

DECREE-LAW 43/99/M  
of August 16, 1999

Copyright in Macao has hitherto been regulated essentially by Decree-Law No. 46980 of April 27, 1966, published in the Official Bulletin of January 8, 1972. Although the 1966 Code provides a generous basic framework of legal protection for authors, it is the result of a draft written to a large extent in the 1950s and is showing clear signs of its advancing years.

The speed of technological development and the introduction of new international standards in the field of copyright in recent decades have indeed given rise to legal loopholes, only some of which were filled in by Law No. 4/85/M of November 25, 1985, and Decree No. 17/98/M of May 4, 1998.

The fact that the existing legislation is falling out of step with the present situation is largely attributable also to the international obligations assumed by Macao on joining the World Trade Organization. At the same time it became bound by the Agreement on Trade-Related Aspects of Intellectual Property Rights, which among other obligations committed the Territory to harmonization of its domestic legislation with the Paris Act of 1971 of the Berne Convention for the Protection of Literary and Artistic Works and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, signed in Rome in 1961.

In view of the foregoing, it is necessary to enact new legislation to effect compliance with the international obligations incumbent on Macao and at the same time respond to the need for modernization that is making itself felt in this area.

Wherefore;

Having heard the Consultative Council;

The Acting Governor, in accordance with paragraph (1) of Article 13 of the Organizational Constitution of Macao, decrees the following to have force of law in the Territory of Macao:

PART I  
LITERARY AND ARTISTIC WORKS AND THE COPYRIGHT THEREIN

CHAPTER I  
PROTECTED WORKS

Article 1  
Definitions

1. Intellectual creations in the literary, scientific and artistic fields, whatever may be the ir type, form of expression, merit, form of communication or purpose, shall be protected by copyright.

2. Ideas, processes, systems, operational methods, concepts, principles or discoveries, alone and as such, shall not be protected by copyright.

3. The prerequisite for copyright protection is the outward manifestation of the work, independently of its disclosure, publication, use or economic exploitation.

4. A work is original where it is the result of the author's own creative effort and not merely the appropriation of another person's creation.

## Article 2 Protected Works

1. The following in particular are protected works in so far as they are original:

- a) literary, journalistic, scientific and other writings, including computer programs;
- b) lectures, speeches, addresses and sermons;
- c) dramatic and dramatico-musical works and the direction thereof;
- d) works of choreography or mime that are expressed in written or any other form;
- e) musical compositions, with or without words;
- f) cinematographic, television, video and other audiovisual works;
- g) works of drawing, tapestry, painting, sculpture, ceramics, glazing, engraving, lithography and architecture;
- h) photographic works and works produced by processes analogous to photography;
- i) works of applied art, industrial designs or models and designer works that constitute artistic creations;
- j) illustrations and maps;
- k) plans, sketches and three-dimensional works relating to architecture, geography or other sciences;
- l) slogans or mottoes, even if of an advertising nature;
- m) parodies and other literary or musical compositions, even if inspired by the theme or subject of another work;
- n) databases and other compilations that are original in the arrangement of their subject matter or the selection of their contents.

2. Successive editions of a work, even if corrected, expanded, revised or given a new title or format, shall not constitute works distinct from the original work, nor shall reproductions of artistic works, even where their dimensions have been changed.

3. The protection granted to computer databases and other compilations of information does not include the actual data or material compiled, without prejudice to any rights that may subsist in them.

### Article 3 Derived and Composite Works

1. Derived works are those that result from the alteration of a preexisting work, for example arrangements, orchestrations, dramatizations, cinema adaptations and translations.
2. Composite works are those in which a preexisting original work is wholly or partly incorporated without change.
3. Derived and composite works are protected in the same way as original works.
4. The protection conferred on derived and composite works shall not prejudice the protection of the original works altered or incorporated, and shall be independent thereof.

### Article 4 Title of the Work

1. The protection of a disclosed or published work shall extend to the title thereof, provided that it is distinctive and cannot be confused with the title of any other work of the same genre by another author.
2. The following are not distinctive:
  - a) titles consisting of the generic, necessary or usual designation of the theme or subject matter of works of a certain kind;
  - b) titles consisting solely of the names of historical, literary or mythological characters, or the names of living persons.
3. Action may be brought against a person who fraudulently appropriates a title in the knowledge that a third party is making effective preparations for its use on an unpublished work.

### Article 5 Exclusions from Protection

1. The following are not protected subject matter, without prejudice to the provisions of the following paragraph:
  - a) daily news and reports of miscellaneous events having the character of mere information, however disclosed;
  - b) petitions, allegations, complaints and other texts submitted in writing or orally to public authorities or services;
  - c) texts presented and speeches given to assemblies or other collegiate, political and administrative bodies, or in public debates, on topics of common interest;

d) political speeches.

2. The author of the texts referred to in subparagraphs (b), (c) and (d) of the foregoing paragraph shall have the exclusive right to publish them or authorize their publication, either in a collection or separately.

3. The use by a third party of the works referred to in paragraph (1), where lawful, shall be limited to what is required by the objective to be achieved through disclosure.

4. Communication to the public of the texts referred to in subparagraph (b) of paragraph (1) shall not be permitted if they are of a confidential nature or if their disclosure might prejudice the honor or reputation of the author or a third party.

5. The prohibition provided for in the foregoing paragraph shall be lifted where the person or the third party whose honor or reputation might be prejudiced has given his consent, or where a judicial decision to the contrary has been handed down in the face of evidence proving the existence of legitimate reasons stronger than those underlying the said prohibition.

#### Article 6 Official Texts

1. Official texts shall not benefit from protection.

2. Official texts are in particular the texts of treaties, laws and regulations and those of reports or decisions by authorities of any kind, and translations thereof.

3. Where the texts referred to in the preceding paragraph incorporate protected works, these may be used by public services within their area of concern without the author's consent and without any right being thereby conferred on him.

### CHAPTER II

### COPYRIGHT

#### SECTION I

#### CONTENT

#### Article 7 Personal Rights and Economic Rights

1. The author shall enjoy personal rights and economic rights in the protected work.

2. The author's economic rights include the exclusive right:

a) to use and economically exploit the work, and to authorize its economic exploitation, in whole or in part, by a third party;

b) to receive remuneration for the use that a third party makes of the work, where the author's permission for that use is dispensed with by law.

3. The author's personal rights include the power:

a) to keep the work unpublished;

b) to claim authorship of the work and to be identified as the author on the original, on each copy and in any publicity;

c) to withdraw his works from circulation as provided in Article 48;

d) to ensure the authenticity and integrity of his work and object to any mutilation or distortion of it and in general to all and any acts that detract from it and might adversely affect his honor and reputation as an author.

#### Article 8 Physical Embodiments of Works

1. The copyright in the work, being incorporeal, shall be independent of the ownership rights in the physical material used for its fixation or communication.

2. The manufacture or acquisition of the material embodiment of a protected work shall not confer any copyright on the manufacturer or acquirer.

### SECTION II OWNERSHIP OF COPYRIGHT

#### Article 9 Original Owner and Subsequent Owner

1. Unless otherwise provided, the original owner of copyright is the intellectual creator of the work.

2. It shall be presumed that the intellectual creator of the work is the person named as such on the work in conformity with current practice, or announced as such in connection with any kind of use or communication to the public.

3. References to the author in this Decree-Law shall include the original owner and also the subsequent owner if the rights concerned are transferable, except where the provision concerned states otherwise.

#### Article 10 Exemption from Formalities

The recognition of copyright is independent of registration, deposit or any other formality.

