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SUMMARY
COUNCIL OF MINISTERS:
Decree-Law No. 1/2009:
Revises Law on Copyright

COUNCIL OF MINISTERS

**Decree-Law No. 1/2009
of April 27**

Legal protection of intellectual works is a pillar of sustainable development in modern society. One of the conditions for the achievement of a civilization based on knowledge, creativity and innovation is the provision of incentives for creators of culture and the agents and entities who or which, on a daily basis through their work, give life to so-called “*cultural industries*”.

The creation of a legal system which defines the protection of copyright and related rights concerns a vast group of interested parties, ranging from authors to consumers.

Thus, the legislature of Cape Verde has provided, since 1990, for the regulation of matters relating to these rights, through a code of its own, which incorporates the principal existing guidelines, at this time, in relation to comparative law and international conventions and treaties.

It was in this context that Law No. 101/III/90 of December 29, known as “Copyright Law” was approved (*and published in*

Official Journal No. 52 of December 29, 1990, 3rd Supplement).

This revision of the Law on Copyright referred to above, aims to adapt the Law to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which in turn constitutes Annex IV of the Agreement establishing the World Trade Organization (WTO).

This adaptation is framed within the process of the Republic of Cape Verde’s accession to that Organization in an attempt to transpose the provisions of that Agreement into the national legal code of Cape Verde.

There is recognition in the TRIPS Agreement of the need to modify, in depth, multiple aspects of the regulation of Intellectual Property, which includes copyright and related rights, by virtue of the accelerated changes brought about by the constant innovation produced in the area of information technologies and the challenges created by the interdependence of societies,

States and international organizations.

The aim of that Agreement is to guarantee that, in all Member States, adequate standards for the protection of intellectual property are applied. These norms are based on the fundamental obligations stated by the *World Intellectual Property Organization* (WIPO) and in the different Conventions related to intellectual property rights (the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the Washington Treaty on Intellectual Property in respect of Integrated Circuits).

Numerous new standards, or more rigorous standards, were introduced by this Agreement in areas not covered, or insufficiently covered, by Conventions previously in existence.

As regards copyright, under the terms of the Agreement, WTO

Member States must observe the basic provisions of the Berne Convention for the Protection of Literary and Artistic Works, and computer programs shall be protected as literary works.

In the area of rental rights, the authors of computer programs and the producers of sound recordings may authorize or prohibit the commercial rental of the respective works to the public.

A similar exclusive right is applicable to cinematographic works.

The Agreement proposes to reduce distortions and barriers to international trade, taking into account the need to promote effective and adequate protection of intellectual property rights, in general, and of authors in particular, and to ensure that the measures aimed at ensuring compliance do not, in turn, become barriers to legitimate trade.

That being so, the relevance of the Agreement lies in the exclusive power of economic exploitation of the work,

performance or production of any type. That power defines the economic nature of copyright.

It is that economic right which is the subject of this review of the Law on Copyright.

The complete incorporation of the principles and standards established in the Agreement in national legislation requires time to come to fruition, which is incompatible, in part, with the reality, urgency and contexts of technical policy decisions of each country.

That is the case in Cape Verde.

That is why, the less ambitious option to proceed with the revision of legislation relating to copyright, attempts to meet the need to introduce the necessary legislative changes to the body of our legal framework, through the adoption of a minimum standard of amendments, aiming to ensure the exact and necessary compatibility of Cape Verdean legislation with international legislation.

This revision aims to build a system of legal protection for works, performances and productions, which is effective and covered by copyright, based on a high level of protection, thus allowing the creation of the basic conditions for the development, on a national scale, of cultural activities - *works, performances and products* - and of the respective agents, providing an incentive for the creation, production, trade and technological developments linked to the market for so-called “*cultural industries*”.

Thus:

Under the legislative authorization granted by Law No. 36/VII/2009 of March 2;

pursuant to the powers granted by subparagraph (b) of paragraph 2 of Article 203 of the Constitution, the Government decrees the following:

TITLE I

GENERAL PROVISIONS

CHAPTER 1

Purpose and definitions

Article 1

Purpose

The purpose of this Law shall be to protect literary, artistic and scientific works and the rights of the respective authors, performers, producers of phonograms and videograms and broadcasting organizations, and to stimulate the creation and production of intellectual work in the fields of literature, art and science.

Article 2

Scope

This Code shall apply to:

(a) all literary, artistic and scientific works, whose authors are citizens of Cape Verde, or who have their usual residence in the territory of the Republic

of Cape Verde;

(b) works published for the first time in the territory of the Republic of Cape Verde, whatever the nationality and country of residence of the author;

(c) the works of foreign authors not resident in the territory of the Republic of Cape Verde, published after the entry into force of this Law, in accordance with the obligations derived from the international conventions to which the Republic of Cape Verde has acceded or will accede, or if reciprocity is ascertained with regard to the protection of Cape Verdean authors' works in the respective countries;

(d) works eligible for protection under an international agreement to which Cape Verde is party.

Article 3

Nature of protection

1. The acquisition of copyright and related rights shall be independent of any formality, deposit or registration, as well

as the type, form of expression, content, merit, purpose or method of use of the works to which it is applied, without prejudice to the provisions of Article 23.

2. Copyright in a work shall be independent of the rights of ownership in the material objects which act as a support or vehicle for its use and the industrial property rights which may exist in the work.

Article 4

Limitations

The rights which this Law recognizes for authors of literary, artistic and scientific works, performers, producers of phonograms and videograms and broadcasting organizations must be exercised in accordance with the higher objectives and interests of the Republic of Cape Verde and the underlying principles, and with the social need for a broad dissemination of these works.

Article 5

Definition of copyright

1. Copyright is defined as the exclusive right of authors of literary, artistic and scientific works to enjoy, use and exploit such works or to authorize their enjoyment, use or exploitation by third parties, either in whole or in part, within the terms and limitations of this Law.

2. Copyright shall comprise economic rights and personal rights, the latter being known as moral rights.

3. Economic rights shall be transferable by all means allowed in law, and moral rights may only be limited by the terms of this Law.

Article 6

Other definitions

The following are definitions for the purposes of this Law:

(a) "Work" - intellectual creation in the literary, artistic and scientific fields, whatever their form of expression which is protected as such in the terms of this Law, including therein the protection of the rights of the respective authors;

(b) "Published work" - that which is made available to the public with the consent of the author, whatever the method of reproduction or production of the respective copies;

(c) "Work published for the first time" - work whose first publication was in the Republic of Cape Verde or which, published for the first time in a foreign country, was also published in the Republic of Cape Verde within 60 days of that publication;

(d) "Work of joint authorship" - that which was created by a number of persons, whether it is possible or not to distinguish their individual contributions;

(e) "Collective work" - that which was organized at the initiative and under the responsibility of a single or collective entity and in whose name it is published;

(f) "Composite work" - that which incorporates all or part of a pre-existing work with the consent, but without the collaboration, of its author;

(g) "Audiovisual works" - those which consist of the recording of sounds, images or sounds and images on a sufficiently stable and durable material carrier to allow them to be viewed, reproduced or communicated in any non-ephemeral way;

(h) "Broadcast works" - those which were created in accordance with the special conditions of use for audio or visual broadcasting, as well as adaptations for those communication media of works originally created for another form of use;

(i) "Works of folklore" - body of works created within the territory of the Republic of Cape Verde by anonymous authors or those whose identity is unknown, passed down by successive generations and which constitute one of the fundamental elements of the cultural and traditional heritage of Cape Verde;

(j) "Public communication" - act by which a literary, artistic or scientific work is made accessible to the public, whatever the medium used, as

long as it is not the distribution of copies;

(k) "Performance" - act by which a dramatic, dramatico-musical, choreographic or musical work, with or without words, is performed, executed or recited in public by whatever means.

(l) "Reproduction" - the making of one or several copies of a literary, artistic or scientific work, in whole or in part, on any form of material and by whatever means, including graphic editions and audio or visual recordings, which allow indirect communication with the public;

(m) "Broadcasting" - the dissemination of sounds, images or sounds and images, by means of radio-electric waves, wire, cable or satellite, for the purpose of reception by the public in general ;

(n) "Distribution" - act of making available to the public, directly or indirectly, a significant quantity of works, phonograms or videograms, for sale, hire or loan;

(o) "Computer program" - a sequential set of data and instructions for computer processing with the aim of producing a defined result, including the respective description, logarithm and secondary documentation;

(p) "Database" - a compilation of works, data or other independent elements, systematically or methodically arranged and individually accessible by electronic or other means;

(q) "Country of origin" - country where the first publication of the work took place, in accordance with subparagraph (b) above;

(r) "Related right" - the legal protection guaranteed to performers, producers of phonograms and videograms and broadcasting organizations for their services.

Article 7

Original works

1. Original works in literary, artistic and scientific fields shall

be the subject of copyright.

2. Subsequent editions of a work, even though they are corrected, enlarged, revised, or their titles or format are changed, shall not constitute works distinct from the original work, nor shall reproductions of works of art, even though their dimensions may have been changed.

3. The existence of a work shall be independent of its publication, dissemination, communication, use or exploitation in whatever form.

