

National Legislation

BURUNDI

Decree-Law regulating the rights of authors and intellectual property in Burundi

(No. 1/9, of May 4, 1978)

PART I

Authors' rights

Article 1. The author of an intellectual work shall, by the mere fact of its creation, enjoy an exclusive incorporeal property right in the work, effective against all persons. This right includes attributes of an intellectual and moral nature as well as attributes of an economic nature, as determined by this Decree-Law.

Article 2. The provisions of this Decree-Law protect the rights of authors of all intellectual works, regardless of their kind, form of expression, merit or purpose.

The following in particular shall be considered intellectual works within the meaning of this Decree-Law: books, pamphlets and other literary, artistic and scientific writings; lectures, addresses, sermons, pleadings in court and other works of the same na-

ture; dramatic or dramatico-musical works; choreographic works and pantomimes the acting form of which is fixed in writing or otherwise; musical compositions with or without words; cinematographic works and works produced by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving, lithography; photographic works of an artistic or documentary character, and works of the same character produced by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science.

Article 3. The rights of authors of works of Burundi folklore shall be exercised by the competent national authority.

Article 4. All literary, artistic and scientific works created on the national territory by authors presumed to be nationals of Burundi, passed from generation to

generation and constituting one of the basic elements of the traditional cultural heritage, shall be considered works of national folklore.

Article 5. The authors of translations, adaptations, new versions or arrangements of literary, artistic or scientific works shall enjoy the protection provided by this Decree-Law, without prejudice to the rights of the author of the original work.

The same shall apply to the authors of anthologies or collections of various works, or of popular or folk themes, which, by reason of the selection and arrangement of their contents, constitute intellectual creations.

Article 6. A work shall be considered created, independent of any public disclosure, by the mere fact of the author's conception being realized, even incompletely, in so far as it is fixed on a material object.

Article 7. Authorship shall belong, in the absence of proof to the contrary, to the person or persons under whose name the work is disclosed.

The authors of pseudonymous works shall enjoy, in those works, the rights recognized by Article 1.

They shall be represented in the exercise of those rights by the original publisher until such time as they reveal their identity and prove their authorship.

Article 8. A work of joint authorship is a work to the creation of which several natural persons have contributed.

A composite work is a new work in which a pre-existing work is incorporated without the collaboration of the author of the latter.

A collective work is a work created on the initiative of a natural person or legal entity who edits it, publishes it and discloses it under his direction and name, and in which the personal contributions of the various authors who participated in its elaboration are merged in the whole work for which it was conceived, so that it is impossible to attribute to each author a separate right in the work thus made.

Article 9. A work of joint authorship shall be the joint property of the co-authors. They shall exercise their rights by common consent.

In cases of disagreement, the civil courts shall decide. Where the contribution of each of the co-authors is of a different kind, each shall be entitled, in the absence of an agreement to the contrary, to exploit his personal contribution separately, without however prejudicing the exploitation of the common work.

Article 10. A composite work shall be the property of the author who made it, subject to the rights of the author of the pre-existing work.

Article 11. A collective work, in the absence of proof to the contrary, shall be the property of the natural person or legal entity in whose name it is disclosed.

The author's rights shall vest in that person.

Article 12. Authorship of a cinematographic work shall belong to the natural person or persons who bring about the intellectual creation thereof.

In the absence of proof to the contrary, the following shall be presumed to be the co-authors of a cinematographic work made in collaboration:

- (1) the author of the script,
- (2) the author of the adaptation,
- (3) the author of the dialogue,
- (4) the author of the musical compositions, with or without words, specially composed for the work,
- (5) the director.

Where a cinematographic work is adapted from a pre-existing work or script which is still protected, the authors of the original work shall be assimilated to the authors of the new work.

Article 13. If one of the authors refuses to complete his contribution to the cinematographic work, or is unable to complete his contribution owing to circumstances beyond his control, he may not oppose the use of the part of his contribution already in existence for the completion of the work. He shall be deemed to be the author of his contribution, and shall enjoy the rights deriving therefrom.

