the letter "P" within a circle), accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection. If the copies or their containers do not identify the producer or the licensee of the producer by carrying his name, trademark or other appropriate designation, the notice shall also include the name of the owner of the rights of the producer. If the copies or their containers do not identify the principal performers, the notice shall also include the name of the person who, in the country in which the fixation was made, owns the rights of such performers.

## CHAPTER 3

### Authorization of the Broadcasting Organizations

*Article 95.* Without the authorization of the broadcasting organization, no person shall do any of the following acts:

- the rebroadcasting of its broadcasts;
- the fixation of its broadcasts;
- the reproduction of a fixation of its broadcasts where the fixation, from which the reproduction is made, was done without authorization, or where the broadcast was initially fixed in accordance with Articles 97 to 99, but the reproduction was made for purposes different from those referred to in that Article.

*Article 96.* The protection under this Law shall subsist for 20 years computed from the end of the year in which the broadcast took place.

## CHAPTER 4

### Limitation of Protection

*Article 97.* The articles relating to neighboring rights shall not apply in the following cases:

- private use;
- the reporting of current events, provided that no more than short excerpts of a performance, of a phonogram or of a broadcast are used;
- use solely for the purposes of teaching or scientific research, subject to Article 98;
- quotations in the form of short excerpts of a performance, of a phonogram or of a broadcast, provided that such quotations are compatible with fair practice and are justified by the informatory purpose of such quotations;
- such other purposes as constitute exceptions in respect of works protected by copyright under this Law.

*Article 98.* However, licenses shall be issued by the Ministry responsible for culture for the reproduction of copies of phonograms where such reproduction is for the sole purpose of teaching or of scientific research, is made and distributed on the territory of the Congo, excluding any exportation of copies, and implies for the producer of the phonograms an equitable remuneration laid down by the Ministry, taking into account, in particular, the number of copies to be made and distributed.

*Article 99.* The requirements for authorization under Articles 86, 93 and 95 for making fixations of performances and broadcasts, for reproducing such fixations and for reproducing phonograms published for commercial purposes shall not apply where the fixation or reproduction is made by a broadcasting organization by means of its own facilities and for its own broadcasts, provided that:

- in respect of each broadcast of a fixation of a performance or of a reproduction thereof made under this Article, the broadcasting organization has the right to broadcast the particular performance;
- in respect of each broadcast of a fixation of a broadcast, and each broadcast of a reproduction of such fixation, made under this Article, the broadcasting organization has the right to broadcast the particular broadcast;
- in respect of any fixation made under this Article or any reproduction thereof, the fixation and any reproductions thereof are destroyed within the same period as applies to fixations and reproductions of works protected by copyright under Article 34 of this Law, except for a single copy which may be preserved exclusively for archival purposes.

## CHAPTER 5

### Procedure and Sanctions

*Article 100.* In a civil action brought by any natural or legal person whose rights under this Law are threatened with infringement or have been infringed, the following remedies shall be available:

- an injunction, upon such terms as the court may deem reasonable, to restrain infringement;
- compensation for any damages suffered as a result of the infringement, including any profits obtained by the infringer that are attributable to the infringement. If the infringement is found to

have been malicious, the court may, at its discretion, award exemplary damages.

*Article 101.* Without prejudice to the remedies available under Article 100, any person who knowingly infringes, or causes to be infringed, the rights protected under this Law shall be liable to a fine of not more than 60,000 CFA francs for the first offense, and shall be liable to a fine of not more than 100,000 CFA francs or to imprisonment for not more than three months, or both, for each subsequent offense.

## CHAPTER 6

### Miscellaneous Provisions

*Article 102.* Nothing in this Law shall prejudice the right of natural or legal persons to use, in accordance with the conditions stipulated above, fixations or reproductions made in good faith before the date of its coming into force.

The preceding provisions on the protection of performers, producers of phonograms and broadcasting organizations shall in no way be interpreted as limiting or prejudicing the protection afforded to authors or to any natural or legal person under this Law or under any international copyright agreement to which the Congo is a party.

*Article 103.* All earlier provisions contrary to this Law, in particular Law No. 57-298, of March 11, 1957, and Ordinance 30-70, of August 18, 1970, shall be repealed.

*Article 104.* Subsequent instruments will set out the conditions for implementing this Law, particularly as regards Articles 28 and 70.

*Article 105.* Until a date to be set by the instruments relating to Article 68, the professional bodies of authors that are properly constituted shall provisionally exercise, within the framework of this Law, the activities entrusted to the professional body of authors referred to in Article 68.

*Article 106.* Contracts concluded prior to the entry into force of this Law shall automatically continue to be valid until their expiry and shall be governed by this Law.

*Article 107.* This Law shall be implemented as a law of the State and shall be published in the Official Journal of the People's Republic of the Congo.