Article 11  
Subsidized Works

Any person who in any way either totally or partly subsidizes or finances the preparation, completion, disclosure or publication of a work shall not thereby acquire any copyright in the said work, unless otherwise agreed in writing.

Article 12  
Works Created for Others

1. The ownership of the economic rights in a work made on behalf of another person, either in fulfillment of official duties or under an employment contract, shall be determined in accordance with what has been agreed.

2. In the absence of agreement, it shall be presumed that the owner of the economic rights in the work is the intellectual creator, without prejudice to the following paragraph.

3. Where the name of the intellectual creator is not mentioned in the work or shown in its customary place, it shall be presumed that the economic rights have been assigned to the entity for which the work was made.

4. Where the economic rights have been assigned to the person for whom the work was made, the intellectual creator shall be entitled to special remuneration in addition to his agreed remuneration, whether or not the work is actually disclosed or published:

a) when the intellectual creation has clearly gone beyond the limits of even zealous discharge of the responsibility or task assigned;

b) when uses are made of the work or benefits derived from it that were not included among those envisaged when the remuneration was agreed.

Article 13  
Limitations on Use

1. Where, as provided in the preceding Article, the economic rights in a work created for another person belong to the intellectual creator, the person on whose behalf the work was made may only use it for the purpose specified in the relevant agreement or, in the absence of an agreement, for the purposes for which it was created.

2. The intellectual creator of a work made for another person may not in any event make use of the work in any way that would be prejudicial to the purposes for which it was produced.

3. The right to make changes to a work made on commission shall always be subject to authorization by the intellectual creator, with the exception of any changes that are essential for the use of the work according to the purpose for which it was produced.

Article 14  
Works of Joint Authorship

1. Copyright in a work of joint authorship as a whole shall belong to all those who have collaborated in its making, and the exercise of the rights shall be governed by the rules of joint ownership, without prejudice to the provisions of paragraph (4) below.
2. A work of joint authorship is one created by two or more persons and disclosed or published in the name of all or some of them, regardless of whether or not the individual contribution of each creator can be distinguished.
3. Unless otherwise agreed in writing, the indivisible parts belonging to the co-authors of a work of joint authorship shall be deemed to be of equal value.
4. Where a work of joint authorship is disclosed or published only in the name of one or some of the co-authors and there is no mention of the others in any part of the work, the copyright concerned is presumed to belong exclusively to the one or to those in whose name the disclosure or publication took place.
5. Persons who have simply helped the author produce, disclose or publish the work in any way shall not be deemed to be co-authors.

#### Article 15 Individual Rights of the Co-Authors

1. Any of the co-authors of a work of joint authorship may request the disclosure, publication, exploitation or modification thereof; in the event of disagreement, the matter shall be settled according to the principles of good faith.
2. Any of the co-authors may individually exercise the rights in his personal contribution, provided that it can be distinguished and the purposes for which the joint work was produced are not prejudiced.

#### Article 16 Collective Works

1. The original owner of the copyright in a collective work shall be the person who organizes and directs its creation and in whose name the work is disclosed or published.
2. A collective work is a work created by two or more persons but organized on the initiative of a natural person or a legal entity in whose name it is disclosed or published.
3. A database shall be presumed to be a collective work.
4. Where it is possible to distinguish the individual contributions of one or some of the intellectual creators of a collective work, the provisions of paragraph (2) of the preceding Article shall apply to the rights in those personal contributions.

#### Article 17

#### Auxiliaries

Any natural or legal person who participates in the production, publication or disclosure of a protected work in an auxiliary capacity as technician, designer, constructor or the like shall not own any copyright in the work, without prejudice to any related rights that he might hold.

### CHAPTER III IDENTITY OF THE AUTHOR, PSEUDONYMS AND STAGE NAMES

#### Article 18 Names or Pseudonyms

The author may identify himself with his name, in either full abbreviated form, his initials, a pseudonym or any other conventional sign.

#### Article 19 Protection of Names

1. The use of a literary, artistic or scientific pseudonym liable to be confused with another name previously used in a disclosed or published work, even a work of a different genre, is not permitted.
2. Where the author is related by blood or marriage to another previously known by the same civil name, a distinction may be made between them by the addition to the name of an element showing the blood or marital relationship.
3. No one may use, in a work created by him, the name of a person who has not participated in its creation, even with his consent.
4. A person prejudiced by the use of a name in a manner contrary to the provisions of the preceding paragraphs may seek the cessation of that use and adequate legal measures to avoid confusion in the mind of the public as to the true authorship.

#### Article 20 Works by Anonymous Authors

1. Any person who discloses or publishes a work under a name or pseudonym that does not reveal the author's identity, or anonymously, shall be deemed to be the author's representative and shall be responsible for defending the rights in the said work against third parties.
2. The preceding paragraph shall not apply where the author has specified otherwise.
3. The powers of representation referred to in paragraph (1) shall cease as soon as the author reveals his identity.



## CHAPTER IV LAPSE OF COPYRIGHT

### Article 21 General Rule

1. In the absence of any special provisions, copyright shall lapse 50 years after the death of the creator of the work, even in the case of works disclosed or published posthumously.
2. Where the term of copyright is calculated from the date of the publication or disclosure of the work and the work remains undisclosed and unpublished for the same length of time counted from the date on which it was made, the term of copyright shall be calculated from the latter date.
3. Copyright terms shall not start until the first day of the year following that in which the determining event occurred.

### Article 22 Works of Joint Authorship, Collective Works and Works Created for Others

1. Copyright in works of joint authorship as a whole shall lapse 50 years after the death of the last surviving co-author.
2. For the purposes of the preceding paragraph, only those persons in whose names the work has been disclosed or published as provided in paragraph (4) of Article 14 shall be considered co-authors.
3. Unless otherwise provided, the copyright in a collective work or accruing to an entity for which the work has been made shall lapse 50 years after the first disclosure or publication.
4. The term of the copyright accruing separately to the intellectual creators of a work of joint authorship or collective work in relation to their recognizably personal contributions shall be that provided for in paragraph (1) of the preceding Article.

### Article 23 Anonymous Works and Works Deemed Anonymous

1. The copyright in an anonymous work or a work disclosed or published without the true identity of the author being revealed shall lapse 50 years after the disclosure or publication.
2. Where the use of a name, while not the author's own, leaves no doubt as to his identity or where he reveals it within the period referred to in the preceding paragraph, the term of protection shall be that granted to works disclosed or published in the author's own name.

### Article 24 Protection of Parts, Volumes or Installments of Works

1. Where the various parts, volumes or installments of a work are not published simultaneously, the copyright terms shall be calculated separately.

2. The preceding paragraph shall also apply to issues or installments of a collective work published periodically, such as a newspaper or magazine.

Article 25  
The Public Domain

A work shall fall into the public domain on the expiry of the term of copyright.

CHAPTER V  
TRANSFER AND ASSIGNMENT OF ECONOMIC RIGHTS

Article 26  
Disposability of Economic Rights

The original owner of the economic rights, and also his successors or transferees, may:

- a) authorize third-party use of the work;
- b) transfer or assign all or some of the said rights.

Article 27  
Authorization

- 1. The mere authorization granted to a third party to disclose, publish, use or exploit a work in any way shall not imply transfer of the copyright in it.
- 2. The authorization referred to in the preceding paragraph may only be granted in writing and shall be presumed to be for a consideration and non-exclusive.
- 3. The authorization must specify the authorized form of disclosure, publication or use, and also the relevant conditions of duration, place and remuneration.
- 4. Where the authorized form of use is the making of copies for commercial purposes, the authorization shall contain the following:
  - a) the identity of the authorizing and the authorized parties;
  - b) the address of the authorizing party;
  - c) the distinctive identity of the work or works whose reproduction is authorized;
  - d) the authorized number of copies of the work or, if several works are involved, of each work;
  - e) the duration of the authorization.