In the absence of an agreement to the contrary, each of the authors of a cinematographic work may freely dispose of the part of the work which constitutes his personal contribution for the purpose of exploiting it in a different field and within the limits fixed by Article 9.

Article 14. A cinematographic work is considered completed when the first master print has been established by common consent between the director, or as the case may be the co-authors, and the maker.

The authors' own rights as defined in Article 17 shall be exercised by them only in relation to the completed cinematographic work, unless Article 258 of the Civil Code is applicable against a person by whose fault the completion of the film was prevented.

Article 15. The maker of a cinematographic work shall be the natural person who or legal entity which takes the initiative and responsibility in the making of the work.

The maker may be the author or one of the co-authors of the work if he comes within the definition given in Article 12.

The authors of a cinematographic work other than the author of the musical compositions, with or

without words, shall be bound to the maker by a contract which, in the absence of a clause to the contrary, shall constitute assignment to the maker of the exclusive right of cinematographic exploitation, without prejudice to the authors' rights recognized by the provisions of Part II.

Article 16. The authorship of a radio or television work shall belong to the natural person or persons who bring about the intellectual creation thereof.

The provisions of Articles 12, last paragraph, and 13 shall be applicable to radio and television works.

Article 17. The author shall enjoy the right to respect for his name, his authorship and his work.

This right shall be attached to his person.

It shall be perpetual, inalienable and imprescriptible.

It may be transmitted *mortis causa* to the heirs of the author.

The exercise of this right may be conferred on a third party by testamentary provisions.

Article 18. The author alone shall have the right to disclose his work. He shall determine the method of disclosure and the conditions thereof subject, with respect to cinematographic works, to the provisions of Article 13.

After the death of the author this right shall be exercised by his heirs in the absence of an executor.

In the case of manifest abuse in the exercise or non-exercise of the right to disclose the work by the deceased author's successors in title, the Court of First Instance may order any appropriate measure. The same shall apply in the case of conflict between the successors in title or if there is no heir entitled to inheritance.

The matter may in particular be referred to the Court by the Ministry in charge of cultural affairs.

Article 19. The author shall enjoy, during his lifetime, the exclusive right to exploit his work in any form whatever and to derive monetary benefit therefrom. On the death of the author this right shall continue to the benefit of his successors in title during the current calendar year and for fifty years thereafter. In the case of works of joint authorship the determinative calendar year shall be that of the death of the last surviving co-author.

Article 20. The calendar year of publication of the work shall determine the calculation of the fifty years of protection in the following cases:

- (1) posthumous works published by the successors in title of the deceased author;
- (2) works the rights in which belong to a legal entity;

- (3) anonymous or pseudonymous works for as long as the author remains unknown.

In the case of the publication of a work of joint authorship in instalments, the term shall be counted from January 1 of the year following the publication of each instalment.

However, if publication is completed within a period of twenty years following the publication of the first instalment, the term of the exclusive right for the work as a whole shall end only on expiration of the fiftieth year following that of the publication of the last instalment.

PART II

Exploitation of the economic rights of the author

Article 21. The right of exploitation belonging to the author shall include:

- (1) the right of performance, whereby the work may be communicated directly by recitation, performance, public presentation or dissemination by any appropriate method of the text, image or sound, or any other substantial element, in a public place;
- (2) the right of reproduction of the work, whereby the work may be communicated to the public indirectly by any process such as printing, photography, drawing, casting, mechanical, cinematographic or magnetic recording, translation, adaptation or arrangement.

In the case of architecture, reproduction shall also consist in the repeated execution of a plan or standard project.

Article 22. The incorporeal property right defined in Article 1 shall be independent of the property rights in the material object.

The person who acquires that object shall not be invested, by its acquisition, with any of the rights provided for in this Decree-Law, except in the cases specified in Article 18, second paragraph.

Article 23. The economic rights in works of national folklore shall be exercised by the competent authority.

