

## National Legislation

### GUINEA

#### Law Adopting Provisions on Copyright and Neighboring Rights in the Revolutionary People's Republic of Guinea

(No. 043/APN/CP, of August 9, 1980) \*

#### TITLE I

#### Copyright

#### CHAPTER I

##### Subject, Scope and Beneficiaries of Copyright—Definition

*Article 1.* The author of any original intellectual work (literary, scientific or artistic) shall, by the mere fact of its creation, enjoy an exclusive incorporeal property right in the work, effective against all persons.

The following in particular shall be considered intellectual works within the meaning of this Law:

- (i) books, pamphlets or other literary, scientific or artistic writings;
- (ii) lectures, addresses, sermons, pleadings in court and other works of the same nature;
- (iii) works created for the stage or for broadcasting (sound and/or visual), including dramatic or dramatico-musical works and also choreographic works and pantomimes, the acting form of which is fixed in writing or otherwise;
- (iv) musical compositions with or without words;
- (v) works of painting, drawing, lithography, etching, wood engraving and other works of the same nature;
- (vi) sculptures, carvings in low relief and mosaics of all kinds;
- (vii) architectural works, including both plans and models and the building itself;
- (viii) tapestries and objects created by artistic professions and by the applied arts, including both sketches and models and the works themselves;

- (ix) maps, illustrations, drawings and graphic and three-dimensional reproductions of a scientific or artistic nature;
- (x) cinematographic works, to which are assimilated, for the purposes of this Law, works expressed by processes analogous to cinematography;
- (xi) photographic works of artistic or documentary character, to which are assimilated, for the purposes of this Law, works expressed by a process analogous to photography;
- (xii) derivative works such as translations, arrangements or adaptations of the above works;
- (xiii) folklore and works derived from folklore, subject to special provisions which will be laid down in a special law on the protection of the national heritage.

*Article 2.* The title of a work, in so far as it has original character, shall be protected in the same way as the work itself. Even if the work is no longer protected, no one may use that title to distinguish a work of the same type if such use is liable to cause confusion.

*Article 3.* Copyright includes attributes of an intellectual and moral nature and attributes of an economic nature.

##### (a) Moral Rights

Moral rights consist of the author's right:

- to decide on the disclosure of his work;
- to respect for his name, his authorship and his work.

The name of the author shall be indicated to such an extent and in such a manner as conforms to fair practice on every copy of any reproduction of the work, and whenever the work is made available to the public.

The work may not undergo any modification without the consent of its author, given in writing. No one may make it available to the public in a form

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or under circumstances that might be prejudicial to his honor or reputation.

The rights conferred on the author by the foregoing paragraphs are perpetual, inalienable and imprescriptible.

(b) *Economic Rights*

The author shall enjoy the exclusive right to exploit his work in any form and to derive monetary benefit therefrom. He shall in particular have the exclusive right to perform or authorize any one of the following acts:

- (i) reproduction of the work in any material form, including cinematograph films and sound recordings, by all processes that allow it to be indirectly communicated to the public;
- (ii) performance or recitation of the work in public, by any means or process, including sound or visual broadcasting;
- (iii) communication of the broadcast work to the public by wire, loudspeaker or any other process or means for the transmission of sounds or images;
- (iv) translation, adaptation, arrangement or any other transformation of the work.

For the purposes of this Article, "work" means the work either in its original form or in any form derived from the original.

None of these acts may be performed by a third party without the formal written authorization of the author. Any reproduction or performance, in whole or in part, made without the authorization of the author or his successors in title shall be unlawful.

The same shall apply to translation, adaptation, arrangement and transformation.

*Article 4.* The author of the work is the person who created it. The work shall be considered created, independently of any public disclosure, by virtue of the mere fact of the author's conception being realized, even incompletely.

In the absence of proof to the contrary, authorship shall belong to the person or persons under whose name the work is disclosed.

Subject to Article 23 below, copyright, even in a work made under a contract to make a work or an employment contract, shall belong in the first instance to the author. However,

- (a) when the work is produced by officials of the administration in the course of their duties, the economic rights deriving from the disclosure of the work may be distributed according to the internal rules of the administration that employs them;
- (b) the economic rights deriving from the disclosure of the works of students or trainees of a school or art establishment may be distributed

according to the internal rules of the school or establishment.

*Article 5.* "Original work" means a work which, in its characteristics and form, or in its form alone, allows its author to be identified.

"Work of joint authorship" means a work resulting from joint contributions on the part of two or more authors, irrespective of whether the work is an indivisible whole or made up of parts having the character of independent creations.

"Composite work" means a new work in which a pre-existing work is incorporated without the collaboration of the author of the latter.

"Collective work" means a work created on the initiative of a natural person or legal entity who or which discloses it and publishes it under his or its name, in which the personal contributions of the various authors who participated in its creation merge in the whole for which they were made, in such a way that it is not possible to attribute to each co-author a separate right in the whole thus completed.

"Posthumous work" means a work made accessible to the public after the death of its author.

*Article 6.* A work of joint authorship shall belong jointly to all the co-authors. The co-authors shall exercise their rights by common consent, failing which the court shall decide. Where the contribution of each of the co-authors is of a different type, each co-author may, unless otherwise agreed, exploit his personal contribution separately, provided however that this does not prejudice the exploitation of the joint work.