Article 28  
Limitation of Transfer and Assignment

There may not be any transfer or assignment, either voluntary or enforced, of the economic rights granted for the exclusive protection of the intellectual creator or of any other rights excluded by law.

Article 29  
Partial Transfer and Assignment

1. Both the partial transfer and the assignment of economic rights shall be effected in writing, and the scope of the rights granted shall be determined by the object of the contract.
2. The corresponding instrument shall specify the subject matter and the conditions governing the exercise of the rights and, where the transaction is for a consideration, the amount of the remuneration.
3. Where the transfer or assignment is temporary and no duration has been specified, it shall be presumed to be 25 years in general and ten years in the case of works of applied art.
4. The exclusive rights granted shall lapse if the work is not used for a period of seven years following their grant.

Article 30  
Total Transfer

The total transfer of economic rights may only be effected by means of an authenticated public instrument that identifies the work and specifies the relevant remuneration if the transfer is for a consideration.

Article 31  
Assignment of Economic Rights to the Territory

The author of a protected work who assigns his economic rights to the Territory free of charge is entitled to receive 50 copies of the said work without any payment if it is published.

Article 32  
Usufruct

1. Economic rights may be the subject of legal and voluntary usufruct.
2. The usufructuary may not use the work concerned for any purpose involving its transformation or alteration without the authorization of the owner of the rights.

Article 33  
Copyright as Security

1. The economic rights in a work may be used as security.

2. In the case of judicial attachment, the measure shall apply specifically to the right or rights that the debtor has pledged as security in relation to the work or works mentioned.
3. The creditor shall not acquire any rights in the physical embodiment or embodiments of the work.

#### Article 34 Seizure and Attachment

1. The economic rights in works already published or disclosed may be seized or attached; the provisions of the preceding Article regarding security shall be observed with respect to enforcement.
2. Incomplete manuscripts, sketches, drawings, paintings, sculptures or other original works shall be exempt from seizure or attachment unless the author offers them or consents thereto.
3. Where the author, by his direct acts, reveals his intention to disclose or publish the works referred to in the preceding paragraph, the creditor may effect seizure or attachment of the corresponding economic rights.

#### Article 35 Advance Disposal of Economic Rights

1. Transfer or assignment of copyright in future works may only apply to works to be produced by the author within a maximum period of seven years.
2. Where a contract specifies a longer period, it shall be considered limited to the period specified in the preceding paragraph and the remuneration provided for shall be reduced accordingly.
3. Any transfer or assignment of the economic rights in future works without limitation in time shall be null and void.

#### Article 36 Additional Compensation

1. Where the intellectual creator or his successors, having transferred or assigned the economic rights in the work for a consideration, suffer a grave economic prejudice as a result of manifest disproportion between their income and the receipts earned by the beneficiary of the transfer or assignment, they may demand additional compensation from the beneficiary according to the results of the economic exploitation.
2. In the absence of agreement, the additional compensation referred to in the preceding paragraph shall be fixed according to the normal results of economic exploitation of all the similar works of the same author.

3. Where the price of the transfer or assignment of the economic rights in the work is calculated as a proportion of the income derived by the beneficiary from exploitation, the right to additional compensation shall apply only where the percentage established is clearly lower than that customarily paid in transactions of the same nature.

4. The right to additional compensation shall lapse when the work falls into the public domain, and in any event where it is not exercised within a period of three years from the date of awareness of the grave economic prejudice suffered.

#### Article 37

##### Economic Rights Forming Part of an Unclaimed Estate

1. Where economic rights forming part of an unclaimed estate are declared to belong to the Territory, they shall be excluded from the liquidation, but they may be disposed of where the revenue from the sale of other assets is not sufficient to pay debts.

2. The work shall fall into the public domain where the Territory has not made or authorized use of the work within of a period of ten years following the date on which the estate was declared unclaimed.

3. Where on the death of one of the authors of a work of a joint authorship his estate reverts to the Territory, the economic rights in the work as a whole shall then belong to the remaining authors.

#### Article 38

##### Republication of Works Out of Print

1. Where the subsequent owner of the right of republication refuses to exercise his right or to authorize republication after the work has gone out of print, any interested party, including the Territory, may seek judicial authorization to republish the work.

2. The judicial authorization shall be granted in so far as the refusal was not based on reasonable moral or material grounds, excluding financial grounds.

3. The judicial authorization provided for in the preceding two paragraphs shall not deprive the owner of his right of republication, and he may undertake or authorize future editions.

4. The provisions of this Article shall not prejudice the owner's right to be remunerated for the republication and shall apply, mutatis mutandis, to all forms of reproduction where the transferee of rights in any work already disclosed or published does not satisfy the reasonable requirements of the public.

#### Article 39

##### Procedure

1. The judicial authorization provided for in the foregoing Article shall be given in accordance with the procedure for the granting of consent.

2. Appeals against the court's decision shall lie, with staying effect, to the next higher instance, which shall hand down a final judgment.

Article 40  
Usucapion  
Copyright shall not be acquired by uscapion.

CHAPTER VI  
PERSONAL RIGHTS OF AUTHORS

Article 41  
Regime

The author's personal rights shall be independent of his economic rights, inalienable, unrenounceable and imprescriptible, and may be exercised after his death as provided in Article 43.

Article 42  
Incompetent Author

An incompetent intellectual creator may exercise the personal rights in his works provided that he has sufficient natural comprehension for the purpose.

Article 43  
Exercise of Rights After the Author's Death

After the author's death, as long as the work does not fall into the public domain, the exercise of personal rights shall accrue to his successors.

Article 44  
Works of Cultural Value

1. The Territory may take upon itself, and be responsible for instituting adequate measures to ensure, the protection of works that have not fallen into the public domain but whose authenticity or integrity are threatened, after the persons referred to in the foregoing paragraph have been notified and have failed to protect their works without just grounds.
2. The Territory shall be responsible for protecting the authenticity and integrity of works in the public domain.
3. The entity competent to implement the provisions of this Article shall be designated by order of the Governor, published in the Official Bulletin.

Article 45  
Disclosure and Publication of Works *Ne Varietur*

Where the author has partly or entirely revised his work and has effected or authorized its disclosure or publication *ne varietur*, his successors or third parties shall not reproduce any of the previous versions.

Article 46  
Amendments and Adaptations

1. Amendments to the work shall not be permitted without the author's consent, even where use of the work is lawful without such consent.
2. Where a person is authorized to use a given work, it shall be understood that he is also authorized to make adaptations in the said work which, without detracting from it, are necessary for its use in the manner authorized.
3. In the case of anthologies intended for educational purposes, the changes dictated by those purposes shall be permissible, provided that the author does not object to them under the following paragraph.
4. The author's consent shall be requested in a registered letter with acknowledgement of receipt in which the amendments to be made are explained, and the author shall have one month from the date of receipt within which to make his position known.

Article 47  
Personal Rights in the Case of Seizure

1. Where the acquirer of the economic rights in a seized work effects the publication thereof, the right to correct the work and in general the author's personal rights shall not be affected.
2. Where in the case mentioned in the preceding paragraph the author retains the proofs without justification for a period exceeding 60 days, printing may proceed without proofreading.

Article 48  
Right of Withdrawal

The author of a disclosed or published work may at any time withdraw it from circulation and discontinue its economic exploitation, in whatever form, provided that he has justifiable moral grounds for doing so, and compensates third parties for any prejudice caused.