Copies of works of the national folklore of Burundi, and copies of translations, adaptations, arrangements or other transformations of such works, made abroad without the authorization of the competent authority may be neither imported nor distributed.

Article 24. The right of performance and the right of reproduction may be assigned free of charge or for a consideration.

Assignment of the right of performance shall not imply assignment of the right of reproduction.

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Where a contract implies total assignment of either of the rights referred to in this Article, the scope of the assignment shall be limited to the methods of exploitation specified in the contract.

Article 25. Notwithstanding the assignment of the exploitation rights, the author shall, even after the publication of his work, enjoy, in relation to the assignee, the right to change his mind or to withdraw the work. He may only exercise this right, however, on the condition that he indemnify the assignee beforehand for the prejudice that the change or withdrawal might cause him.

Where the author decides to have his work published after having exercised the right to change his mind or to withdraw the work, he is bound to offer his exploitation rights in the first instance to the assignee he originally chose, and on the conditions originally specified.

Article 26. Total assignment of future works shall be void.

Article 27. Any complete or partial performance or reproduction made without the consent of the author or his successors in title or assignees shall be unlawful.

The same shall apply to translations, adaptations, new versions, arrangements or reproductions made by any method or process whatever.

Article 28. When the work has been disclosed, the author may neither prohibit nor profit by:

- (1) free, private performances produced exclusively within the family circle;
- (2) copies or reproductions made strictly for the private use of the copier and not intended for collective use, with the exception of copies of works of art intended to be used for purposes identical with those for which the original work was created;
- (3) on condition that the name of the author and the source are clearly indicated, analyses and quotations justified by the critical, polemic, educational, scientific or informational character of the work in which they are incorporated; press reviews.

The dissemination, even in their entirety, through the press or by broadcast as current news reports, of speeches intended for the public made at political, administrative, judicial or academic gatherings, as well as at public meetings of a political nature and official cere-

monies: Provided, however, that the authors of such speeches shall have the exclusive right to combine them in a collection;

- (4) parodies, pastiches and caricatures, with due consideration for the rules applicable to that type of work.

Article 29. Official documents of the public authorities shall not generate authors' rights.

Any other publications produced by the Government or public institutions, including works of national folklore, shall generate authors' rights, either in favor of the State or in favor of the public institution concerned, for a term of fifty years following their publication.

Article 30. Notwithstanding the provisions of Article 27, if the author of a literary or scientific work has not authorized or undertaken its translation into either Kirundi or French after a period of three years following the original publication, or if all the Kirundi or French editions are out of print, a translation and publication license may be granted by the Minister in charge of cultural affairs to a Burundi publisher, solely for the purpose of teaching, scholarship or research.

A license may also be granted to any Burundi broadcasting organization for the sole purpose of educational or scientific and technical information broadcasts.

Such a license may also concern any text incorporated in an audiovisual fixation prepared and published for the sole purpose of systematic instructional activities.

Article 31. The license without commercial purpose referred to in the preceding Article shall terminate if the owner of the right of translation publishes a translation in French or Kirundi at a price comparable to that normally charged in Burundi. However, any copies already made before the termination of the license may continue to be distributed until their stock is exhausted.

Article 32. If works printed or published by an analogous process have not been put on sale in Burundi by the owner of the right of reproduction within a period, counted from its most recent publication abroad, of three years for works of science and technology, seven years for works of fiction such as poetry, novels, operas and plays, and five years for all other works, the Minister in charge of cultural affairs may grant to a Burundi publisher a license to reproduce and publish that edition with a view to its distribution to the general public or in connection with instructional activities.

Such a license may also be granted in the same form and under the same conditions if the edition put on sale in Burundi is out of print and has not been

reprinted within six months following a request sent by airmail to the owner of the right of reproduction.

Article 33. Any license as provided for in Articles 30 and 32 shall not be granted unless the applicant establishes that he has requested authorization from the owner of the right to make a translation and publish it or to reproduce and publish the edition and has been unable to obtain such authorization or, after due diligence on his part, has been unable to find him.