A composite work shall belong to the author who made it, subject to the rights of the author of the pre-existing work.

A collective work shall belong to the natural person or legal entity who or which initiated its creation and disclosed it.

*Article 7.* The authors of pseudonymous and anonymous works shall enjoy the rights specified in Article 3 in relation to their works.

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

The declaration provided for in the preceding paragraph may be made by will; however, any rights that may have been previously acquired by third parties shall be maintained.

The provisions of the second and third paragraphs above shall not be applicable where the pseudonym adopted by the author leaves no doubt as to his identity.

*Article 8.* The authors of translations, adaptations, transformations or arrangements of intellectual works shall enjoy the protection afforded by this Law

without prejudice to the rights of the author of the original work as defined in Article 3 above.

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

*Article 9.* Folklore shall belong in the first instance to the national heritage.

For the purposes of this Law:

(1) "Folklore" means all literary and artistic creations made by authors presumed to be of Guinean nationality, passed from generation to generation and constituting one of the basic elements of the traditional Guinean cultural heritage.

(2) "Work derived from folklore" means any work composed exclusively of elements borrowed from the traditional Guinean cultural heritage.

The public performance or direct or indirect fixation of folklore with a view to its exploitation for profit-making purposes shall require the prior authorization of the BGDA (Guinean Copyright Office), obtainable against payment of a fee, the amount of which shall be determined under the conditions customary in each of the categories of creation concerned.

The fees payable in connection with the compilation of a work of folklore shall be distributed as follows:

- (i) compilation without arrangement or personal contribution:
  - 50 % to the person who made the compilation;
  - 50 % to the BGDA;
- (ii) compilation with arrangement or adaptation:
  - 75 % to the author;
  - 25 % to the BDGA.

The proceeds from the above fees shall be managed by the BGDA and used for cultural and social purposes for the benefits of authors.

## CHAPTER II

### Limitations on Copyright

#### *Permanent Limitations*

*Article 10.* Where the work has been lawfully made available to the public, the author may not prohibit:

- (i) communications such as performance or broadcasting,
  - (a) if they are private, take place exclusively within a family circle and do not give rise to receipts of any kind;
  - (b) if they take place free of charge for strictly educational or scholastic purposes or in the

course of a religious service, in premises reserved for that purpose;

- (ii) reproductions, translations and adaptations intended for strictly personal and private use;
- (iii) parodies, pastiches and caricatures, with due regard for the laws governing that type of work.

*Article 11.* It shall be lawful, provided that the title of the work and the name of its author are mentioned, to make analyses of and short quotations from a work that has already been lawfully made available to the public, provided that this is compatible with fair practice and justified by the scientific, critical, polemic, educational or informatory purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

Such quotations and analyses may be used in their original form or in translation.

*Article 12.* Subject to the mention of the name of the author and of the source, the following may be reproduced in the press or broadcast for information purposes, unless the right of reproduction has been expressly reserved:

- articles on current political, social and economic topics, published in their original form or in translation;
- speeches intended for the public and delivered at political, judicial, administrative and religious assemblies, and at public meetings of political character and official ceremonies.

*Article 13.* It shall be lawful, to the extent justified by the informatory purpose, to record, reproduce and communicate to the public literary, scientific or artistic works that may be seen or heard in the reporting of current events by means of photography, cinematography, or sound or visual broadcasting.

*Article 14.* It shall be lawful to reproduce in a film or in a television broadcast and to communicate to the public works of figurative art permanently located in a public place, or whose inclusion in the film or broadcast is only by way of background or is incidental to the essential matters represented.

#### *Exceptional Limitations*

*Article 15.* Subject to, and under the conditions specified in, the Appendix to the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works, licenses may be granted by the Minister for Higher Education and Scientific Research to any natural person or legal entity residing on the territory of the Revolutionary People's Republic of Guinea for:

- (i) the translation of foreign works already lawfully made available to the public and their publication in printed or analogous forms of

reproduction on the territory of the Revolutionary People's Republic of Guinea;

- (ii) the reproduction and publication in printed or analogous forms of reproduction on the territory of the Revolutionary People's Republic of Guinea of foreign works already lawfully made available to the public; such licenses may not be granted, however, for the publication of literary or scientific works of which a French edition is available abroad unless such publication on the national territory affords good conditions for the desired dissemination.

*Article 16.* In the cases provided for in Article 15, there must be no derogation from the rights conferred on the author by Article 3 above. Furthermore, the author shall have the right to equitable remuneration which, failing amicable agreement, shall be determined by the Minister for Higher Education and Scientific Research, whose decision may be referred to the court competent under Article 50 below.

### CHAPTER III

#### Transfer of Copyright

*Article 17.* With the exception of the right to modify the work, copyright as defined in Article 3 shall be transferable by inheritance.

The moral rights shall be exercised jointly by the successors and the BGDA.