CHAPTER VII  
INTERNATIONAL SCOPE OF PROTECTION

Article 49  
Territoriality Principle

The law of Macao shall be exclusively applicable when the protection granted to a work in the Territory is determined.

Article 50  
Personal and Material Eligibility

1. Authors resident in the Territory shall enjoy the protection granted by the law of Macao.

2. Authors who are not resident in the Territory shall enjoy the protection accorded to residents subject to material reciprocity.
3. The following shall in any case enjoy the protection granted by the law of Macao:
  - a) works that are first or simultaneously published in Macao;
  - b) works of architecture built within the Territory;
  - c) works of art incorporated in buildings erected within the Territory;
  - d) audiovisual works produced by residents of the Territory.

#### Article 51 Term

Where the work originates in another legal system and its author is not resident in the Territory, the term of protection thereof shall be that specified by this Decree-Law, provided that it does not exceed that specified by the legal system in which the work originated, as determined by the following Articles.

#### Article 52 Origin of a Published Work

1. The legal system of a published work is that of the place of first publication.
2. Where a work has been published simultaneously in different places subject to legal systems that specify different terms of copyright protection, the legal system that grants the shortest term protection shall be considered the legal system of origin.
3. A work shall be considered published under several legal systems where, within a period of 30 days from the date of first publication, it is again published in another place subject to a legal system different from that of the place of first publication.

#### Article 53 Origin of an Unpublished Work

1. The legal system of an unpublished work shall be that of the author's ordinary residence.
2. However, in the case of works of architecture and graphic or three-dimensional art, the legal system of the place in which the said works have been built or are incorporated in a building shall be considered the legal system of origin.

#### Article 54 International Treaties

The provisions of this Chapter shall be without prejudice the application of international treaties to which the Territory is party.



PART II  
USE OF PROTECTED WORKS

CHAPTER I  
GENERAL PROVISIONS

Article 55  
Exclusive Rights

1. Unless otherwise provided, the author shall have the exclusive right to use his work, in whole or in part, including notably the right to disclose, publish and economically exploit it in any form, either directly or indirectly, within the limits of the law.
2. The guarantee of the pecuniary benefits deriving from exploitation of the work shall constitute the basic objective, in economic terms, of legal protection.

Article 56  
Forms of Use

1. Economic exploitation of the work, and its use in general, may take any known or as yet unknown form according to its type and nature.
2. The author shall have the exclusive right to choose freely the process and conditions for the use and economic exploitation of the work.
3. The author shall in particular have the exclusive right to carry out or authorize the following:
  - a) publication by printing or by any other method of graphic reproduction;
  - b) performance, recitation, execution, display or presentation in public;
  - c) cinematographic reproduction, adaptation, performance, distribution and presentation;
  - d) adaptation to any apparatus used for mechanical, electric, electronic or chemical reproduction and public performance, transmission or retransmission by such means;
  - e) dissemination by photography, broadcasting or any other process for reproducing signs, sounds or images, and communication the public by wire or wireless means, including making the work available to the public in such a way that they may have access to it in the place and at the time of their choosing;
  - f) distribution to the public of the original or copies of the work by any means, including, in the case of cinematographic works and computer programs, commercial rental, but excluding lending;
  - g) translation, adaptation, arrangement, setting to music or any other transformation of the work, without prejudice to the rights of the person who does the transformation work;

- h) any use in another work;
  - i) total or partial, permanent or temporary, direct or indirect reproduction, whatever the means by which it is done;
  - j) construction of an architectural work according to the relevant plans.
4. The various forms of use and economic exploitation of the work shall be mutually independent, and the adoption of one of them by the author or an authorized person shall not prejudice the adoption of the other forms also by the author or by authorized third parties.
5. Reproduction means the making of copies of a fixation or of a qualitatively or quantitatively significant part thereof.
6. The mere similarity of works derived from the same original work, or of representations of the same subject matter, shall not constitute unlawful use where, in spite of the similarity attributable to the identity of the original work or subject matter, each of the derived works or representations has an individuality of its own.

#### Article 57 Publication and Disclosure

1. The act of lawfully bringing a work to the notice of the public by reproduction of the physical medium concerned and the supply of copies to that public by any means in such a way as to meet its requirements, due account being taken of the nature of the work, shall be considered publication.
2. The act of lawfully bringing a work to the notice of the public by any means that does not meet the requirements of the preceding paragraph, for example the performance of a dramatic or dramatico-musical work, the showing of a cinematographic work, the recitation of a literary work, the performance of a musical work, transmission or broadcasting, the construction of a work of architecture or three-dimensional work incorporated therein and the exhibition of any kind of artistic work, shall be considered disclosure.
3. Publication and disclosure shall be lawful where authorized by the author or where he is aware of the acts and does not object to them.

#### Article 58 Exhaustion of the Right of Distribution

Any act of disposal of the original or copies of a protected work within the meaning of subparagraph (f) of Article 56(3) shall cause the exhaustion of the exclusive right of distribution of the subject matter concerned, without prejudice to the continued existence of the exclusive right of commercial rental, if any.

#### Article 59 Posthumous Works

1. It shall be for the author's successors to decide on the use of works not disclosed or published in his lifetime.

2. Successors who disclose or publish a posthumous work shall have the same rights in it as they would have had if the author had disclosed or published the work in his lifetime, without prejudice to the term of the copyright therein.

3. Where the successors do not publish or disclose the work within a period of 25 years from the date of the author's death, they may not object to its disclosure or publication by third parties, except in the presence of serious grounds of a moral nature, which shall be evaluated by the court.

## CHAPTER II PRIVATE USE AND FAIR USE

### Article 60 Freedom of Private Use

1. The private use of protected works shall be free unless otherwise provided.
2. The following in particular shall be considered private use:
  - a) reproduction of the work exclusively for the private purposes of the person who does it;
  - b) the performance of a dramatic or dramatico-musical work, the showing of a cinematographic work, the recitation of a literary work, the performance of a musical work and any other form of communication of a work already disclosed or published, when done without gainful intent and in a place open to the public.

### Article 61 Fair Use

The following shall be lawful without the consent of the author:

- a) the reproduction in the media, for information purposes, of speeches, addresses and lectures given in public that do not fall into the categories provided for in Article 5(1), either as excerpts or in the form of summaries;
- b) the regular selection of articles from printed periodicals in the form of press reviews;
- c) the fixing, reproduction and communication to the public by any means of short excerpts from works where their inclusion in accounts of current events is justified by the informatory purpose pursued;
- d) the partial or total reproduction of previously published or disclosed works, provided that it is done by a public library, non-commercial documentation center or scientific institution and that the reproduction is not intended for the public and is limited to the requirements of the institution's own activities;
- e) partial reproduction by educational establishments that is exclusively for teaching purposes in those establishments and without gainful intent;

- f) the inclusion in one's own work of quotations or summaries from another's, whatever their nature, in support of one's own opinions or for the purposes of criticism, discussion or teaching;
- g) the inclusion of short excerpts or parts of another author's works in one's own works intended for teaching;
- h) the performance of musical works or literary-musical works at official events in the Territory and religious ceremonies, provided that the performers work free of charge and public access, where permitted, is also free;
- i) the reproduction of news articles and articles on economic, political or religious topics, provided that such reproduction has not been expressly reserved;
- j) the fixation of works of art located in public places by means of photography, videography, cinematography or other similar means;
- k) the use of works not available commercially for exclusively scientific, educational and humanitarian purposes;
- l) use by the courts and other official services in the Territory to the extent strictly essential to the exercise of their public functions.