4. The following works, among others, shall be the subject of copyright:

(a) books, pamphlets, magazines, newspapers and other writings;

(b) lectures, lessons, addresses, sermons and similar works, both written and oral;

(c) dramatic and dramatico-musical works;

(d) musical compositions, with or without words;

(e) choreographic works, circus acts and mimes, irrespective of whether they are expressed in written or any other form;

(f) audiovisual works, including cinematographic, videographic, radiophonic and television works;

(g) three-dimensional works of art, including works of architecture, painting, drawing, engraving, sculpture, ceramics, glazed tiles, tapestry and lithography;

(h) photographic works or works produced by processes analogous to photography;

(i) works of applied art, whether crafts or made through industrial processes;

(j) works of design that constitute artistic creations, whether or not protected by industrial property;

(k) illustrations, maps, plans, sketches and three-dimensional works concerning architecture, town planning, geography, topography or other sciences;

- (l) computer programs;
- (m) works of folklore.

Article 8

Derived works

In addition to original works, the following shall also be protected, without prejudice to the rights of the authors of original works:

- (a) translations, adaptations, arrangements, orchestrations and other alterations of any work, even if it is not subject to protection or may be freely used;
- (b) compilations of works, protected or not, such as anthologies, encyclopedias, dictionaries, compendia and databases, which through the selection or composition of the subjects are intellectual creations;
- (c) systematic or annotated compilations of texts of conventions, laws, regulations or administrative rulings, or whatever bodies or authorities of the State or Administration;

- (d) works inspired by national folklore.

Article 9

Titles of works

Protection granted to literary, artistic and scientific works shall extend to their titles, as long as they are original, and may not be confused with any other work previously published, and that they do not consist of a generic, necessary or habitual designation of the subject matter in them or the name of historical, literary or mythological figures.

Article 10

Works not protected

The following may not be protected:

- (a) news of the day and reports of different events given simply for information, however disclosed;
- (b) laws and rulings of judicial and administrative bodies, as well as petitions, allegations, complaints and other texts submitted to public authorities

or services;

(c) political speeches, except when assembled in a volume by their authors;

(d) simple facts and data;

(e) ideas, processes, systems, operational methods, concerts, principles or discoveries, in themselves and as such.

CHAPTER II

Ownership of copyright

Article 11

General rule

1. Except in the case of contrary legal provision or express agreement, with particular proviso for moral rights, the ownership of copyright shall belong to the natural person or persons who created the work, with those under whose name or pseudonym they were published or communicated to the public considered as such, whatever the media used for its communication.

2. The entity which has only subsidized the publication, reproduction or conclusion of a work, even if for reasons of public interest, shall not acquire the capacity of author or any rights over the work, except in the case of legal provision or written agreement to the contrary.

3. The fact that the work is carried out on commission or on behalf of another person, either in fulfillment of official duties or under an employment contract, shall not exclude the capacity of author and rights in the work.

Article 12

Works of joint authorship

1. Except in the case of express agreement to the contrary, copyright for a work of joint authorship, as a whole, shall belong jointly to all those who participated in its creation, the individual contributions of each deemed of equal value, and the joint exercise of copyright shall be subject to the regulations governing joint ownership.

2. Without prejudice to use of the work of joint authorship, any of the authors may exercise his rights related to his individual contribution provided that such contribution can be distinguished.

Article 13

Collective works

1. Copyright in a collective work shall belong to the single or collective entity that has organized and directed its creation and in whose name the work has been disclosed or published.

2. Where it is possible to distinguish the individual contributions of some or all of the authors in a collective work, the provisions on individual contributions to works of joint authorship cited in paragraph 2 of Article 12 shall apply.

3. Newspapers and other periodicals shall be deemed to be collective works and copyright therein shall belong to the respective owners or publishers.

Article 14

Composite works

The rights pertaining to a composite work shall belong exclusively to its author, without prejudice to the rights of the author(s) of the pre-existing works incorporated therein.

Article 15

Works of folklore

1. Ownership of copyright in works of Cape Verdean folklore shall belong to the State, which shall exercise it through the Government department responsible for the culture sector, without prejudice to the rights of those who collected, transcribed, arranged or translated them, as long as those collections, transcripts, arrangements or translations are original and respect authenticity.

2. Copies of Cape Verdean folklore works as well as the respective transcripts, translations, arrangements or other alterations, reproduced or carried out abroad without the

authorization of the competent authority, may only be imported or distributed in the territory of the Republic of Cape Verde by authorization of the government department responsible for culture.

Article 16

Audiovisual works

1. The capacity of author of an audiovisual work shall fall to the natural person or persons who carry out the intellectual creation of that work.

2. The following shall be deemed co-authors of an audiovisual work made in collaboration, except in the case of stipulation or agreement to the contrary:

(a) the director;

(b) the author of the script and the dialogues;

(c) the author of musical compositions, with or without words, specially made for the work;

3. The authors of pre-existing works, adapted for or used in

audiovisual works shall be deemed as co-authors.

4. Unless otherwise stipulated, the contract concluded between the producer of an audiovisual work and the co-authors of that work, shall imply, with regard to the contributions thereof, a transfer to the producer of the respective economic rights and of their contributions.

5. The authors shall preserve, except in the case of a stipulation or agreement to the contrary, their economic rights in other uses of their contributions, to the extent that they may be used separately from the audiovisual work.

6. The provisions of Article 14 shall apply to the rights of authors of other works, within the audiovisual work, who are not considered co-authors under the terms of this Article.

7. The following shall also be considered co-authors of cartoons:

(a) the author of drawings used in an audiovisual work;

(b) the director of an audiovisual work with drawings.

Article 17

Works of architecture, town planning and design

The creator of the overall concept and the relevant project shall be the owner of copyright in works of architecture, town planning and design.

Article 18

Broadcast works

1. The authors of the text, music and respective production of a broadcast work, considered to be a work of joint authorship, as well as the authors of the adaptation of a work not originally produced for audiovisual communication purposes, shall be deemed to be the joint authors.

2. The provisions of the preceding Article on audiovisual works, with the necessary adaptations, shall apply to the authorship of broadcast works.

Article 19

Technical collaborators

Without prejudice to related rights which they may own, single or collective entities acting as collaborators, technical agents, designers, constructors or in other similar capacities in the production and disclosure of the works referred to in Articles 16 et seq. may not claim any of the rights related to copyright in respect of these works.

Article 20

Special cases

1. Except in the case of an express agreement to the contrary, and with a proviso for moral rights, the ownership of copyright in works created within a work contract, or in the provision of a service or the exercise of an official duty, shall belong to the single or collective entity responsible for its production.

2. Notwithstanding the provision of paragraph 1, the author shall have the right to remuneration for the uses of

these works which exceed the scope of the contract or the purpose for which they were created.

3. This Article shall also apply to computer programs and their documentation.

Article 21

Identification of the author

1. The author may indicate his authorship either by using his own name in full or in part, his initials, a pseudonym, a heteronym or any other conventional symbol.

2. The use of a literary, artistic or scientific name liable to be confused with another name previously used to identify the author of a disclosed or published work, or the use of names of figures well-known in history, literature, the arts or science, shall not be permitted.

Article 22

Anonymous author

1. Rights related to a work published without an indication of the name of the respective

author, but with his consent, shall be exercised, as long as his identity is not made public, by the single or collective entity which oversaw the editing and/or publication of the work.

2. The disclosure of the civil identity of the work's author may be made by a will, in addition to other legally stipulated methods, and rights previously acquired by third parties may be maintained in any way.

CHAPTER III

Registration

Article 23

General rule

1. The protection of copyright and related rights shall not be dependent on registration, except in terms of the provisions of the following paragraph.

2. The registration of the following shall determine the effectiveness of legal protection:

- (a) the title of the unpublished work;
- (b) the titles of newspapers and other periodicals.

Article 24

Conditions of registration

Regulation of the organization of the services and conditions of registration shall be the responsibility of the Government department responsible for culture.

CHAPTER IV

Duration of rights and public domain

Article 25

General rule

1. The duration of protection granted by this Law to an author relating to the economic exploitation of a literary, artistic and scientific work shall be for the lifetime of the author plus 50 years following his death, even if it is a posthumous work, without prejudice to the

provisions of Article 30.

2. If the legislation of a foreign country assigns a different duration for copyright to that set in paragraph 1, the duration of protection claimed in the territory of the Republic of Cape Verde for any work originating in that country shall be that established in paragraph 1 if it does not exceed that set in the law of the country of origin of that work.

Article 26

Joint authorship or collective works

1. Copyright in works of joint authorship as such shall lapse 50 years after the death of the last surviving author.

2. Copyright in collective works shall lapse 50 years after the first disclosure or publication of the works.

3. Copyright related to the individual contributions of authors in a work of joint authorship or collective work shall lapse 50 years after the death of the author.

4. If the collective work belongs to a single entity, copyright shall extend for the lifetime of the author plus 50 years following his death.

5. In the case of *intra vivos* transfer by act or of alienation in executive proceedings, the period of 50 years shall commence in relation to the events of the transfer or alienation.

Article 27

Posthumous works

1. The duration of protection of posthumous works, to the benefit of heirs and other successors of the author, shall be 50 years following the author's death.

2. If the posthumous work were disclosed after the end of this period, the exclusive right shall be of 25 years' duration.

3. If disclosure takes place during the period provided for in the previous paragraph, the right shall belong to the single or collective entity which published or disclosed the work

in any form.