The right of disclosure of posthumous works shall be exercised during their lifetime by the executors designated by the author. In the absence of executors or after their death, and unless otherwise willed by the author, this right shall be exercised in the following order: by the descendants, by the spouse or spouses against whom there exists no final judgment of separation or who have not remarried, by successors other than descendants who inherit all or part of the estate and by the universal legatees or donees of the entirety of future assets.

This right may be exercised even after expiry of the exclusive right of exploitation specified in Article 42.

In the event of manifest abuse in the exercise or non-exercise of the right of disclosure on the part of the deceased author's representatives referred to in the second paragraph of this Article, the civil court may order any appropriate measure. The same shall apply if there is conflict between the said representatives or if there is no known successor in title, no claimant and no heir.

The matter may be referred to the court in particular by the Minister for Higher Education and Scientific Research.

Escheated economic rights of authors shall accrue to the BGDA, and royalty revenue deriving therefrom shall be used for cultural and social purposes, without prejudice to the rights of creditors and to the honoring of such assignment contracts as may have been concluded by the author or his successors in title.

*Article 18.* The total or partial assignment of any one of the rights specified in Article 3 above shall not imply assignment of any one of the other rights.

Where a contract entails total assignment of one of the rights, the scope of the assignment shall be limited to the methods of exploitation provided for in the contract.

*Article 19.* The transfer of ownership of the sole copy or of one or more copies of a work shall not imply transfer of the copyright in the work.

In the case of manifest abuse on the part of the owner preventing exercise of the right of disclosure, the civil court may take any appropriate measure in accordance with the provisions of Article 17.

*Article 20.* A clause assigning the right to exploit a work in a manner which is unforeseen or unforeseeable on the date of the contract shall be explicit and shall stipulate a corresponding participation in the profits derived from exploitation.

*Article 21.* Total assignment of future works shall be null and void. However, it shall be lawful to conclude a contract commissioning three-dimensional or graphic works that grants temporary exclusive rights for a period not exceeding five years, subject to respect for the independence and freedom of expression of the author.

*Article 22.* Unless otherwise specified, the authorization to broadcast the work shall cover all free communications made using its own facilities and on its own responsibility by the Radio and Television Broadcasting Office of the Revolutionary People's Republic of Guinea.

Pursuant to Article 3(b)(ii), this authorization shall not extend to the communication of broadcasts made in places open to the public or to any transmissions made by third parties by wire or wireless.

*Article 23.* Rights of performance, reproduction, adaptation and translation shall be assignable for a consideration or free of charge. The author's assignment of his rights in his work may be total or partial. It shall confer on the author a proportionate participation in any proceeds from sale or exploitation.

However, the remuneration of the author may be calculated as a lump sum under the following circumstances:

- (i) a basis for calculating the proportionate participation cannot be determined practically;

- (ii) the cost of supervision would be out of proportion to the results expected;
- (iii) the use of the work is merely of an accessory nature in relation to the subject matter exploited.

Notwithstanding the assignment of his right of exploitation, the author shall enjoy, even after the publication of the work, the right to disavow or withdraw in relation to the assignee. He may only exercise this right, however, on condition that he indemnifies the assignee beforehand for any loss that the disavowal or withdrawal may cause him.

When the author decides to have his work published after having exercised the right to disavow or withdraw, he shall be bound to offer priority exploitation rights to the assignee he originally chose, under the conditions originally specified:

- (i) the author of the script;
- (ii) the author of the adaptation;
- (iii) the author of the musical compositions with or without words specially composed for the work;
- (iv) the director;
- (v) the author of the dialogue.

These contracts shall, unless otherwise stipulated, imply assignment to the maker of the exclusive right of cinematographic exploitation; they shall be in writing.

*Article 27.* The director of a cinematographic work shall be the person who assumes the direction of, and artistic responsibility for, the transformation into images and sounds and the cutting of the cinematographic work, and its final editing. The cinematographic work shall be deemed to be completed when the first "master print" has been established by common consent between the director and the maker.

*Article 28.* If one of the intellectual creators of a cinematographic work refuses to complete his contribution to the work or is unable to complete such contribution owing to circumstances beyond his control, he may not object to the use of the part of his contribution already in existence for the purpose of the completion of the work.

Unless otherwise stipulated, the intellectual creators of a cinematographic work may use their personal contributions freely with a view to their exploitation in a different type of work, provided that such use does not prejudice the exploitation of the work in which they have collaborated.

*Article 29.* The authorship of a radio or television work shall belong to the natural person or persons who assume the intellectual creation of the work. The provisions of Article 28 shall be applicable to radio or television works.

## CHAPTER IV

### Droit de Suite

*Article 24.* Notwithstanding any assignment of the original work, authors of graphic and three-dimensional works shall have an inalienable right to share in the proceeds of any sale of the work by public auction or through a dealer.

After the author's death, this *droit de suite* shall subsist to the benefit of his heirs for the period laid down in Article 42.

This right shall take the form of a deduction, in favor of the author or his heirs, of 5% of the proceeds of the sale.

## CHAPTER V

### Cinematographic and Broadcast Works

*Article 25.* A cinematographic work shall be the property of the natural person or legal entity who or which has taken the initiative for the making of the work and the responsibility for exploiting it.

That person or entity, called the maker, shall be deemed to be invested with the copyright in the work.