#### Article 62 Limits and Requirements

1. The private and free use of a protected work shall not prevent its normal economic exploitation or unjustifiably prejudice the legitimate interests of the author.
2. The free use referred to in the preceding Article shall be accompanied by the following:
  - a) a mention, where possible, of the author and title of the work;
  - b) in the case referred to in subparagraph (d) of the preceding Article, equitable remuneration payable to the author by the entity that carried out the reproduction.
3. The works reproduced or quoted under the preceding Article must not be susceptible of confusion with the works of the person using them, and the reproduction or quotation must not be so extensive as to prejudice interest in the works.
4. The author alone has the right to assemble the works mentioned in subparagraphs (a) and (i) of the preceding Article in a volume.

#### Article 63 Commentaries, Notes and Discussions

1. It shall not be permissible to reproduce another author's work without his permission on the pretext of commenting on or annotating it, but it shall be lawful to publish separate commentaries or notes merely with references to chapters, paragraphs or pages of the other author's work.

2. The author who reproduces his articles, letters or other polemic texts published in newspapers or periodicals may also reproduce articles defending the opposite position, and the opposing party or parties shall have the same right, even after publication of the articles by the former.

Article 64  
Lectures by Professors

1. Lectures by professors may only be published with the consent of the author concerned, even if the lecture is presented in the form of a report on the direct responsibility of the person publishing it.

2. Unless otherwise specified, it shall be considered that the authorized publication is intended solely for the use of students.

Article 65  
Use by the Blind

1. Reproduction or any other non-profit-making use of published works, involving Braille or another system for the blind, shall be permitted.

2. Blind persons are entitled to fix the lectures referred to in the preceding Article by any means for their exclusive use.

Article 66  
Legal Right of Transformation

The legal right to use a work without the author's prior consent includes by implication the right to transform it, by translation or otherwise, the extent necessary for its authorized use.

CHAPTER III  
WORKS AND USES IN PARTICULAR

SECTION I  
PUBLICATION

Article 67  
Publishing Contracts

A contract by which the author authorizes another to produce, distribute and sell a specified number of copies of a work or set of works on his own account shall be considered a publishing contract.

Article 68  
Other Contracts

1. Those contracts shall not be considered publishing contracts under which the author entrusts another with:
  - a) producing on his own account a specified number of copies of a work and ensuring that they are stocked, distributed and sold, the parties having agreed to share between themselves the results of the corresponding economic exploitation;
  - b) producing a specified number of copies of a work and ensuring that they are stocked, distributed and sold on the author's account and at his risk in exchange for remuneration;
  - c) ensuring that copies produced by the author are stocked, distributed and sold in exchange for remuneration.
2. The contracts referred to in the preceding paragraph shall be subsidiarily regulated by the legal provisions governing special partnerships in the case of subparagraph (a), by those governing contracts for the rendering of services in the case of subparagraphs (b) and (c), and in addition by usage.

Article 69  
Subject Matter

Publishing contracts may have as their subject matter one or more existing or future works, whether published or not.

Article 70  
Form of Contract

1. The publishing contract shall be drawn up in writing.
2. Nullity for failure to draw up the contract in writing may not be invoked by the party who has been the cause of it, and shall be presumed attributable to the publisher until the opposite is proved.

Article 71  
Effects of the Contract

1. The publishing contract shall not transfer any copyright to the publisher or authorize him to translate the work or to transform or adapt it to other genres or forms of use.
2. Modernization of the spelling of the text according to the current official rules shall not be considered modification except where a deliberate choice has been made by the author with respect to spelling.
3. Subject to the provisions of Article 83 or any provisions to the contrary, the publishing contract shall prevent the author from making or authorizing a new edition of the same work in the same language inside or outside the Territory until the previous edition is out of

print or the period prescribed has expired, unless circumstances arise that prejudice interest in the edition and make revision or updating of the work necessary.

#### Article 72 Content of the Contract

1. The publishing contract shall mention the number of editions concerned, the number of copies in each edition and the unitary public selling price, even approximate.
2. Where the number of editions is not specified in the contract, the publisher may only produce one edition.

#### Article 73 Remuneration

1. The publishing contract shall be presumed to be for consideration.
2. The author's remuneration may consist of a lump sum payable for the edition as a whole, a percentage of the cover price of each copy, the allocation of a certain number of copies or a consideration based on some other criterion, according to the nature of the work, and a combination of those forms may be adopted.
3. In the absence of any stipulation regarding the author's remuneration, he shall be entitled to 20 per cent of the cover price of each copy sold.
4. Where there are two or more authors, the percentage referred to in the preceding paragraph shall be shared by them.
5. Where the remuneration consists of a percentage of the sale price, its calculation shall take price rises and reductions into account, but the publisher may not, except as provided in Article 85, reduce that price without the author's consent unless he pays the author the remuneration corresponding to the original sale price.

#### Article 74 Obligations of the Author

1. The author shall provide the publisher with the means necessary for fulfillment of the contract, in particular by handing over within the agreed period the original of the work to be published in a form that enables the publisher to reproduce it.
2. The original referred to in the preceding paragraph shall be the property of the author and shall be returned to him on completion of publication.
3. Where the author unjustifiably delays handing over the original so that the expectations of the publisher are jeopardized, the latter may terminate the contract without prejudice to any claim of compensation for losses and damages to which he may be entitled.
4. The author is obliged to guarantee the publisher's exercise of the rights under the publishing contract against any third-party rights in the work, but not against impediments and disturbance attributable solely to third parties.

Article 75  
Obligations of the Publisher

1. The publisher is obliged to devote to the production of the edition such care as is necessary for the reproduction of the work in accordance with the agreed conditions, and to work assiduously and diligently on the promotion and marketing of the copies produced.
2. In the absence of agreement to the contrary or grounds attributable to the author, the publisher shall complete the reproduction of the work within 12 months of receiving the original.
3. Where the work is on a subject of topical interest or is such that any delay in publication detracts from its interest or topicality, the publisher shall be obliged to commence reproduction immediately and to complete it within such a period as will avoid the prejudice due to such a delay.
4. The publisher shall identify the author on every copy in the manner chosen by the latter except where he wishes to remain anonymous.

Article 76  
Proofs

1. The publisher shall provide the author with a set of galley proofs, a set of page proofs and the draft cover design so that he may correct the layout of the pages and give his opinion on the draft cover design.
2. The author shall have the right to make typographical corrections to the galley proofs or page proofs, and the cost thereof shall be borne by the publisher.
3. Unless otherwise agreed, the cost of any corrections, amendments or additions to the text that are not justified by new circumstances shall be borne entirely by the publisher up to a limit of five per cent of the cost of typesetting, and by the author above that percentage.
4. Under normal conditions, the author shall return the proofs within a period of 20 days and the draft cover design within a period of five days.
5. Where the publisher or author delays in providing or returning the proofs, the party concerned may call upon the other party, by registered letter with acknowledgement of receipt, to provide or return the proofs, as the case may be, within a further, unrenewable period.
6. Where either party fails to meet the deadline imposed on him under the preceding paragraph, the other may claim compensation for loss and damages caused by the delay in publication; where the delay is caused by the author, the publisher may choose publication on the basis of the revision undertaken by him.

Article 77  
Printing

1. Printing shall not be done without the author's consent, subject to paragraph (6) of the foregoing Article.



2. The return of the page proofs and the draft cover design, unless accompanied by a declaration to the contrary, shall constitute authorization to print.
3. Works shall not be brought on to the market without the author having inspected one copy thereof.