4. Except where they constitute a fragment of a work previously published, posthumous works must be the subject of a separate publication, and may not be attached to other works of the same author previously published, unless the owners of the copyright are also the holders of the exploitation rights.

Article 28

Anonymous works

1. Copyright in works published anonymously shall lapse 50 years after their disclosure or publication, starting from the first day of January of the calendar year following that in which the work was published beginning from the end of the calendar year in which it took place.

2. The date of publication shall be determined by any form of proof of joint right, and by the legal deposition.

3. If the author's identity were revealed before the end of this period, the duration of the

protection shall be that established in paragraph 1 of Article 25.

4. Any person who has published or has ordered to be published a work disclosed after the lapse of the period provided for in this Article, shall enjoy an exclusive right for 25 years.

Article 29

Audiovisual works

Copyright in an audiovisual work shall lapse 50 years after the death of the last survivor among the following persons:

- (a) the director;
- (b) the author of the script and the dialogues or its adaptation;
- (c) the composer of the music;
- (d) the author and the director of the cartoons.

Article 30

Works of photography or applied arts

Copyright in works of photography or applied arts

shall lapse 25 years after such works are produced.

Article 31

Computer programs

1. The right assigned to the intellectual creator on the creation of a computer program shall lapse 50 years after his death.
2. If the right were originally assigned to a different person from the intellectual creator the right shall lapse 50 years after the date on which the program was legally published or disclosed for the first time.

Article 32

Calculating time limits

1. The periods of protection established in the preceding articles shall only begin from the first day of January of the year following which the events referred to therein take place and shall remain in force until the last day of the year during which they lapse.
2. If the different volumes or parts of a work were published

separately and at different times the periods of protection referred to shall start, under the terms of the preceding paragraph 1, separately for each volume and each part of the work.

3. The provisions of the preceding paragraph 2 shall apply to the issues or editions of collective works or periodicals.

Article 33

Works of folklore

The protection of works of folklore shall have no time limit.

Article 34

Public domain

1. A work shall be deemed to have fallen into the public domain when the rights relating to it conferred by this Law to the respective authors and their successors, have lapsed.

2. The following shall fall into the public domain:

(a) works for which the periods set in Articles 25 to 31 have lapsed;

(b) works of deceased authors whose estate was declared unclaimed and became the property of the State, and 10 years have passed without the work being used directly or its exploitation by third parties has not been authorized;

(c) works of folklore.

3. A work shall also fall into the public domain if it was not legally published or disclosed in the period of 50 years, starting from its creation, if this period is not calculated from the death of the author.

4. The use and exploitation, for financial gain, of works in the public domain shall be free as long as such use is subordinate to absolute respect for the moral rights, on the previous authorization of the member of Government responsible for culture and the payment of a fee to be set by the members of Government responsible for culture and finance, with the purpose of promotion and cultural development and social

assistance to Cape Verdean authors.

Article 35

Works in the public domain

1. Any person who legally publishes or discloses an unpublished work, after the expiry of copyright, shall enjoy 25 years of protection equivalent to that of the economic rights of the author, starting from the date of publication or disclosure.

2. Critical and scientific publications which have fallen into the public domain shall enjoy 25 years protection from the date of the first legal publication.

CHAPTER V

Transfer of rights

Article 36

Economic rights

1. The author of a work protected by this Law shall have the exclusive right to practice or authorize third parties to

practice the following acts:

(a) the publication or reproduction of his work by any means and the distribution to the public of the respective copies;

(b) communication to the public of his work, by any means, notably performance, broadcasting, audio or visual, and rebroadcasting, by any means;

(c) the translation, adaptation, arrangement or any other alteration of his work.

2. The various forms of economic use and exploitation of the work shall be independent of one another, and the exercise of any of them by the author shall not prejudice the exercise of the remainder.

Article 37

Authorization and transfer of rights

1. The author may, in exercising the right conferred by the preceding Article:

(a) authorize the use, exploitation and distribution of his work by third parties, in whole or in part;

compulsory transfer or assignment.

Article 39

(b) transfer, wholly or partially, his economic rights to third parties.

Authorization

Simple authorization granted to third parties to use or exploit a work shall not imply total or partial transfer of the rights related to the work and must consist of a written document.

2. In any of the cases, the act by which use and exploitation of his work is authorized or the respective rights are transferred must be in writing and must show specifically the form of use and exploitation, the conditions governing duration, place, price and mode of payment, without prejudice, in the latter case, to the regulations and tariffs which shall be established by Article 138.

Article 40

Transfer

3. Authorization and transfer shall not, in any case whatsoever, affect moral rights.

1. The partial transfer of rights shall be limited to the embodiments and exploitation expressly indicated in the relevant act, which must consist of a written document.

2. Where the transfer is temporary and no duration has been laid down, it shall be understood that the maximum duration shall be 25 years in general, or 10 years, in the case of photographic or applied arts works, but this shall lapse within seven years if the work has not been used or exploited.

Article 38

Limitations of transfer and assignment

Powers granted for the guardianship of moral rights and any other rights excluded by the law may not be the subject of either voluntary or

3. On pain of nullity, the total and permanent transfer of rights may only be effected by public deed, with an indication of the work and the related price.

Article 41

Assignment of rights

1. The economic rights conferred on the authors of works protected by this Law may be the subject of:

- (a) legal or voluntary usufruct;
- (b) seizure, as security for payment of the author's debts or liabilities;
- (c) seizure or attachment.

2. Unless otherwise specified, the usufructuary may only use the work subject to usufruct for any purpose involving its transformation or modification with the authorization of the copyright owner.

3. Unpublished manuscripts, sketches, drawings, unfinished paintings or sculptures, shall be exempt from seizure, without prejudice to the right of the author to indicate them for

attachment.

4. Where the author, by his direct acts, has shown his intention to disclose or publish the works referred to in this Article, the creditor may obtain seizure or attachment of the related economic rights to the income from the economic exploitation of the work.

5. The seizure set out in the terms of this Article shall not assign any rights related to the material carriers of the work to the creditor.

6. Where the seizure is effected, this shall fall specifically on the right or rights which the debtor offered as security in relation to the work or works indicated.

Article 42

Future works

1. The transfer or assignment of rights relating to future works may only cover those which the author should create within a maximum period of 10 years.

2. Where the contract indicates a time period greater than that set in paragraph 1, the period shall be reduced to that, with a reduction proportional to the compensation set.

3. A contract of transfer of rights related to future works with no time limit shall be null and void.

Article 43

Share of value-added

1. An author who has assigned an original work of art, original manuscript or his copyright in a work shall have the right to a share of the value-added possibly obtained, as long as the assignee benefits from a significant increase in price from his new assignment.

2. The share shall consist of an amount of six per cent on top of the increase in the price obtained.

3. Where two or more transactions take place within a period of less than two months or within a longer period in such a way that it is considered that the author is intentionally

being deprived of his right to a share of the increase in remuneration, that increase in value shall be calculated according to the last transaction only.

4. The costs of transactions, for the purposes of assigning the right to a share and the fixing of the amount, shall be reduced by verified expenditure on advertising, representation and other similar actions involved in promoting and selling the work.

5. The provisions of this Article shall not apply if the price increase is due exclusively to currency devaluation.

6. The right referred to in paragraph 1 of this Article shall be perpetual, inalienable and imprescriptible.

Article 44

Additional compensation

1. Where an author who has assigned, against payment, the right to exploit a given intellectual work, suffers significant prejudice due to insufficient forecast of the probable profits of that

exploitation, because there is a large disproportion between his revenue and the profits earned by the acquirer of those rights, he may claim additional compensation therefrom reflecting the results of the exploitation.

2. The compensation referred to in the preceding paragraph 1 may only be demanded if the assignment was made for a fixed sum, paid in one installment only or in periodic installments, or, in the event that the author's remuneration is in the form of a share of the profits from the exploitation, if this were not established in accordance with the customary methods for transactions of this nature.

3. The right to compensation shall lapse if it is not exercised within a period of two years from the date of becoming aware of the serious economic prejudice suffered.

Article 45

Prescription

Copyright may not be acquired by prescription.

CHAPTER VI

Moral rights

Article 46

Content

The following shall be moral rights of the author of a protected work:

(a) the right to claim authorship of the work and to demand mention of his name, pseudonym, heteronym or distinctive sign whenever the work is published, reproduced or communicated to the public;

(b) the right to defend the authenticity and integrity by opposing every and any distortion, mutilation or modification and, in general, opposing every and any act which diminishes the work and is liable to be prejudicial to his honor and reputation;

(c) the right to keep the work unpublished or to change it, before or after publication and

communication to the public;

(d) the right to withdraw the work from circulation or suspend any form of use or exploitation which he had authorized with the exception of the provisions of Article 4;

(e) the right to access to a unique or rare copy of the work, when this is in the hands of third parties, in order to exercise the right to publish, disclose or communicate to the public or use the work.

Article 47

Non-transferability of moral rights

1. The moral rights defined in Article 46 shall be perpetual, inalienable and imprescriptible, even in the case of total transfer and after the death of the author.

2. Moral rights related to works in the public domain shall be exercised by the State, through the Government department responsible for culture.

Article 48

Amendments

1. Amendments to works without the author's express consent shall not be permitted, even where use and exploitation of the work without such consent are lawful.