The maker shall be required, prior to the making of the work, to conclude contracts with all those whose works are to be used in the making.

Such contracts, with the exception of those concluded with the authors of musical compositions with or without words, shall, unless otherwise stipulated, imply assignment to the maker of the exclusive right of cinematographic exploitation; they shall be in writing.

*Article 26.* The maker shall also be required, prior to the making of the cinematographic work, to conclude contracts with the intellectual creators of the cinematographic work, and in particular:

## CHAPTER VI

### Authors' Contracts

*Article 30.* Contracts under which the author or his successors in title authorize the performance or publication of his work shall, on pain of nullity, be drawn up in writing. The same shall apply to performance authorizations granted free of charge.

Such contracts shall mention the method of exploitation and the manner of remuneration specified by the author or his successors in title. They shall be subject to the provisions of the Code of Civil and Commercial Obligations.

The transfer of the author's rights shall be subject to the condition that each of the rights assigned is mentioned separately in the instrument of assignment and that the area of exploitation of the rights as-

signed is limited with respect to extent and purpose, and also with respect to place and duration.

Where required by special circumstances, the contract may be validly concluded by exchange of telegrams, on condition that the area of exploitation of the rights assigned is defined in accordance with the provisions of the third paragraph of this Article.

(a) *Publishing Contract*

*Article 31.* A publishing contract is a contract under which the author of the work or his successors in title transfer to the publisher, under specified conditions, the right to manufacture, in quantity, graphic, mechanical or other copies of the work, on condition that he ensures the publication and dissemination thereof.

The form and mode of expression, the manner in which publication is to take place and the termination clauses shall be determined by the contract.

*Article 32.* The publishing contract shall mention the minimum number of copies constituting the first printing. However, this obligation shall not apply to contracts specifying minimum royalties guaranteed to the author by the publisher.

They shall provide for remuneration proportionate to the proceeds from exploitation, except in the case of lump-sum payment made in accordance with Article 23 of this Law.

*Article 33.* The publisher may, either free of charge or for a consideration, or as a share in any corporate partnership, transfer the benefits of the publishing contract to a third party independently of his own business without having obtained the prior authorization of the author. In the case of disposal of the business, if such disposal is liable to prejudice seriously the material and moral interests of the author, the latter shall be entitled to obtain redress, even by means of termination of the contract.

Where the publishing business was operated as a corporation or as a joint enterprise, the fact of entrusting the business to one of the former shareholders or partners as a result of its liquidation or division shall in no case be considered an assignment.

In the case of a contract with a specific term, the rights of the assignee shall lapse automatically on expiry of the term, without need for formal notice.

The publisher may, however, for three years following such expiry, proceed to sell the copies remaining in stock at the standard price, except where the author prefers to purchase those copies at a price to be fixed, failing amicable agreement, by expert opinion, provided that this right conferred on the first publisher shall not prevent the author from having a new edition made within a period of 30 months.

*Article 34.* The publisher shall be required to provide the author with all the documentary evidence necessary for establishing the accuracy of his accounts. In the absence of special procedures specified in the contract, the author may, at least once a year, demand that the publisher produce a statement showing the number of copies manufactured in the course of the period concerned, with details of the date and volume of printings, the number of copies in stock, the number of copies sold by the publisher, the number of copies unused or destroyed by accident or by circumstances beyond his control, the amount of royalties payable and, where appropriate, the amount of royalties paid to the author.

Any clause to the contrary shall be deemed not to have been written.

Neither the bankruptcy of the publisher nor a settlement approved by the court shall terminate the contract.

The receiver shall not proceed to remainder the copies in stock or sell them out for at least 15 days after having advised the author of his intention, by registered letter with a request for acknowledgement of receipt.

The author shall have an option to purchase all or part of the copies. In the absence of agreement, the purchase price shall be fixed by expert opinion.

*Article 35.* The publishing contract shall terminate, regardless of cases provided for in ordinary legal provisions or in the foregoing Articles, when the publisher destroys all the copies.

Termination shall take place automatically when, after formal notice has been served on him by the author and a suitable period fixed, the publisher does not proceed with publication of the work or, where the work is out of print, with its republication.

An edition shall be considered out of print if two orders for the delivery of copies addressed to the publisher have not been met within three months.

If the work is not completed on the author's death, the contract shall terminate with respect to the uncompleted part of the work, unless otherwise agreed between the publisher and the successors in title of the author.

*Article 36.* The author shall deliver to the publisher the work to be published within the period specified in the contract and in a form that permits manufacture. Unless otherwise agreed or impossible for technical reasons, the work handed over by the author for publication shall remain his property. The publisher shall be responsible for it during a period of one year after manufacture is completed.

*Article 37.* A contract for publication at the author's expense [*à compte d'auteur*] does not constitute a publishing contract within the meaning of Article 31.

Under such a contract, the author or his successors in title pay the editor an agreed sum, on condition that the latter manufactures copies of the work in quantity, in the form and according to the modes of expression specified in the contract, and that he ensures publication and dissemination thereof.

Such a contract constitutes a contract for the making of a work, governed by the agreement, usage and the provisions of the Code of Civil and Commercial Obligations.