Article 78  
Presentation of Accounts and Payment

1. The author may demand payment of remuneration on completion of publication, unless otherwise agreed or where the chosen form of remuneration makes payment dependent on the subsequent situation, and in particular on the placing of all or some of the copies made on the market.
2. Where the remuneration payable to the author depends on the result of sales or where payment is determined by sales development, the publisher shall submit accounts to the author within the agreed period, or every six months where none has been agreed, the reference dates being June 30 and December 31 of each year.
3. For the purposes of the preceding paragraph, the publisher shall send the author, within 30 days of the end of the period, by registered letter, an account of sales and returns during the said period, together with the balance of payment.

Article 79  
Author's Right of Inspection

1. The author has the right to inspect, either in person or through his representatives, the number of copies published; to that end he may demand to examine the publisher's business papers or resort to another means that does not interfere with the production of copies, such as the placing of his signature or seal on each such copy.
2. The author also has the right to inspect the premises on which the work is reproduced or copies are stored.

Article 80  
Excess or Shortage of Copies

1. Where the publisher produces fewer copies than agreed and refuses to complete the edition, the author has the right to contract a third party to produce the missing number of copies at the publisher's expense, without prejudice to the his right to compensation for losses and damages.
2. Where the publisher produces more copies than agreed, the author may claim compensation for losses and damages or seek legal attachment of the surplus copies and take possession of them, the publisher having no right in that case to any compensation.
3. Where the publisher has already sold either all or some of the surplus copies, that shall not prejudice the author's right to compensation.

Article 81

## Re-editions

1. Where the publisher has been authorized to publish several editions, the conditions laid down for the first edition shall apply to subsequent editions in case of doubt.
2. Before undertaking a new edition, the publisher shall give the author the possibility of working on the text to make small corrections or refinements that do not constitute substantial amendment of the work.
3. The author is entitled to additional remuneration if he agrees with the publisher on substantial amendments to the work, even where the price has been fixed as a lump sum for all editions.
4. The publisher who is obliged to produce successive editions of a work shall produce them without interruption in such a way that copies are always available on the market.

## Article 82 Future Works

1. The provisions of Article 35 shall apply, *mutatis mutandis*, to publishing contracts relating to future works.
2. Where the publication contract for future works has not specified the time limit for delivering the work to the publisher, he shall have the right to ask for it to be fixed by the court.
3. The time limit laid down in the contract for delivering the work to the publisher may be extended by the court at the author's request if there are sufficient grounds for doing so.
4. Where the work to which the contract relates is to be written as it is published in volumes or installments, the contract shall specify approximately the number and the length of the volumes or installments, with a margin of ten per cent more or less being allowed with respect to length unless otherwise agreed.
5. The author who exceeds the limits specified in the preceding paragraph without the publisher's consent shall not have any right to additional remuneration, and the publisher may refuse to publish the additional volumes, installments or pages.
6. Where the publisher exercises his right under the preceding paragraph, the author may choose to terminate the contract and compensate the publisher for the expenditure incurred for the edition and the profits expected from it. Where sales of the work have already started, the results achieved shall serve as the basis for calculating compensation.

## Article 83 Complete Works

1. The author who has contracted with one or more publishers for the separate publication of each of his works retains the right to contract with another publisher for the publication of a complete edition of his works.

2. Unless otherwise agreed, the contract for the complete edition shall not authorize the publisher to publish separately any of the works contained therein, and shall not prejudice the author's right to contract for the separate publication of any of them.

3. The author who exercises any of the rights referred to in the preceding paragraphs shall safeguard the benefits guaranteed to the publisher in the previous contract.

#### Article 84

##### Works for Reference or Teaching

1. Publishers of dictionaries, encyclopedias or educational works may update or complete such works after the author's death by means of notes, addenda, footnotes or small alterations in the text.

2. Updates and alterations under the foregoing paragraph shall be duly mentioned where the texts concerned are signed or contain doctrinal material.

#### Article 85

##### Sale of Copies at a Reduced Price or by Weight

1. Where an edition has not gone out of print within the period agreed by the parties or, in the absence of such agreement, within a period of ten years from the date of publication, the publisher shall have the right to sell the remaining copies at a reduced price or by weight, or to destroy them.

2. The author shall have a preferential right to acquire the copies referred to in the preceding paragraph.

3. For the purposes of the preceding paragraph, the publisher shall inform the author, by registered letter with acknowledgement of receipt, of his intention to sell, stating the price and other conditions.

4. On being so informed, the author shall have a period of eight or 30 days within which to exercise his rights, depending on whether or not he resides on the Territory, without prejudice to the possibility of being allowed a longer period.

#### Article 86

##### Death or De Facto Incapacity of the Author

1. Where the author dies or is prevented from completing the work after having delivered a substantial part thereof, his successors or representatives, if any, may terminate the contract, compensating the publisher for losses or damages.

2. Where the successors or representatives of the author do not exercise the right given them in the preceding paragraph within two months after the date of the author's death or declared incapacity, the publisher may choose to terminate the contract or consider it fulfilled with respect to the part delivered, and pay, in the latter case, the corresponding remuneration to the successor or representative.

3. Where the author has expressed the desire that the work should not be published unless complete, the contract shall be terminated and the incomplete work shall not be published under any circumstances, the publisher having to be reimbursed for any fees he may have paid to the author.

4. Only with the written consent of the author may the incomplete work be completed by another person.

5. A work completed by another person under the foregoing paragraph may only be published if a clear distinction is made between the original part and the addition, together with a mention of the authorship of each part.

#### Article 87 Transfer of Publishing Rights

1. The publisher may not, without the author's consent, transfer his rights and obligations under the publishing contract to third parties, either free of charge or against payment, except where the transfer is the result of the transfer of his business establishment.

2. Where the transfer causes the author a considerable prejudice, he shall have the right to terminate the publishing contract within a period of three months of being informed of the transfer, and the publisher has the right to compensation for losses and damages.

3. The inclusion of the rights under the publishing contract in the publisher's share in the capital of any commercial company shall be deemed to be a transfer of those rights.

4. The award of the rights under the publishing contract to any of the partners in the publishing company as a result of a judicial or extrajudicial liquidation shall not be deemed to be a transfer of those rights.

#### Article 88 Bankruptcy of the Publisher

1. Where the realization of assets in the publisher's bankruptcy proceedings involves the sale at a reduced price of all or a substantial number of the copies of the published work stocked by the publisher, the bankruptcy administrator shall inform the author not less than 20 days in advance so that he may take whatever steps he deems necessary to defend his interests.

2. The author shall have a preferential right to purchase copies auctioned at the highest price reached.

#### Article 89 Termination of the Contract

1. In addition to other cases specially provided for, the publishing contract may also be terminated:

a) by the author, where the publisher does not complete the edition within the period specified in Article 75;

- b) by either party, where the completion of publication is delayed for more than six months by a case of *force majeure*;
  - c) by the author, where a prohibition has been declared and imposed on the publisher;
  - d) by the author, where on the death of the individual publisher his establishment does not continue under one or more of his successors;
  - e) by the publisher, where the author does not deliver the original of his work by the time limit agreed;
  - f) by either party, where it is proved that there has been a serious failure to comply with any of the contractual clauses or any of the directly or subsidiarily applicable legal provisions.
2. Termination of the contract shall be without prejudice to the liability for losses and damages of the person responsible.

## SECTION II STAGE PERFORMANCE, RECITATION AND EXECUTION

### Article 90 Stage Performance

Stage performance is the presentation before an audience of a dramatic, dramatico-musical, choreographic, mimed or other similar work by means of dramatic interpretation, singing, dancing or music or by other appropriate means, either separately or together.