2. Where the author has partially or wholly revised his work and has effected or authorized the publication of disclosure *ne varietur*, his successors or third parties may not reproduce any of the previous versions.

3. In the case of authorized amendments to a work, such amendments shall be lawful if they are proved necessary, as long as they do not distort the meaning of the original work.

4. Where a work of architecture is executed according to a project approved by the owner of the work, and modifications not authorized by the author are introduced during or after the building process, the author may, in addition to requesting compensation for loss and damages, repudiate authorship of the work, rendering it unlawful for the owner to

invoke in the future, for his benefit, the name of the project author.

Article 49

Audiovisual works

1. An audiovisual work shall be deemed completed when the final version has been established by joint agreement between the director, or co-authors, and the producer.
2. The destruction of the matrix of the final version shall be prohibited.
3. Any amendment to the final version, through addition, deletion or change to any element, shall require the agreement of the persons mentioned in paragraph 1.
4. Any transfer of the audiovisual work to another form of carrier, or for another form of exploitation must be preceded by consultation with the director.
5. The moral rights of the authors, as defined in Article 46, may only be exercised in the final version of the audiovisual

work.

6. Where one of the authors refuses to complete his contribution to the audiovisual work or finds himself unable to complete said contribution for reasons beyond his control, he may not oppose the use, for the purpose of making the work, of the part of the contribution already made.

7. The author who, under the terms and conditions of the previous paragraph, has given his contribution to the making of the work, shall enjoy the capacity of author thereof, in the part he has given, and of all the rights arising therefrom.

Article 50

Right of withdrawal

The author of a work published or lawfully communicated to the public by whatever means may, at any time, withdraw it from circulation or terminate its use or exploitation, as long as he compensates the interested parties for the prejudice caused to them, except for the provisions of Article 4.

Article 51

Moral rights in cases of attachment and auction of copyright

1. Attachment and auctioning of copyright in a particular work shall not deprive the author, in the case of the publication thereof, promoted by the bidder, of the right to revise the proofs and to correct the work, nor shall they affect, generally, his moral rights with regard thereto.
2. However, the author may not hold the proofs for more than 60 days, without a valid reason, in which case printing may proceed without his revision.

Article 52

Computer programs

1. Unless stipulated otherwise, the author of a computer program may not:
 - (a) oppose the modification of the program by the assignee of the rights mentioned in Article 8 as long as it does not prejudice his good name,

reputation or honor;

(b) exercise the right of withdrawal.

2. The author of a computer program may, despite assignment, demand the mention of his name as author on future versions which may be made.

CHAPTER VII

Formatted: French (France)

International regime

Article 53

Competence of Cape Verdean jurisdiction

The legal protection which a work enjoys shall be determined by Cape Verdean legislation, without prejudice to the international conventions Cape Verde may have ratified or shall ratify.

Article 54

Protection of foreign works

Works by foreign authors or authors having a foreign country as their country of origin shall enjoy the protection

granted by Cape Verdean legislation, as long as reciprocity is verified for protection of Cape Verdean authors' works in the respective countries and with the exception of any international convention to the contrary.

Article 55

Country of origin of published works

1. Published works shall have the country of first publication as their country of origin.
2. Where a work has been published simultaneously in several countries that grant different periods of copyright protection, in the absence of any applicable international treaty or agreement, the country of origin shall be deemed to be that granting the minimum duration of protection.
3. A work published in two or more countries within a period of 30 days from the first date of publication inclusive shall be deemed to have been published simultaneously in several countries.

Article 56

Country of origin of unpublished works

1. The country of origin of unpublished works shall be deemed to be the country of origin of the author.
2. Nevertheless, in the case of works of architecture and graphic or three-dimensional arts incorporated in a building, the country of origin shall be deemed to be that in which said works are built or incorporated in construction.

CHAPTER VIII

Exercise of copyright

Article 57

Mode of exercise

Copyright may be exercised by its owners or through their legal or voluntary representatives.

Article 58

Death or absence of the author

1. In the event of the death or absence of the author under the terms of Articles 111ff. of the Civil Code, it shall fall to his heirs, declared and assumed, and successors to exercise his moral rights and to decide on the exploitation of his works as yet undisclosed or unpublished except if the author has prohibited their disclosure or publication in any way.

2. In the event of deciding to exploit the work, the heirs shall enjoy rights identical to the author under the terms of Article 36.

3. In the event of differences of opinion between the heirs with regard to the exploitation of the work, the majority opinion shall prevail, in the case of a deadlock, and at the request of one of the interested parties, the court in the place where the will was read shall decide.

Article 59

Authors' rights organizations

Associations and other organizations established to exercise and defend the interests of authors shall carry

out this function as their authorized representatives and their mandate shall be based on the simple capacity of member or subscription, under any designation, as the beneficiary of the services of said organizations.

Article 60

Authors in a state of incapacity

1. Incapacitated authors shall be represented, with regard to the exercise of their economic rights, in and out of court, by their legal representatives.

2. They may, in the meantime, exercise the defined moral rights, provided that they are naturally able to do so.

TITLE II

USE OF WORKS

CHAPTER I

General provisions

Article 61

Forms of use

1. The author of a literary, artistic or scientific work shall have the exclusive right to enjoy, use or exploit his work, either in whole or in part, or to authorize third parties to do so, by any means currently known or which may come to be known in the future.

2. As such he may carry out or authorize the following:

(a) publication of the work, by printing or any method of graphic, mechanical, electronic or other reproduction;

(b) performance, execution, exhibition or communication to the public by any means;

(c) audiovisual recording and related communication to the public by any means;

(d) radiophonic or televisual broadcast by any process of reproduction of signals, sounds and images and the respective communication to the public by any means;

(e) direct or indirect appropriation in any form, namely the sale, distribution, or rental or lending of copies of

the reproduced work;

(f) translation, adaptation, arrangement, instrumentation or any other transformation, as well as its use in a different work;

(g) construction of an architectural work according to a plan, whether it is a repetition or not;

(h) broadcast or rebroadcast of a work by satellite or any other methods of telecommunication of sounds, images, documents, data or messages of all types;

(i) making available to the public, whether by wire or not, so that it is accessible to any person at the place and time of their choosing.

3. The owner of the copyright shall have the exclusive right to decide freely upon the procedures and conditions of use and exploitation of the work, without prejudice to the provisions of paragraph 2 of Article 47 and of Article 136.

Article 62

Unrestricted use

1. The following embodiments of works already lawfully published or disclosed shall be lawful, irrespective of authorization of the respective author and without any need for compensation, as long as the authenticity and integrity of the title and the name of the author are mentioned and respected:

(a) the performance, execution, cinematographic showing and communication of recorded or broadcast works, where they take place in private, with no paid entry and without profit, or in school establishments for exclusively educational, research or professional training purposes;

(b) reproduction by photographic processes or any other similar processes when carried out for exclusively didactic, research or professional training purposes, by libraries, archives and non-commercial documentation centers, scientific institutes or teaching establishments, as long as the copies reproduced do not exceed the needs of the purpose

for which they are intended;

(c) reproduction of works included in news reports, filmed or televised, or of works permanently exhibited in public places or in places where representatives of social communication bodies have access;

(d) reproduction, broadcasting or communication, by any other means, to the public, of the image of a work of architecture, three-dimensional arts, photography or applied arts, which is kept permanently in a place open to the public, except if the image of the work is the main subject of the reproduction, broadcasting or communication in question, and if it were used for commercial purposes;

(e) reproduction, by printing, of speeches, lectures and other statements made in a public place or in places where representatives of social communication channels have access;

(f) citation of short excerpts of another author's work, whether in written, audio or visual form,

when it is justified for scientific, critical or didactic reasons or for information and as long as those excerpts are not so extensive as to lessen interest in the work;

(g) partial or total reproduction of works of graphic or three-dimensional arts intended to appear in judicial auction catalogs, carried out in Cape Verde for the copies made available to the public before the auction, with the sole aim of describing the works of art placed on sale;

(h) parody, pastiche or caricature;

(i) reproduction of a work intended for judicial or administrative proceedings, to the extent justified by the intended purpose;

(j) reproduction intended to conserve a copy of a work, and if necessary, to replace it in a complete collection of a work in a library, an archive service or a documentation center, as long as, through having been lost, destroyed or made unusable, it is impossible to find such a copy on reasonable conditions

and/or the act of reprographic reproduction is an isolated act, or if repeated, on separate and unrelated occasions;

(k) performance of national anthems or officially adopted patriotic songs, as well as works of an exclusively religious character, during religious rites or services;

(l) reproduction, translation, adaptation, arrangement, or any other alteration exclusively for individual and private use.

2. An author who reproduces his articles or letters published in newspapers or periodicals in argument with another person may also reproduce the replies of his adversary binding the latter to the same right, even after the publication by him.

3. Any person who publishes manuscripts existing in public or private libraries or archives, may not oppose their subsequent publication of the original text by another party, unless such publication is no more than a reproduction of the previous one.

Article 63

Reproduction for private use

The provisions of the preceding article relating to reproduction exclusively for private use shall not apply to:

- (a) reproduction of architectural works consisting of buildings or other similar constructions;
- (b) reprographic reproduction of works of three-dimensional arts of limited printruns, the graphic presentation of musical works (scores), exercise manuals and other publications as long as people use them only once;
- (c) reproduction of all or significant parts of databases;
- (d) reproduction of computer programs, except in the cases provided for in Article 64;
- (e) any other reproduction of a work which damages its normal exploitation or causes unjustified prejudice to the legitimate interests of the author.