*Article 38.* A "shares" contract [*de compte à demi*] does not constitute a publishing contract within the meaning of Article 31.

Under such a contract, the author or his successors in title commission a publisher to manufacture, at his expense and in quantity, copies of a work in the form and according to the modes of expression specified in the contract, and to ensure publication and dissemination thereof, subject to an agreement reciprocally contracted to share the benefits and losses of exploitation in the proportions specified.

Such a contract constitutes a partnership.

#### (b) Performance Contract

*Article 39.* A performance contract is a contract under which the author of an intellectual work or his successors in title authorize a natural person or legal entity to perform the work under specified conditions.

A contract under which a professional organization of authors grants an entertainment manager the right to perform, for the duration of the contract, the existing or future works constituting the repertoire of the said organization under conditions specified by the author or his successors in title shall be called a general performance contract. In the case provided for in the foregoing paragraph, an exception may be made to the provisions of Article 21.

*Article 40.* The performance contract shall be concluded for a limited period or for a specified number of communications to the public.

Except where exclusive rights are expressly provided for, the contract shall not confer any monopoly of exploitation on the entertainment manager. The entertainment manager may transfer the benefits of his contract without the formal and written consent of the author or his representative.

The validity of the exclusive rights granted by the dramatic author may not exceed five years; any interruption of performances in the course of two consecutive years automatically causes them to lapse.

*Article 41.* The entertainment manager shall be obliged:

- (i) to notify the author or his representatives of the exact program of public performances;

- (ii) to provide them with a documented statement of receipts;
- (iii) to pay them the amount of royalties provided for;
- (iv) to ensure public performance under technical conditions such as will guarantee the intellectual and moral rights of the author.

## CHAPTER VII

### Term of Protection

*Article 42.* Copyright shall subsist during the lifetime of the author and for 80 calendar years from the end of the year of his death.

In the case of a work of joint authorship, the only date taken into consideration for the calculation of the term of protection shall be that of the death of the last surviving coauthor.

*Article 43.* Copyright shall subsist:

- (a) for 80 calendar years from the end of the year in which the work is lawfully made accessible to the public in the case of:
  - (i) anonymous or pseudonymous works, except where the identity of the author of the work becomes known before expiry of the term provided for in this Article, in which case the term provided for in Article 42 shall be applicable;
  - (ii) cinematographic works;
  - (iii) posthumous works;
  - (iv) collective works.

Where a collective work is published in installments, the term shall run from January 1 of the calendar year following the publication of each installment. Provided that publication is completed within the 20 years following publication of the first installment, the term of the exclusive rights in the work as a whole shall not end until the expiry of the 80<sup>th</sup> year following the year of publication of the last installment;

- (b) for 40 calendar years from the end of the year of the author's death in the case of photographic works and works of applied art.

*Article 44.* A general lien on the assets of the debtor shall attach to the economic rights of the author. This lien shall be unaffected by bankruptcy and settlements approved by the court. It shall operate immediately after that which guarantees the wages of employees.

## CHAPTER VIII

## Domaine Public Payant

*Article 45.* On expiry of the terms of protection referred to in Articles 42 and 43, during which a recognized exclusive right belongs to authors, their heirs or successors in title, the works of the author shall fall into the public domain. Exploitation of works in the public domain shall be subject to:

- respect for moral rights;
- prior declaration;
- payment of a fee, the product of which shall be paid to the BGDA and used for cultural and social purposes for the benefit of authors. The right of exploitation or performance of works in the public domain shall be administered by the BGDA. The rate of the fee shall be specified by the Ministry of Higher Education and Scientific Research, and may not exceed 50 % of the rate of collection by virtue of the copyright during the period of protection.

## CHAPTER IX

## Exercise of Copyright

*Article 46.* The administration of the rights and the defense of the material and moral interests of creators of intellectual works, as defined in Title I of this Law, shall be entrusted to a body called the *Bureau guinéen du droit d'auteur* [Guinean Copyright Office] (BGDA), the tasks, organization and operation of which shall be laid down by decree.

The BGDA shall have the status of a public institution of professional character; it shall be under the authority of the Ministry of Higher Education and Scientific Research.

The BGDA shall be entitled, to the exclusion of any other natural person or legal entity, to act as intermediary between the author and his successors in title and the users of literary or artistic works, for the issue of authorizations and for the collection and distribution of the royalties payable for rights as specified in this Law.

The BGDA shall represent the interests of the various foreign authors' offices or societies on the national territory under such conventions or agreements as it may have entered into with them.

## CHAPTER X

## Procedure and Sanctions

*Article 47.* The BGDA shall be entitled to be party to legal proceedings in the defense of the interests entrusted to it, notably in all disputes di-

rectly or indirectly concerning the reproduction or communication to the public of works protected under the provisions of this Law.

*Article 48.* The user of a work of folklore or of the right of performance of a work in the public domain who fails to make the appropriate prior declaration to the BGDA shall be liable to a fine amounting to twice the amount of the royalties normally payable, but not less than 500 sylis.

*Article 49.* It shall be prohibited and shall constitute an act of infringement to import into the territory of the Revolutionary People's Republic of Guinea any reproduction of a work made in violation of the provisions of this Law.