### Article 91 Authorization

1. The stage performance of a protected work, whether on premises to which access is restricted or without gainful intent, shall be subject to the author's consent, without prejudice to the provisions of Article 60.
2. The right of performance shall be deemed to be granted for a consideration, unless it is granted to amateurs.

### Article 92 Filming, Transmission and Reproduction

Authorization by the author shall be necessary for all or part of the stage performance of a work to be broadcast by radio or television, reproduced on phonograms or videograms, filmed or shown, without prejudice to any other authorization that might be required.

### Article 93 Proof of Authorization by the Author

Where the performance of a work that has not fallen into the public domain requires a license or administrative authorization, documentary proof that the author has consented to such performance shall be shown to the competent authority for it to be obtained.

#### Article 94 Stage Performance Contract

1. A contract by which the author authorizes an impresario to promote the performance of the work in public, and the latter undertakes to do so in accordance with the conditions agreed, shall be considered a stage performance contract.
2. The stage performance contract shall be drawn up in writing.
3. The contract shall precisely define the conditions on which the performance of the work is authorized, and in particular the period of time, the place, the author's remuneration and the manner of its payment.
4. Unless otherwise agreed, the contract shall not give the impresario the exclusive right of direct communication of the work by performance, nor shall it prohibit the author from publishing the work, by printing or reproduction or any other means, even where the work has never before been disclosed or published.

#### Article 95 Copyright

1. Unless otherwise stipulated, the stage performance contract shall give the author the right:
  - a) to make such changes in the work as he deems necessary, independently of the other party's consent, provided that they do not prejudice its general structure or detract from its dramatic or theatrical interest, or prejudice the programming of rehearsals and performances;
  - b) to be consulted on casting;
  - c) to attend rehearsals and give the necessary guidance regarding interpretation and direction;
  - d) to be consulted regarding the choice of collaborators for the artistic production of the work;
  - e) to object to performance where he does not consider the work sufficiently rehearsed, provided that he shall not abuse that right and unjustifiably delay performance, in which case it shall lawfully proceed and he shall be liable for losses and damages.
  - f) to verify the performance in person or through his representative, for which purpose both shall have free access to the place of performance.
2. Where it has been agreed in the contract that the performance of the work shall be entrusted to specific actors or performers, their replacement shall only take place with the consent of the contracting parties.

Article 96  
Obligations of the Impresario

1. Under the contract the impresario shall undertake to have the work performed in public within the agreed period, and in the absence of any agreed period within one year from the date of the conclusion of the contract, except in the case of dramatico-musical works, where the period shall be two years.
2. The impresario shall hold such rehearsals as may be necessary to ensure that the performance is carried out under satisfactory technical conditions, and in general shall make every effort expected of him in the circumstances to ensure the success of the performance.
3. The impresario may not make any changes to the text supplied to him without obtaining the author's consent.
4. The impresario shall whenever possible post on the premises in advance the program or other publicity material that shows clearly the title of the work and the identity of the author.

Article 97  
Performance of Unpublished Works

In the case of a work that has not yet been disclosed or published, the impresario may not disclose it before the first performance, except for publicity purposes according to standard practice.

Article 98  
Fraudulent Arrangement or Production of a Performance

1. Where unannounced works are fraudulently included in the program or works announced are not included, the said program having been agreed with the authors, the latter have the right to claim compensation, independently of any other liability that might exist.
2. The impresario shall not incur any liability or obligation where performers respond to insistent requests from an audience by performing other works in addition to those listed in the program.

Article 99  
Remuneration

1. The author's remuneration for granting the right to perform may consist of a lump sum, a percentage of the proceeds from performances or a certain sum for each performance, or it may be determined on another basis laid down in the contract; a combination of the said forms may also be used.
2. Where remuneration is determined by the proceeds from performances, it shall be paid within ten days after the relevant performance, unless otherwise agreed.

3. Where remuneration is determined by the proceeds from each performance, the author shall have the right to verify those proceeds, either in person or through a representative.

Article 100  
Burden of Proof

When the impresario is prosecuted, he shall be under the obligation to prove that he has obtained the author's authorization for the performance.

Article 101  
Transfer of the Impresario's Rights

The impresario may not transfer the rights under the stage performance contract without the author's consent.

Article 102  
Termination of the Contract

1. A stage performance contract may be terminated:
  - a) in the cases corresponding to subparagraphs (c), (d) and (f) of Article 89(1), subject to adaptation as necessary;
  - b) by the impresario, in the case of obvious and continuous lack of public attendance at performances;
  - c) by the author, if the impresario uses fraudulent methods to conceal the true results of performances where his remuneration is determined by those results.
2. Termination of the contract shall be without prejudice to the liability for losses and damages of the party to whom they are attributable.

Article 103  
Recitation and Instrumental Performance

1. The recitation of a literary work and the performance of a musical or literary-musical work using instruments or instruments and singers shall be treated as a stage performance.
2. The provisions on stage performance contracts shall apply to contracts for recitation or for instrumental performance, provided that they are compatible with the nature of the work and its use.
3. The impresario shall give the author or his representative a copy, if there is one, of the program of a performance consisting in recitation or the playing of music.
4. The provisions of Article 95 shall not apply to recitation and instrumental performance.



SECTION III  
AUDIOVISUAL WORKS

SUBSECTION I  
SCOPE, OWNERSHIP AND REGIME

Article 104  
Scope

Audiovisual works means cinematographic works and those expressed by methods analogous to cinematography, including televised and videographic works.

Article 105  
Authorship

The following are deemed to be the authors of an audiovisual work:

- a) the director;
- b) the authors of the plot or the music, where created specially for the audiovisual production;
- c) the authors of the adaptation where a work not specially created for audiovisual production is adapted for that kind of use.

Article 106  
Lapse of Copyright

The copyright in an audiovisual work shall lapse 50 years after its disclosure.

Article 107  
Public Performance

Paragraph (4) of Article 96 and, subject to the necessary adaptation, the regime for recitation and instrumental performance shall apply to the public showing of audiovisual works.

Article 108  
Supplementary Regime

The provisions of the following subsection on cinematographic works shall apply, mutatis mutandis, to audiovisual works in general.

## SUBSECTION II CINEMATOGRAPHIC WORKS

### Article 109 Use of Protected Works

The use of protected works in a cinematographic production shall be subject to authorization by the authors concerned.

### Article 110 Authorization

1. The authorization granted by the authors of a cinematographic work for the production concerned shall specify the conditions governing the production and also the distribution and showing of the film.
2. The producer shall derive from the authorization of cinematographic production the right to produce the negatives, the positives, the copies and the magnetic recordings necessary for the showing of the works.
3. Unless expressly agreed otherwise, the authorization referred to in the preceding paragraph shall also imply authorization to distribute and show the film in cinemas open to the public, and to exploit it commercially by that means, without prejudice to payment of the agreed remuneration.
4. Special authorization by the authors of cinematographic works shall be required for their communication to the public in other forms by wire or wireless means, including radio or television broadcasting, cable distribution or satellite transmission, as well as for their reproduction, exploitation or presentation in the form of a videogram.
5. Broadcasting organizations shall have the right, without the author's consent, to communicate all or part of cinematographic works produced by them through their own transmission channels.

### Article 111 Exclusive Rights

1. Unless otherwise agreed, the authorization given by an author for cinematographic production of a work, whether specially created for that form of expression or adapted, shall imply the grant of exclusive rights.
2. Where the parties are silent, the exclusive rights granted for cinematographic production shall lapse 25 years after the conclusion of the corresponding contract.
3. The provision in the preceding paragraph shall not prejudice the rights of the party to whom the economic exploitation of the film has been granted to continue to show, reproduce and distribute it.