Article 64

Reproduction for disabled persons

1. The following shall be permitted, without the authorization of the author and without remuneration, at the request of disabled persons, with motor, intellectual, aural or visual impairments or of legal entities acting in the interests of such persons, as long as access to the work in the available versions, is not possible due to their impairment, and the reproduction is carried out on a non-profit basis:

- (a) the production of a copy or audio recording of a literary or dramatic work, with the exception of a cinematographic, musical or artistic work, on a material carrier intended for those disabled by the impairments listed above;
- (b) the translation, adaptation or reproduction in sign language of a literary or dramatic work, with the exception of a cinematographic work, fixed on a material carrier intended for those disabled by any of the impairments listed

above;

Article 65

(c) the public performance in sign language of a literary or dramatic work, except cinematographic, or the public performance of such a work fixed on a carrier which may be of use to those disabled by any of the impairments listed above;

(d) reproduction or other form of use, using Braille or another system for blind persons;

(e) distribution in any of the cases provided for in the preceding subparagraphs, as long as it is justified by the intent of the authorized act of reproduction.

2. The author or the copyright holder shall be entitled to compensation for the reproduction and distribution of more than one copy.

3. This right may only be exercised by legal entities acting in the interests of disabled persons, after authorization from the competent administrative authority.

Reproduction and adaptation of computer programs

1. The legitimate owner of a copy of a computer program may, without authorization from the author and without payment of separate compensation, reproduce or make a copy or an adaptation of the program, as long as this copy or adaptation is:

(a) necessary for the use of a computer program, in accordance with the purposes for which the program was obtained;

(b) necessary for archival purposes and to replace the copy lawfully purchased, in case it should be lost, be destroyed or become unusable.

2. No copy may be reproduced and no adaptation may be carried out for any other purpose than those set out in the preceding paragraph, and any copy or adaptation may be destroyed, if its prolonged possession ceases to be harmless.

Article 66

Ephemeral recording by a broadcasting organization

1. A broadcasting organization may, without authorization from the author and without special payment, carry out ephemeral recording, without commercial purpose, by its own means and for its own broadcasts, for a work which it has the right to broadcast.
2. The broadcasting organization must destroy this recording in the six months following its making, except in the case of an agreement made for a longer period with the author of the work so recorded.
3. In the meantime, for purely conservation purposes, without the agreement referred to, a single copy of the recording may be kept.

Article 67

Resale and public lending

The following shall be permitted, without authorization from the author or any

remuneration:

- (a) resale or transfer in another manner, of ownership of the copy of a work, following the first sale or transfer of ownership, of the copy to a library, an archive service or a documentation center, whose activities are not, directly or indirectly, profit making;
- (b) loan to the public the copy of a written work, purely for the purposes of consultation, as long as it is not a computer program.

Article 68

Reproduction and adaptation of databases

1. The legitimate user of a database may, without authorization from the author and separate remuneration, reproduce, permanently or temporarily, translate, adapt, transform or modify it, in any other way, communicate it to the public, as long any of these uses are necessary for the use of the database or to access its content.

2. Where the legitimate user is only authorized to use a part of the database, this paragraph shall only apply to that part.

Article 69

Lectures

1. Lectures by professors may only be published by third parties with the consent of the respective authors, even if they are presented under the personal responsibility of the person publishing them.

2. Unless otherwise specified, publication shall be deemed to be solely for the use of students.

Article 70

Temporary reproduction

Acts of temporary reproduction of a work shall be permitted, irrespective of authorization from the author or any remuneration, as long as:

(a) they are transient or episodic in nature;

(b) they do not have any economic value as such;

(c) they are an integral and essential part of a technological process with the sole aim of allowing transfer in a network between third parties by an intermediary or a lawful use.

Article 71

Importation for personal use

The importation of a copy of a work by a natural or legal person shall be permitted, for personal or collective use, without the authorization of the author or any other holder of copyright in the work.

Article 72

Other uses

Reproduction shall also be permitted of a single copy of works which are not yet available in trade or are impossible to obtain, for purely scientific or humanitarian interest purposes, and for the time necessary for their use.

Article 73

Compensation for reproduction or recording of works

1. The reproduction of an audiovisual work, lawfully published, or a sound recording of a work, without authorization from the author, but in return for fair remuneration, shall be permitted exclusively for private use by the user.

2. Fair remuneration for reproduction for private use, in the cases set out in the preceding paragraph, shall be paid by the importers and sellers of apparatus and material carriers used for this reproduction or recording obtained by any of these methods, and shall be received and distributed by the organization for collective management of copyright.

3. In the absence of agreement between the representatives of the importers and the sellers on the one hand, and the organization for the collective management of copyright on the other, the amount of the fair remuneration and the conditions

for payment thereof shall be set in regulatory terms.

4. The distribution of the fair remuneration to be paid to authors, performers, and producers of phonograms and videograms, must be carried out between these three groups of rights holders, under regulatory terms.

5. The apparatus and material carriers referred in paragraph 2 shall be exempt from payment of fair remuneration if:

(a) they are intended for re-export;

(b) they cannot normally be used for the reproduction of works for private use.

Article 74

Licensing system

1. The author of a work may grant a license, exclusive or not, to one or more persons, for the performance of acts protected by his economic rights.

2. An exclusive license shall authorize its holder, to the exclusion of all others,

including the author himself, to execute in the way permitted to him, the acts laid down therein.

3. A non-exclusive license shall authorize the holder to fulfill, in the way permitted to him, the acts laid down therein, at the same time as the author or other holders of non-exclusive licenses.

4. Unless stipulated otherwise, the license shall be presumed to be non-exclusive if it were granted for a period of 12 months.

5. The granting of a license for the performance of the intended acts may be limited to certain specific rights, and also, relative to the aims, duration, territorial scope, the extent and the means of exploitation.

6. In the absence of a mention of the territorial scope for which the license is granted, the country where the act of grant took place shall be deemed the limitation of the license.

7. In the absence of a mention of the scope and the means of exploitation for which a license has been granted, it is deemed

that the limitation of the license shall be the scope of the means of communication and exploitation necessary for the aims provided for at the time the license is granted.

Article 75

Free licenses

1. For exclusively teaching or scientific research purposes, it shall also be lawful, without the consent of the author, to obtain a non-exclusive and inalienable license for the translation and publication of a work already lawfully disclosed into Portuguese or Cape Verdean creole, which its author has not withdrawn from circulation, and/or to reproduce it, as long as the following conditions are met:

(a) one year has elapsed since the first publication or reproduction of that work in the original language or three years in Portuguese or Cape Verdean creole without another translation having been published or copies of said reproduction being exhausted within this time period;

(b) the license request proves authorization was requested for the translation, publication or reproduction from the holder of the related rights, without authorization having been granted or without it having been possible to find the holder of the copyright, despite reasonable efforts having been made;

(c) the translation, publication and reproduction shall be carried out and the respective copies distributed exclusively in the territory of the Republic of Cape Verde, only with the exception of export for citizens of Cape Verde resident abroad or organizations set up for them, within the limits strictly necessary and with express prohibition on its commercialization;

(d) the holder of rights to translation, publication and reproduction shall be guaranteed fair and equitable compensation, in accordance with international practice and their transfer carried out in equitable currency.

2. The license to which this Article refers may be granted to

an audio or audiovisual broadcasting organization, with headquarters in the Republic of Cape Verde exclusively for the purposes indicated in the preceding paragraph, as long as the translation and reproduction are made from lawfully produced copies. The license may include, in addition to the published work, in print or similar format, the texts incorporated or included in audiovisual fixations for school or scientific use.

3. The title and the name of the author of the original work must be indicated on all copies of the published translation and on reproductions thereof.

4. The competence for granting the licenses to which paragraphs 1 and 2 of this Article refer shall be exclusive to the Government department responsible for the culture sector.

Article 76

Trial

1. In the case of a dispute emerging from the exercise of the right provided for in the

preceding Article, the trial shall follow in so far as compatible with the provisions of the Code of Civil Procedure.

2. Claims must be brought before the court at the domicile of the license applicant, and this shall only be granted after proof of payment of the compensation determined to the copyright holder or of the respective deposit or security, in the case where contact with the holder has proved to be impossible.

3. The decision may be appealed, with suspensory effect, before the Supreme Court of Justice.

CHAPTER II

Special uses

Section I

Publishing contracts

Article 77

Concept

Through a publishing contract, the author of a work shall authorize the publisher to reproduce it graphically,

distribute it and put on sale the respective copies, on the understanding that, unless agreed otherwise, that authorization shall only be valid for one edition.

Article 78

Exclusions

1. The following shall not be deemed publishing contracts:

(a) an agreement whereby a person commits, against payment of a certain sum by the holder of copyright in a work, to produce in the stipulated conditions, a certain number of copies of that work and to ensure their distribution and sale on behalf of the rights holder;

(b) an agreement whereby the holder of copyright in a work, has produced at his own cost a certain number of copies of that work and simply charges another with the storage, distribution and sale of the copies in return for payment of a certain commission or any other form of payment;

(c) any agreement whereby a fixed or proportional payment shall be established for the entity which takes charge of the reproduction or distribution and sale of the copies of the work, with all risks being borne by the holder of copyright;

(d) an agreement whereby the holder of copyright in a work charges another to produce, at his own cost, set numbers of copies of that work and to ensure their distribution and sales where the parties agree to share between them the profits or losses of exploitation.