*Article 50.* At the request of any author of a work protected by this Law, his successors in title or the BGDA, the examining magistrate to whom the infringement has been referred or the president of the court in all cases, including when the interests of the author risk imminent violation, shall be empowered, subject to security where appropriate, to order the seizure in any place, and even at hours not provided for in the law in force, of copies of an unlawfully reproduced work that have been or are being manufactured, of unlawfully used copies and of the proceeds of any unlawful reproduction, performance or dissemination of a protected work.

He may also order the cessation of any manufacture or public performance, either in progress or announced, that constitutes an infringement or an act preparatory to infringement.

The provisions of this Article shall be applicable in the case of irregular exploitation of folklore or by reason of performance of a work in the public domain.

*Article 51.* Where the proceeds from exploitation due to the author of an intellectual work are the subject of a seizure, the president of the court may order payment to the author, as maintenance, of a specified sum or proportion of the amounts seized.

*Article 52.* The measures ordered by the examining magistrate under Article 50 shall be withdrawn automatically in the event of a non-suit or *nolle prosequi* order.

They may be withdrawn at any time by the examining magistrate or by the criminal jurisdiction, on condition, where appropriate, that security is given or a receiver is appointed to resume the manufacture or the public performances and to hold the proceeds from the exploitation of the work on behalf of the owner to be determined.

The measures ordered by the president of the court shall be withdrawn automatically on the 30<sup>th</sup> day following the decision if the plaintiff fails to refer the matter to the competent civil court,

unless criminal proceedings are in progress; they may be withdrawn at any time by the president of the court in a summary proceeding or by the civil court hearing the main issue, in accordance with the conditions provided for in the second paragraph of this Article, where appropriate.

*Article 53.* Evidence of violations of the provisions on the protection of copyright may be obtained either from the reports of police officers or from the statements of sworn agents of the BGDA.

*Article 54.* In the case of violation of the provisions of Article 24, the acquirer and the ministerial officials may be jointly condemned to pay damages to the beneficiaries of the *droit de suite*.

## CHAPTER XI

### Field of Application of Title I

*Article 55.* The provisions of this Title shall apply to current contracts whose execution shall continue until the expiry date agreed upon at the time of their conclusion.

*Article 56.* This Title shall apply:

- (a) to the works of nationals of Guinea;
- (b) to the works of foreign nationals the first publication of which took place in Guinea;
- (c) to works of architecture erected on the territory of the Revolutionary People's Republic of Guinea and any work of art incorporated in a building located on that territory.

Works that do not fall into any of the categories referred to above shall enjoy protection under this Law only if the country of which the original owner of the copyright is a national or resident affords equivalent protection to the works of nationals of Guinea. No derogatory action may, however, be undertaken with respect to the integrity or authorship of such works. Royalties shall be paid to the BGDA.

The countries for which the reciprocity condition provided for in the second paragraph above is deemed fulfilled shall be decided jointly by the Ministry of Higher Education and Scientific Research and by the Ministry of Foreign Affairs.

## CHAPTER XII

### Production Bonus

*Article 57.* The Revolutionary People's Republic of Guinea,

(1) moved by the desire to encourage creative activity and promote the protection of intellectual property,

(2) resolved to render effective the administration of management bodies that have been and may yet be created in the field of literary and artistic property and

(3) determined to derive the maximum benefit from the wide experience of WIPO in the promotion of intellectual works under the protection of intellectual property,

without prejudice to the rights of the author as specified in Article 3 of this Law, hereby introduces the following:

- (i) a literary production bonus to encourage creative activity on the part of the authors referred to in Articles 4 and 8 above;
- (ii) a bonus for the correction of this literary and artistic production;
- (iii) a literary competition with a range of prizes.

*Article 58.* The procedure for the application of the provisions of Chapter XII will be laid down by decree of the President of the Republic.

*Article 59.* Authors whose works were published prior to this Law shall be fully eligible for the literary production bonus provided for in Article 57(i).

## TITLE II

### Neighboring Rights

#### CHAPTER I

##### Definitions

*Article 60.* For the purposes of this Title:

- (i) "performers" means actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in or otherwise perform intellectual works as referred to in Article 1, and expressions of folklore;
- (ii) "duplicate of a phonogram" means any article which contains sounds taken directly or indirectly from a phonogram and which embodies all or a substantial part of the sounds fixed in that phonogram;
- (iii) "distribution to the public" means any act by which duplicates of a phonogram are offered, directly or indirectly, to the general public or any section thereof.
- (iv) "fixation" means the embodiment of sounds, images or both in a material form sufficiently permanent or stable to permit them to be perceived, reproduced or otherwise communicated during a period of more than transitory duration;
- (v) "phonogram" means any exclusively aural fixation of sounds of a performance or of other sounds;
- (vi) "producer of phonograms" means the person who, or the legal entity which, first fixes the sounds of a performance or other sounds;
- (vii) "publication of a phonogram" means the offering of copies of a phonogram to the public in reasonable quantity;

- (viii) "broadcasting" means the transmission by wireless means for public reception of sounds or of images and sounds;
- (ix) "rebroadcasting" means the broadcasting by one broadcasting organization of the broadcast of another broadcasting organization;
- (x) "reproduction" means the making of a copy or copies of a fixation or a substantial part of that fixation.