The applicant shall notify this request to any national or international information center that may have been designated in a notification deposited with the Director General of the World Intellectual Property Organization by the Government of the country in which the original publisher is believed to have his principal place of business.

Article 34. The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted by virtue of Article 30 or 32.

Copies published under such licenses may not be exported out of Burundi; this prohibition shall be mentioned on each copy.

However, public entities of Burundi may send such copies either to Burundi nationals residing abroad or for educational or research uses. The sending of the copies must not have any commercial purpose.

Article 35. Publishers using licenses as provided for in Articles 30 and 32 shall pay just compensation in accordance with general practice into a special account for the benefit of the copyright owner. Sums paid into this special account may be freely converted into the currency of the country of which the author is a national.

Any sum made available to the author and not claimed within five years shall revert to the publisher. This prescription cannot be invoked against the author who alleges malpractice on the part of the publisher.

PART III

Procedure and sanctions

Article 36. The Minister in charge of cultural affairs shall, by ordinance, authorize representative associations of Burundi authors to represent in Burundi foreign bodies that ensure the protection of the rights of authors whose works are published or distributed in Burundi.

He shall lay down procedures for the assertion of the rights accruing to authors and for the reporting of infringements of those rights.

Article 37. An entertainment manager shall be bound to inform the author or his representatives of the exact program of public performances and furnish him with a certified accounting of his receipts. He shall pay the amounts of the stipulated remuneration to the author or his representatives when they fall due.

Article 38. The entertainment manager shall ensure the public performance of the work under technical conditions such as will guarantee respect for the author's intellectual and moral rights.

Article 39. Neither the author nor the owner of a portrait shall have the right to produce it or show it in public without the consent of the person portrayed or his successors in title for a period of twenty years after his death.

Subject to that consent, the owner shall have the right of reproduction, provided however that the copy does not bear the name of the author.

Article 40. Any malicious or fraudulent infringement of one of the author's rights shall be punishable by a fine of 10,000 to 1,000,000 Burundi francs. The same fine shall be applicable to those who knowingly sell, display, hire or stock in Burundi, or bring into Burundi, with gainful intent, unlawful reproductions of intellectual works within the meaning of Article 2.

Article 41. The malicious or fraudulent application on an art object or intellectual work, of the name of an author or of any distinctive sign adopted by him to designate his work shall be punishable by penal servitude for three months to two years and a fine of 10,000 to 1,000,000 francs, or one of these penalties alone.

The same penalty shall be applicable to those who knowingly sell, hire or stock in Burundi, or bring into Burundi, with gainful intent, art objects or intellectual works as referred to in the first paragraph.

Article 42. Article 14 of the Criminal Code shall be applicable to the infringements specified in Articles 40 and 41 in so far as the article subject to confiscation belongs to the condemned party.

Article 43. In cases of infringement specified in Articles 40 and 41, receipts may be seized as products of the infringement and awarded to the injured party as part of the civil redress to which he is entitled, but only in proportion to the share represented by his work in the amount of those receipts.

Article 44. At the request of the author the competent court may order the seizure, confiscation or destruction of copies infringing its rulings.

In cases of urgency, provisional seizure may be pronounced by simple ordinance at the request of the President of the Court of First Instance. Only that Court may thereafter decide on the confiscation or destruction of the copies in question.

Article 45. This Decree-Law shall apply to:

- works of Burundi nationals, or works of persons having their habitual residence in Burundi;
- works published for the first time in Burundi, irrespective of the nationality or residence of their authors;

- all works that have to be protected under conventions to which Burundi is party, and works of national folklore.

Article 46. All legislative and regulatory texts contrary to this Law, in particular the Decree of June 21, 1948, and Ordinance No. 11/208 of June 14, 1952, are hereby repealed.

Article 47. The Minister for Youth, Sports and Cultural Affairs shall be responsible for the implementation of this Decree-Law, which shall enter into force on the day of its signature.

(WIPO translation)