2. The contracts referred to in the preceding paragraph, subparagraphs (a), (b) and (c), shall be regulated by the provisions entered therein, by the legal provisions relating to service provision contracts and via the usual trade channels.

3. The contracts referred to in the preceding paragraph, subparagraph (d), shall be regulated by the special provisions therein, via the usual trade channels, and subsequently, by the rules relating to share accounts.

Article 79

Form and content

1. The publishing contract must be drawn up in writing, in order to be valid, and it shall be compulsory for the contract to state the delivery time for the work and the conclusion of the publication, the number of copies, the price per copy, the amount of royalties to be paid to the author and the payment terms, as well as the terms of its termination.

2. The publishing contract may have as its subject one or more works, published or unpublished, existing or future, with the limitation, in the latter case, of Article 41.

3. Nullity resulting from the failure to draw the contract up in writing shall be deemed imputable to the publisher and may only be invoked by the author.

Article 80

Author's obligations

The author shall:

(a) furnish the publisher, within the agreed period, with the work which is the subject of the publishing contract and the original of which is his property;

(b) guarantee the publisher the exercise of the rights deriving from the publishing contract against all opposition and disputes arising from possible rights of third parties in the work, except against opposition and disputes simply engendered by third parties;

(c) not enter into a contract with another publisher of the work in the same language so long as the edition has not been sold out or the period provided for such effect in the contract has not lapsed, except for the provisions of Articles 82 and 84 of this Law.

Article 81

Publisher's obligations

The publisher shall:

(a) carry out or promote the reproduction of the work, in the form, under the conditions and within the time period

stipulated in the publishing contract;

(b) respect the integrity of the work, since he is prohibited from making any changes whatsoever thereto without the express consent of the author;

(c) give the author at least one galley proof, one page proof, the draft and proof of the cover, which the author must revise and correct within 30 days, if not agreed otherwise in the contract;

(d) mention the name, pseudonym, and heteronym or other conventional sign adopted by the author on all the copies of his work;

(e) give to the production of the edition the requisite due care so that the work can be reproduced in accordance with the agreed conditions, and to promote it with the diligence usual in the trade and distribution of the copies produced;

(f) pay the author the adjusted royalties, in the form and time periods agreed, and allow the verification of the print run by all means, in particular through

the examination of the commercial accounts of the publisher or the company which produced the copies;

(g) return to the author of the work, the subject of the contract, after it has been reproduced.

2. The modernization of spelling and the correction of grammatical errors, carried out with the consent of the author, in accordance with the official rules in force, shall not be deemed to be modification of the work.

Article 82

Production of a smaller number of copies than agreed

A publisher who produces a smaller number of copies than that agreed upon, may be required to make good the number, and if he fails to do so, the author may promote, at the publisher's expense, the production of the number of copies missing, without prejudice to his right to be compensated for any damage.

Article 83

Production of a larger number of copies than agreed

Where the publisher produces a larger number of copies than that agreed upon, the author may seek attachment of the additional copies and take possession of them.

Article 84

Remuneration

1. Publishing contracts shall be subject to payment.

2. The author's remuneration shall be that which was laid down in the publishing contract and may consist of a fixed lump sum to be paid for the edition as a whole, a percentage of the retail price of each copy, the allocation of a certain number of copies or a payment established on another basis, and a combination of such forms may always be used.

3. Where remuneration consists of a percentage of the retail price of the copies produced, the publisher shall render accounts to the author every six

months, unless another time period has been agreed.

4. The failure to meet the obligation in paragraph 3 shall give the author the right to request from the publisher the judicial rendering of accounts and to request examination of his submission.

Article 85

Sale of copies at reduced prices or by weight

Where within the period agreed, or in the absence thereof, 10 years after the publication of the work, the edition has not been sold out, the publisher may sell at reduced price, or by weight, the existing copies, notifying the author in advance, who will have the right of priority to the acquisition.

Article 86

Complete works

1. An author who has concluded contracts with one or more publishers for the separate publication of each of his works shall retain the right to conclude a contract with another

publisher for the publication of a complete edition of his works.

2. A contract for the complete edition of the works of an author shall not authorize the publisher to publish separately any of the works contained therein and shall not affect the author's right to conclude contracts for separate publication of any of them.

Article 87

Future works

The provisions laid down in Article 42 shall apply to the publication of future works.

Article 88

Assignment of rights

1. The authorization to publish a work shall not include the transfer to the publisher of the rights arising from the contract, nor does it confer the right to translate, adapt or modify the work which is the subject of the contract.

2. Without the author's consent, the publisher may not assign or transfer his rights under the

publishing contract to third parties, against payment or otherwise, unless the transfer is the result of the dissolution of his commercial establishment.

3. In the case of the dissolution of the commercial establishment, by the publisher, the author shall have the right to compensation for moral and material damages which may arise from the operation.

Article 89

Cancellation of publishing contracts

Publishing contracts may be cancelled:

(a) in the event of the death of the publisher unless within six months, from the declaration of death, it should be decided under the terms of the Code of Civil Procedure, to fulfill the contracts concluded, or should the dissolution of the establishment as a whole be carried out;

(b) in the event of the death of the publisher, if his establishment does not continue with one or more of his

successors;

(c) in the event of the death of the author, or should it be impossible for him to complete the work;

(d) where, duly notified by the author to conclude the edition, under the terms of the publishing contract, the publisher should not do so within the reasonable period set for that by the author.

Section II

Performance

Article 90

Concept

In the public performance contract, the author shall authorize the performance of his dramatic, dramatico-musical, choreographic, mime or other similar work, or the performance of his musical, literary or musical literary work in any premises open to the public, with paid or unpaid admission.

Article 91

Exclusions

1. Radiophonic or televisual broadcasts, cinematographic filming or any other method of reproduction or communication of the show in which the work is used, shall not be considered covered under performance authorization.

2. Where there is authorization for the broadcast of a work by terrestrial broadcasting, this shall not include:

(a) distribution by cable of this broadcast, unless it is carried out simultaneously and in full by the organization benefiting from that authorization and without extension of the geographical area contractually agreed;

(b) satellite broadcast which enables this work to be received through third party organizations, unless the authors or their beneficiaries contractually authorize these organizations to communicate the work to the public; in this case, the broadcast shall be exempt from any remuneration.

3. The authorization to broadcast a work shall not mean authorization to communicate the broadcast of this work in a place accessible to the public.

Article 92

Impresario's obligations

1. The impresario organizing the show in which the works referred to in the preceding Article are performed shall obtain prior authorization from the respective authors for its use in the show.

2. For the purposes of this Article, an impresario shall be defined as a natural person or legal entity who, on a temporary basis or permanently, organizes in premises open to the public the show in which the works referred to are performed.

3. The impresario shall guarantee the performance in technical conditions which permit the author's economic and moral rights in the performed work to be respected, without being able to make any changes to the work without the prior consent of the author and

without being able to assign to others the rights arising from the contract.

Article 93

Author's rights

Unless otherwise stipulated, the performance contract shall give the author the right to:

- (a) make to the work, independently of the other party's consent, the changes he deems necessary, provided that they do not alter the general structure or detract from its dramatic or theatrical interest;
- (b) be consulted regarding casting in the case of performance of a dramatic work;
- (c) attend rehearsals and give the necessary indications regarding performance of his work as well as to be consulted regarding the choice of artistic collaborators for the work;
- (d) to object to performance where he considers that there have not been sufficient rehearsals for the success of the

performance to be assured;

(e) verify the performance himself or through his representative, for which purpose they shall have free access to the premises during the performance.

Article 94

Written draft

The performance contract must be drawn up in writing and therein it shall be compulsory to state the period for which the performance authorization is granted, the premises where the performance shall take place and the royalty payment arrangements, which may consist of a percentage of receipts, a fixed sum for each performance or any other form.

Article 95

Assumption of no charge

The performance authorization granted to amateurs shall be assumed to be free of charge.

Article 96

License, police authorization or permit

Where a performance is dependent on a license, a police authorization or permit, it shall be necessary to obtain these by showing the competent authority the document which states that the author of the work gave his consent for the performance.

Article 97

Cancellation of the contract

Performance contracts may be cancelled particularly in the following cases:

- (a) where there is insistent and clear expression of displeasure by the public;
- (b) where there is a suspension or banning of the performance by public authorities;
- (c) where the work in question is incomplete or not started, in the event of the death or physical incapacity of the author.

Section III

Audiovisual fixing and communication

Subsection I

Cinematographic production

Article 98

Contract for cinematographic use

1. Through a cinematographic use contract the producer shall acquire the right to produce, distribute and project a cinematographic work with the prior authorization of the respective authors.
2. The authorization referred to in the preceding paragraph shall involve the right to reproduce, distribute and project or have projected the cinematographic work and to exploit it economically.
3. This same authorization shall not cover the television broadcasting of the cinematographic work, nor its reproduction in videogram format or its exploitation and communication to the public by any of these means.

4. Unless otherwise agreed, the authorization given by the authors for cinematographic production of a work, whether it has been specially created for this form of expression or has been adapted, shall involve the grant of exclusive rights.