## CHAPTER II

### Protection of Performers

*Article 61.* Without the authorization of the performers, no person shall do any of the following acts:

- (a) the broadcasting of their performance, except where the broadcast:
  - (i) is made from a fixation of the performance, other than a fixation made under the terms of Article 76, or
  - (ii) is a rebroadcast authorized by the organization initially broadcasting the performance;
- (b) the communication to the public of their performance, except where the communication:
  - (i) is made from a fixation of the performance; or
  - (ii) is made from a broadcast of the performance;
- (c) the fixation of their unfixed performance;
- (d) the reproduction of a fixation of their performance, in any of the following cases:
  - (i) where the performance was initially fixed without their authorization;
  - (ii) where the reproduction is made for purposes different from those for which the performers gave their authorization;
  - (iii) where the performance was initially fixed in accordance with the provisions of Articles 74 and 76 below, but the reproduction is made for purposes different from any of those referred to in those Articles.

*Article 62.* In the absence of any contractual agreement to the contrary or of circumstances of employment from which the contrary would normally be inferred:

- (i) the authorization to broadcast does not imply an authorization to license other broadcasting organizations to broadcast the performance;
- (ii) the authorization to broadcast does not imply an authorization to fix the performance;
- (iii) the authorization to broadcast and fix the performance does not imply an authorization to reproduce the fixation;

- (iv) the authorization to fix the performance and to reproduce the fixation does not imply an authorization to broadcast the performance from the fixation or any reproduction of such fixation.

*Article 63.* Once the performers have authorized the incorporation of their performance in a visual or audiovisual fixation, the provisions of Articles 61 and 62 (iii) and (iv) shall have no further application.

*Article 64.* Nothing in this Chapter shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favorable for them in respect of any use of their performances.

*Article 65.* Granting of authorization by performers.

(1) A binding authorization under Article 61 may be given by the performer or by the Guinean Copyright Office.

(2) Any authorization given by a performer claiming that he has retained the relevant rights or by the Guinean Copyright Office (BGDA) shall be considered valid unless the recipient knew or had good reason to believe that the delegation of powers was not a valid one.

*Article 66.* (1) The performer (in the case of a group of performers, the leader and the main participants) shall be entitled to have his name mentioned as follows:

- (i) in the case of a public performance and in the case of a transmission of the performance to the public by any means, the main performers shall be identified in an appropriate manner;
- (ii) all copies of a published phonogram of a performance and their containers shall bear the names of the main performers; if such mention cannot be affixed to the copies of the phonogram, the main performers need only be mentioned on the containers;
- (iii) where applicable, the mention referred to in subparagraph (ii) above shall also include the name of the person who authorized the fixation on behalf of the performers concerned.

(2) The performer shall be entitled to protection against any distortion of his performance.

*Article 67.* The protection under this Title shall subsist for 40 years computed from the end of the year in which the performance took place. Application of the provisions of Article 66 above shall remain reserved without limitation in time.

## CHAPTER III

### Protection of Producers of Phonograms

*Article 68.* Without the authorization of the producer of phonograms, no person shall do any of the following acts:

- (i) direct or indirect reproduction,
- (ii) importation for the purpose of distribution to the public, or
- (iii) distribution to the public, of duplicates of his phonogram.

*Article 69.* All copies in commerce of the published phonograms or their containers shall bear a notice consisting of the symbol ® (the letter "P" in a circle), accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection. If the copies or their containers do not identify the producer by carrying his name, trademark or other appropriate designation, the notice shall also include the name of the owner of the license granted by the producer.

*Article 70.* The protection of producers of phonograms under this Title shall subsist for 40 years computed from the end of the year in which the phonogram was published for the first time or, failing that, was initially made.

#### CHAPTER IV

##### Remuneration of Performers and Producers of Phonograms for Use of Phonograms in Public

*Article 71.* (1) If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for communication to the public, a single equitable remuneration for the performers and the producer of the phonogram shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performers and the producer, half on the amount received by the producer under paragraph (1) shall be paid by the producer to the performers.

(3) The amount received from the producer under paragraph (2) shall be divided among themselves by the performers.

(4) The right to an equitable remuneration under this Article shall subsist for 40 years computed from the end of the year in which the phonogram was published for the first time or, failing that, was initially made.

(5) This Article shall not apply where a broadcast is made for non-profit-making purposes or where communication to the public in public places is not the result of a purely commercial activity.

#### CHAPTER V

##### Protection of Broadcasting Organizations

*Article 72.* Without the authorization of the broadcasting organization, no person shall do any of the following acts:

- (i) the rebroadcasting of its broadcasts;
- (ii) the fixation of its broadcasts;

(iii) the reproduction of a fixation of its broadcasts:

- (a) where the fixation, from which the reproduction is made, was done without its authorization; or
- (b) where the broadcast was initially fixed in accordance with the provisions of Articles 74 and 75, but the reproduction is made for purposes different from any of those referred to in those Articles.