5. Where no agreement has been reached between the parties, the exclusive rights granted for cinematographic production shall lapse 25 years after conclusion of the corresponding contract, without prejudice to the right of the party to whom the economic exploitation of the film has been granted to continue to project, reproduce and distribute it.

Article 99

Producer

1. The producer of a cinematographic work shall be a natural person or legal entity responsible for its production and completion, either from the technical or financial point of view.

2. The producer shall be identified as such in the film.

3. The producer may only make changes to the cinematographic work which are required for technical reasons, as long as they do not alter the meaning of the work.

4. The producer may, at any time, transfer rights deriving from the contract, in whole or in part, to a third party, although he shall remain responsible towards the authors for the strict fulfillment of the contract.

Article 100

Authors

1. The director, the authors of the script, adaptation, dialogues, cartoons and musical compositions, with or without lyrics, created especially for this work, shall be deemed authors of the cinematographic work.

2. The author or co-authors of cinematographic works shall have the right to request that their names appear in the film when shown, together with an indication of each one's contribution to the work in question.

3. Where the cinematographic work is an adaptation of a pre-existing work, it shall mention the title of that work, as well as the author's name, pseudonym, or any other identifying sign.

4. The rights of the authors of pre-existing works used in the production of the cinematographic work shall be recognized under the terms of the final part of Article 14.

5. Authors of the literary and musical parts of a cinematographic work may reproduce or use these parts separately in any way, provided that this does not prejudice the exploitation of the work as a whole.

Article 101

Completion of the work

A cinematographic work shall be deemed to be completed when the director and the producer have jointly agreed on its final version and its matrix may not, under any circumstances, be destroyed.

Article 102

Time limit for fulfillment of the contract

Where the producer fails to complete the production of the cinematographic work within a period of three years from the date of handing over the literary and musical parts, or fails to have the finished film shown within a period of three years from the date of its termination, the author or co-authors shall have the right to cancel the contract.

Article 103

Works produced by processes analogous to cinematography

The provisions of this subsection shall also apply to works produced by any process analogous to cinematography.

Subsection II

Phonographic and videographic fixing

Article 104

Scope of authorization

1. Through a phonographic and videographic use contract, the

producer shall acquire the right to produce, distribute and project a phonographic or videographic work with the prior authorization of the respective authors.

2. The authorization to fix and reproduce by any process a literary, artistic or scientific work on a phonogram, shall merely allow the person granted it to proceed with its recording and to sell the copies produced but not to perform it publicly, broadcast it by radio or television or to communicate to the public in any way the work fixed, nor to hire out the corresponding copies.

3. The purchase of a copy of a phonogram or videogram shall not give the purchaser the right to use it for any public communication purposes, reproduction, sale or hire of the works fixed therein, for commercial purposes.

Article 105

Prior fixing

1. Musical works and corresponding texts that have already been the subject of

authorized phonographic fixing may be fixed anew without the need for the consent of the author, who shall still be due equitable remuneration.

2. In the absence of agreement by the parties, it shall fall to the Government department responsible for the culture sector to set the fair amount of equitable remuneration.

Article 106

Producer's obligations

1. A phonographic or videographic producer, who shall be deemed to be the natural person or legal entity who or which, for the first time, fixed the sounds, images deriving from a performance or recording, must display on them or the corresponding label the name, pseudonym or distinctive sign of the author of the fixed work.

2. The producer may not, even when claiming needs of a technical nature, make any changes to the fixed work, or adapt it, arrange it or transform it without the consent of the author, transfer to third parties

the rights emerging from the contract or transfer the corresponding matrix, except in the case of the dissolution of the establishment.

Article 107

Works produced by analogous process

The provisions contained in this subsection shall apply to the reproduction of intellectual works obtained by any process analogous to phonography and/or videography, already in existence or which has just been invented.

Subsection III

Broadcasting and other processes for the reproduction of signals, sounds and images

Article 108

Authorization

The authorization to broadcast a work by audio or visual broadcasting shall be general for all programs, live or retransmitted, made by the organization which obtained it.

Article 109

Limitations of authorization

1. Authorization granted for the broadcast by sound or visual broadcasting of a work shall not include the power to fix nor to communicate in any public place through loudspeakers or any other process used for the distribution of signals, sounds and images.
2. The power referred to in the preceding paragraph 1 shall be dependent on prior authorization and grant the author of the work the right to additional prior and exclusive remuneration for broadcasts from Cape Verdean national territory.
3. Broadcasting carried out by an entity different to that which obtained the authorization referred to in paragraph 1, where it is done by cable or satellite, and is not expressly provided for in that authorization, shall be dependent on the author's consent and grant him the right to remuneration.

Article 110

Identification of the author

Broadcasting stations shall indicate, before the act of broadcasting, the name, pseudonym or any other sign which identifies the author of the work broadcast along with the title of the work.

2. Unless otherwise agreed, transfer of ownership of such works of art shall imply transfer of the right to exhibit them.

3. Whenever one of these works is exhibited or reproduced, it must show the name, pseudonym or other sign allowing the author to be identified.

Section IV

Three-dimensional and photographic arts

Article 111

Author's rights

1. Authors of works listed in subparagraphs (g), (h), (i) and (k) of paragraph 4 of Article 7, as well as works of three-dimensional arts inspired by folklore, shall have the right:

(a) to exhibit them or authorize third parties to exhibit them publicly;

(b) to reproduce them or authorize third parties to reproduce them.

Article 112

Photographs

1. The choice of subject and the conditions of creation of a photographic work must be deemed to be a personal artistic creation by the author before it may be protected.

2. Unless otherwise agreed, transfer of a negative of a photographic work shall imply transfer of the rights referred to in paragraph 1 of the preceding article.

3. The reproduction and public communication of photographs of people shall be subject to the restrictions of civil law on image rights.

4. Unless otherwise agreed, a photograph of a person, if it was taken on commission, may be published, reproduced or ordered to be reproduced by the subject or his heirs or successors without the consent of the author, but indicating the name if this appears in the original photograph.

5. If the name of the photographer appears in the original photograph, it must also be shown in the reproductions.

6. The exhibition or dissemination by any photographic or photographic film method of a surgical operation shall depend on authorization from both the surgeon and the patient operated on.

7. Where a photograph was taken in the fulfillment of a work contract or on commission, it shall be assumed that the right set out in the previous Article belongs to the employing entity or the person commissioning the work.

Section V

Newspapers and periodicals

Article 113

Rights of authors and of owners or publishers

1. Without prejudice to the provisions of special legislation and those of paragraph 3 of Article 13 of this Law, copyright relating to works published, whether signed or not, in newspapers or other periodicals, even if they were created in fulfillment of a work contract, shall belong to the respective authors and only they may reproduce them separately.

2. Unless authorized by the owner of the newspaper or publication, a work which was published in fulfillment of a work contract, may not be reproduced until three months after the date on which it was published.

3. The owner or publisher of a newspaper or periodical may reproduce, without authorization from the author, the issues in which the works referred to in paragraph 1 of this Article were published.

4. Where said works are not signed or do not contain any identification of the author, copyright therein shall belong to the owner of the newspaper or publication in which they appeared and their authors may only publish them separately with his permission.

Article 114

News articles

News articles and economic, political, social, cultural or religious articles may be reproduced by the press, where reproduction has not been expressly reserved by the respective author, but his name or pseudonym and the source of the article must always be shown.

TITLE III

RELATED RIGHTS

Article 115

Definition

1. Related rights shall consist of the legal protection guaranteed to performers, producers of phonograms and

videograms and broadcasting organizations for their services.

2. Performers shall mean the actors, singers, musicians, dancers and others who perform, sing, recite, declaim, interpret or execute literary and artistic works in any manner.

3. Producers of phonograms or videograms shall mean the individual or collective persons who, for the first time, fix the sounds coming from a performance or other sounds, or images of any origin, whether or not accompanied by sound.

4. Phonograms shall mean the recording resulting from fixing, on a material carrier, the sounds coming from a performance or other sounds, or a performance of sounds.

5. Videograms shall mean the recording resulting from fixing, on a material carrier, of images, whether or not accompanied by sounds, as well as copies of cinematographic or audiovisual works.

6. Copies shall mean the material carriers on which sounds and images are

separately or jointly reproduced, whether directly or indirectly taken from a phonogram or videogram, where the sounds or images or performances thereof fixed therein are totally or partially incorporated.

7. Broadcasting organizations shall mean the bodies which make audio or visual broadcast programs, broadcast programs meaning the dissemination of sounds and/or images, or the performance thereof, separately or jointly, whether by wire or not, in particular, by hertzian waves, optical fiber, cable or satellite, and intended for public reception.

8. Retransmission shall mean the simultaneous broadcast by one broadcasting organization of a program by another broadcasting organization.

Article 116

Content

The services of performers shall be protected through recognition of related rights.

Article 117

Application

The protection of related rights shall apply, without prejudice to the rights recognized for the authors of the work used.

Article 118

Reference

The rules relating to copyright shall apply, where appropriate, to related rights.

Article 119

Requirements

A performer shall enjoy protection if one of the following requirements is met:

- (a) the performer has Cape Verdean nationality;
- (b) the performance is given in Cape Verde; and
- (c) the original performance is fixed or broadcast for the first time in Cape Verde.