*Article 73.* The protection of broadcasting organizations under this Title shall subsist for 40 years computed from the end of the year in which the broadcast took place.

#### CHAPTER VI

##### Limitations on Protection

*Article 74.* The acts referred to in Articles 61, 68, 71 and 72 shall not be subject to authorization and payment when they are performed for:

- (i) private use as provided in Article 10(1), (2) and (3);
- (ii) the reporting of current events, provided that no more than short excerpts of a performance, of a phonogram or of a broadcast are used;
- (iii) use solely for the purposes of teaching or scientific research, subject to the application of Article 75 below;
- (iv) quotations in the form of short excerpts of a performance, or of a phonogram or of a broadcast, provided that such quotations are compatible with fair practice and are justified by their informatory purpose;
- (v) such other purposes as constitute exceptions in respect of copyright works under Articles 10(1)(a) and (b) and 12.

*Article 75.* The Guinean Copyright Office shall issue licenses for the reproduction of duplicates of phonograms, where such reproduction serves the exclusive purpose of education or scientific research, is made and distributed on the territory of the Revolutionary People's Republic of Guinea to the exclusion of all exportation of duplicates, and comprises an equitable remuneration for the phonogram producer, fixed by the said Office according to the tariff laid down by the competent Ministry, with particular reference to the number of duplicates to be made and distributed.

*Article 76.* The requirements for authorization under Articles 61, 68, 71 and 72 for making fixations of performances and broadcasts, for reproducing such fixations and for reproducing phonograms published for commercial purposes shall not apply where the fixation or reproduction is made by a

broadcasting organization by means of its own facilities and for its own broadcasts, provided that:

- (i) in respect of each broadcast of a fixation of a performance or of a reproduction thereof made under this subsection, the broadcasting organization has the right to broadcast the particular performance; and
- (ii) in respect of each broadcast of a fixation of a broadcast, and each broadcast of a reproduction of such a fixation of a broadcast, made under this Article, the broadcasting organization has the right to broadcast the particular broadcast; and
- (iii) in respect of any fixation made under this Article or any reproduction thereof, the fixation and any reproductions thereof are destroyed within the same period as applies to fixations and reproductions of copyright works under Article 10, except for a single copy which may be preserved exclusively for archival purposes.

#### CHAPTER VII

##### Exercise of Neighboring Rights

*Article 77.* The administration of the rights conferred by Title II of this Law shall be entrusted to the Guinean Copyright Office (BGDA), mentioned in Article 46 above.

#### CHAPTER VIII

##### Procedure and Sanctions

*Article 78.* In a civil action brought by any person or legal entity whose rights under this Title are threatened with violation or have been violated, the following remedies shall be available:

- (i) an injunction, upon such terms as the court may deem reasonable, to restrain violations;
- (ii) payment to the complaining party of any damages suffered by it as a result of a violation, including any profits enjoyed by the violator that are attributable to the violation. If the violation is found to have been malicious, the court may, at its discretion, award damages.

*Article 79.* (1) Any person who gives authorizations on behalf of performers without being a duly appointed representative, or any person who knowingly proceeds under such an unlawful authorization, shall be guilty of a criminal offense punishable by a fine of 10,000 to 20,000 sylis.

(2) Any person who fails to affix the notice provided for in Article 69 on copies of published phonograms or on their containers shall be liable to a fine not exceeding 10,000 sylis.

#### CHAPTER IX

##### Field of Application of Title II

*Article 80.* Protection of performers under this Title is available where:

- (i) the performer is a national of the Revolutionary People's Republic of Guinea;
- (ii) the performance took place on the territory of the Revolutionary People's Republic of Guinea;
- (iii) the performance is fixed in a phonogram qualifying for protection under Article 81;
- (iv) the performance, which has not been fixed in a phonogram, is embodied in a broadcast qualifying for protection under Article 82.

*Article 81.* Protection of phonograms under this Title is available where:

- (i) the producer is a national of the Revolutionary People's Republic of Guinea;
- (ii) the first fixation of the sound was made in the Revolutionary People's Republic of Guinea;
- (iii) the phonogram was first published in the Revolutionary People's Republic of Guinea.

*Article 82.* Protection of broadcasts under this Title is available where:

- (i) the headquarters of the organization is situated in the Revolutionary People's Republic of Guinea;
- (ii) the broadcast was transmitted from a transmitter situated in the Revolutionary People's Republic of Guinea.

*Article 83.* This Title shall also apply to performers who, and to phonograms and broadcasts which, are to be protected by virtue of the international conventions to which the Revolutionary People's Republic of Guinea is party.

*Article 84.* Nothing in this Title shall prejudice the right of persons or legal entities to use, in accordance with the requirements of this Law, fixations or reproductions made in good faith before the date of its coming into force.

*Article 85.* The provisions of this Title on the protection of performers, producers of phonograms and broadcasting organizations shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors or to any person or legal entity under Title I of this Law or under any international agreement to which the Revolutionary People's Republic of Guinea is party.

#### FINAL PROVISIONS

*Article 86.* All earlier provisions contrary to the provisions of this Law are repealed.

*Article 87.* This Law shall be registered and published in the Official Journal of the Republic.