Article 120

Authorization

1. The performer shall enjoy the exclusive right to authorize the fixation, reproduction, directly or indirectly, temporary or permanent, by any media in any form, in whole or in part, the broadcasting, communication and making available to the public, by cable or wireless means, so that it may be accessible to any person from the place and time of his choosing, without the performer's consent, of the services that have been made from his performances.

2. Authorization must be given in writing.

3. In the absence of any agreement to the contrary, authorization to broadcast a performance shall imply authorization to fix it, as well as authorization to broadcast fixations lawfully authorized by other broadcasting organizations.

4. The performer shall, however, have the right to additional remuneration where, although not laid down in the original contract, the following

operations are carried out:

(a) a new broadcast;

(b) retransmission by another broadcasting organization;

(c) commercialization of fixations obtained for broadcasting purposes.

5. Unauthorized retransmissions and new broadcasts of a performance shall entitle the participating performers to a joint payment of 20 per cent of the remuneration originally decided.

6. Commercialization shall entitle the performers to a joint payment of 20 per cent of the sums which the broadcasting organization that has fixed the performance receives from the purchaser.

7. The performer may agree to conditions other than those laid down in the preceding paragraphs with the broadcasting organization, but may not renounce the rights referred to therein.

Article 121

Special cases

1. Related rights relating to a performer's services carried out in fulfillment of a work contract or on commission, shall belong, unless otherwise agreed, to the employing entity or the person who commissioned the work.
2. The performer shall enjoy the right to request that his name be indicated on all his performances and to oppose, during his lifetime, any distortion or mutilation of, or damage to, his performance, which harms his prestige and reputation.
3. Following his death and for a period of 25 years his heirs shall enjoy the powers referred to in paragraph 2.

Article 122

Producer's authorization

1. The authorization of the producer of the phonogram or videogram shall be required for the making of copies and their distribution to the public, and also for their import or export.

2. The authorization of the producer of the phonogram or videogram shall also be required for dissemination by any means and for the public performance thereof.
3. Where a commercially published phonogram or videogram, or a copy thereof, is used for any form of public communication, the user shall pay equitable remuneration to the producer and the performers, to be divided equally amongst them, unless otherwise agreed.

Article 123

Broadcasting organizations

1. Broadcasting organizations shall have the right to authorize or prohibit:
 - (a) retransmission of their programs by radioelectric waves;
 - (b) fixing on a material carrier of their programs, be they wired or wireless;
 - (c) reproduction of the fixing of their programs, where these have not been authorized or in

the case of ephemeral fixing, and reproduction for purposes different from those originally envisaged.

(d) communication to the public of their programs, where this communication takes place in a public place with paid admission.

2. The rights provided for in this Article shall not apply to cable distributors who are limited to the retransmission of programs of broadcasting organizations.

Article 124

Presumption of agreement

Where the interested party has submitted a request confirmed by the Government department responsible for the culture sector, but it has not proven possible to contact the owner of the right or he has not replied within the reasonable period provided for this purpose, his consent shall be presumed, but the interested party may only effect the use requested if he provides a guarantee of payment of the remuneration.

Article 125

Forms of exercise

The provisions on forms of exercise of copyright shall, with the necessary adaptations, apply to the forms of exercise of related rights.

Article 126

Duration of protection

1. Related rights shall expire after 50 years from January 1 of the calendar year following:

(a) the performance by the performer;

(b) the first fixing, by the producer of a phonogram, videogram or film for the original and the copies of his films;

(c) the first broadcast by the broadcasting organization, whether the broadcast is wired or wireless, including cable or satellite;

(d) the first communication to the public of programs belonging to audiovisual

companies by such companies.

2. However, if during the period referred to in the preceding paragraph, fixation of the performer's performance were made available to the public on material carriers, subject to lawful publication or communication to the public, of the protected phonogram, or videogram or film, the period of expiry shall commence from the time of those events and not from the time of the events referred to in the subparagraphs of the same paragraph.

3. The provisions of paragraph 2 of Article 25 shall apply to the organizations mentioned in subparagraphs (a), (b) and (c) of paragraph 1.

TITLE IV

INFRINGEMENT AND PROTECTION OF RIGHTS

Article 127

Infringement

1. Any person who uses in any form, in whole or in part, a literary, artistic or scientific work, or exceeds the limits of

the authorization granted, without the authorization of the respective author, or performer, producer of the phonogram or videogram, or the broadcasting organization, shall be guilty of the offense of illegal exercise of rights.

2. The following shall also be guilty of the offense of illegal exercise of rights:

(a) any person who unlawfully discloses or publishes a work not yet disclosed or published by its author or not intended to be disclosed or published, even where he presents it as the respective author's work and whether or not he seeks to obtain economic benefits;

(b) any person who makes a collection or compilation of published or unpublished works without the author's consent;

Article 128

Counterfeiting

1. Any person who fraudulently represents or uses as his own creation, in whole or in part, a literary, artistic or scientific work, a performer's

performance, a phonogram, videogram or broadcast program of another party shall be guilty of the offense of counterfeiting.

2. Where the reproduction referred to in paragraph 1 represents only a part or fragment of the work or performance, only that part or fragment shall be deemed to be counterfeit.

3. For the purposes of verification of counterfeiting it shall not be essential for the reproduction to be made by the same process as the original, nor need it be of the same size or format.

Article 129

Penalties

1. The crimes set down in the preceding article shall be public offenses and shall be punishable by a term of imprisonment of up to three years or a fine of 100 to 200 days, doubled in the case of a repeat offense, provided that the offense in question does not constitute a crime punishable by a more

severe penalty.

2. Mere negligence shall be punishable by a fine of up to 100 days.

Article 130

Infringement of moral rights

1. The following shall be punishable by the penalties laid down in the preceding Article:

(a) any person who unlawfully claims authorship of a literary, artistic or scientific work of another person;

(b) any person who prejudices the authenticity or integrity of a literary, artistic or scientific work.

2. Criminal proceedings relating to the crimes laid down in this Article shall depend on the complaint or participation.

Article 131

Use of usurped or counterfeit works

Any person who imports, sells, offers for sale or in any way distributes to the public within

the territory of the Republic of Cape Verde a work that has been usurped or is counterfeit whether the copies in question have been produced in the country or abroad, shall also be liable to the penalties laid down in Article 130.

Article 132

Criminal proceedings

In the case of works of folklore or works that have fallen into the public domain, the complaint shall be submitted by the Government department responsible for culture.

Article 133

Attachment and loss of objects related to the commission of an offense

1. Copies of works illegally used or infringed shall always be seized, whatever the nature of the work and the form of infringement, together with the corresponding material packaging, the machines, or other instruments or documents suspected of being used or being intended for use in

committing the offense.

2. The fate of all the objects seized shall be fixed in the final judgment, whether or not an application has been made, and when it has been proven that they were intended for use or were used in the offense, and they shall be considered to have been handed over to the State and the copies shall automatically be destroyed without any right to compensation.

3. In cases of *flagrante delicto*, the police and administrative authorities shall be competent to seize the copies.

Article 134

Seizures

1. The owner of copyright may request of the court seizure of the copies of the usurped or counterfeit work, whatever the nature of the work and the form of its infringement, as well as of the machines or instruments used for their reproduction or communication.

2. The seizure shall always be ordered by judicial authority,

and the police and administrative authorities shall be competent to perform this.

Article 135

Civil liability

Civil liability derived from infringement of the rights provided for in this Law shall not be dependent on the criminal proceedings to which it gives rise, although it may be exercised in conjunction with criminal action.

Article 136

Preventive measures

Without prejudice to the exercise of civil or criminal action, the holder of copyright related to a literary, artistic or scientific work may request from the judicial, administrative or police authorities of the place in which infringement or the threat of infringement of copyright has been ascertained, the immediate suspension of any performance or other form of communication to the public of the work that is being carried out without his due

authorization.

Article 137

Proof of infringement

Under the terms of the Code of Criminal Procedure, the contributions made by police officials or by sworn agents of the organizations referred to in Article 138 shall be authentic.

TITLE V

FINAL PROVISIONS

Article 138

Management organization

1. The management of the economic and moral rights considered in this Law may be entrusted to public and private authors' organizations granted the power, on behalf of and in representation thereof, to grant the necessary authorizations for the use and exploitation of their works, to establish the fees and proceed with the collection of the related royalties and their distribution to the respective holders, defend the moral rights, monitor compliance with the law, identify infringements

of the law and request appropriate action from the courts.

*José Maria Pereira Neves -
Manuel Monteiro da Veiga*

2. The Government department responsible for the culture sector shall carry out administrative supervision of collective management activities, in the sense of guaranteeing transparency and applying fair collection and distribution criteria for the amounts collected, for the benefit of authors and in the public interest, under terms to be regulated.

*- Fátima Maria Carvalho
Fialho - Marisa Helena do
Nascimento Moraes*

Promulgated on April 24, 2009

Published hereby.

The President of the Republic,
PEDRO VERONA
RODRIGUES PIRES.

Ratified on April 24, 2009

Prime Minister, *José Maria
Pereira Neves*

Article 139

Revocation

Law No. 101/IV/90 of December 29 is hereby revoked.

Article 140

Entry into force

This Ordinance shall enter into force immediately.

Seen and approved by the Council of Ministers.