### Article 112 Economic Exploitation of the Work

1. Where the authors have expressly or implicitly authorized the showing of the cinematographic work, the producer has the right to the economic exploitation thereof, without prejudice to the application of the provision in paragraph (4) of Article 110.
2. The authors may not prevent the economic exploitation of the entire cinematographic work as a whole on the ground of violation of their personal rights in the work until a final judicial ruling has been obtained.

#### Article 113 Producer

1. The impresario who organizes the making of the cinematographic work, providing the necessary resources and assuming the corresponding technical and financial responsibilities, shall be considered the producer.
2. The producer shall be identified as such in the film.
3. Throughout the period of economic exploitation, unless the owners of the copyright have adopted other means of defending their rights in the cinematographic work, the producer shall be deemed to be their representative for that purpose, and he shall report to them on the way in which he carries out his mandate.
4. Unless otherwise agreed, it shall be lawful for the producer under contract to the authors to collaborate with other producers to ensure the production and economic exploitation of the cinematographic work.
5. The producer may also at any time transfer rights and obligations under the contract with the authors, in whole or in part, to a third party; he shall however remain responsible to them for the strict fulfillment of the said contract.

#### Article 114 Time Limit for Fulfillment of the Contract

1. Where the producer fails to complete production of the cinematographic work within a period of three years from the date of delivery of the literary and musical parts thereof, or fails to have the completed work shown within a period of three years from its completion, the author shall have the right to terminate the contract.
2. A cinematographic work shall be deemed to be completed when the director and the producer have agreed on its final version.

#### Article 115 Identification of the Authors and of the Adapted Work

1. The names of the authors of the cinematographic work shall appear in the film when it is shown, together with a mention of the contribution to the work made by each.
2. Where the cinematographic work is an adaptation of a preexisting work, the title of the latter shall also be mentioned and its author identified.

#### Article 116

## Transformations

1. The translation or dubbing or any other transformation of the cinematographic work shall be subject to written authorization by the authors.
2. Authorization to show or distribute a film in Macao shall imply authorization to translate it and subtitle or dub it in one of the official languages of the Territory.
3. Arrangements contrary to the provisions of the preceding paragraph may be made except where the law only allows showing of the work after translation or dubbing.

## Article 117

### Separate Use and Reproduction

The author of the literary part and the composer of the musical part of a cinematographic work may reproduce and use their contributions separately in any way, provided that this does not prejudice the economic exploitation of the cinematographic work as a whole.

## Article 118

### Remuneration

The remuneration of the authors of a cinematographic work may consist of a lump sum, a percentage of the proceeds derived from the showing of the film or a specified sum for each showing, or it may take any other form agreed upon with the producer.

## Article 119

### Proofs, the Original and Copies

1. The producer shall:
  - a) preserve appropriately the original of the cinematographic work, which he shall on no account destroy;
  - b) make copies or proofs of the cinematographic work only to the extent requested.
2. The producer may not, except with the author's agreement, sell the copies produced at a reduced price, even on the ground that there is a lack of demand for them.
3. The provisions of Article 88 on publishing contracts shall apply, *mutatis mutandis*, to bankruptcy of the producer.

## Article 120

### Supplementary Regime

The provisions concerning publishing contracts, amended accordingly, shall apply, *mutatis mutandis*, to cinematographic production contracts.

## SECTION IV

### FIXATION AND PUBLICATION OF PHONOGRAMS AND VIDEOGRAMS

Article 121  
Definitions

1. The contract by which the author allows others to fix the sounds or images of a protected work and to produce and sell copies of the fixation shall be considered a contract for phonographic or videographic fixation.
2. Fixation is the separate or combined incorporation of sounds or images in a sufficiently stable and durable material medium that allows them to be perceived, reproduced or communicated in any way for an indefinite time.
3. Phonograms are recordings of sounds from any source that are fixed in a material medium.
4. Videograms are recordings of images from any source, with or without accompanying sound, which are fixed in a material medium, including copies of cinematographic or other audiovisual works.

Article 122  
Public Performance, Broadcasting and Transmission

The phonographic or videographic fixation and publication contract shall not authorize the public performance, broadcasting or transmission in any form of the sounds or images of the works fixed, and shall not prevent the authors from authorizing others to make the uses referred to.

Article 123  
Use of Phonograms and Videograms

The acquisition of copies of phonograms or videograms shall not confer on the acquirer the right to use them for any kind of public playing or transmission, reproduction or commercial rental.

Article 124  
Identification of the Work and the Author

Copies of phonograms and a videograms shall show the title of the work and the identity of the author, printed either on them or on labels as their nature dictates.

Article 125  
Musical Works That Have Already Been Fixed

1. Independently of the author's consent, a musical work and the corresponding text that have been incorporated in a commercial phonographic fixation without opposition from the author may be fixed and published again.
2. The author of a work that is fixed and published again under the preceding paragraph shall be entitled to equitable remuneration.

3. The author may put an end to economic exploitation where the technical quality of the fixation referred to in paragraph (1) jeopardizes the satisfactory communication of the work.

Article 126  
Transformation

The adaptation, arrangement or other transformation of any work for the purposes of fixation, broadcasting, performance or showing by mechanical, phonographic or videographic means shall also be subject to authorization by the author, who shall specify the purpose or purposes for which the transformation is intended.

Article 127  
Scope

The provisions in this Section shall apply to the reproduction of a protected work by any process analogous to phonography or videography that already exists or may be invented in the future.

Article 128  
Supplementary Regime

The provisions on publishing contracts, shall apply, *mutatis mutandis*, to phonographic or videographic fixation contracts.

SECTION V  
BROADCASTING OF PROTECTED WORKS AND COMMUNICATION TO THE  
PUBLIC OF BROADCAST WORKS

SUBSECTION I  
BROADCASTING OF PROTECTED WORKS

Article 129  
Authorization for Broadcasting

Broadcasting of protected works shall be subject to authorization by the author.

Article 130  
Broadcasting of Fixed Works

Where the work has already been fixed for commercial purposes with the author's authorization, and its broadcasting or communication is envisaged, it shall not be necessary to obtain special authorization for each broadcast, without prejudice to the author's right to equitable remuneration.

Article 131  
Technical Prerequisites

1. The owners of the building from which the broadcast is to be made, the impresario and any other person involved in the making of the broadcast shall allow the installation of the equipment and the making of the technical tests necessary to ensure transmission quality.

Article 132  
Limitations

1. Mere authorization of broadcasting shall not imply authorization to fix the works broadcast.
2. It shall be lawful for broadcasting organizations to fix works for deferred broadcasting exclusively by their own transmitting stations.
3. The fixations referred to in the preceding paragraph shall be destroyed within a maximum period of three months, during which time they shall not be broadcast more than three times, without prejudice to the author's remuneration.
4. Notwithstanding the provisions of paragraphs (1) and (2) and without prejudice to the copyright, it shall be lawful to preserve fixations of exceptional documentary interest in official archives or, if they do not exist, in the archives of the Territory's radio and television organization.

Article 133  
Scope of Authorization

1. Authorization to broadcast a work shall apply to all live or deferred broadcasts carried out by the transmitting stations of the authorized entity, without prejudice to due remuneration of the author for each transmission.
2. A broadcast made at different times owing to programming or technical constraints by several stations in the Territory that belong to the same broadcasting channel or the same entity shall not be considered a new transmission.
3. Mere authorizations to broadcast shall not cover cable distribution or satellite transmission, which require special authorization.

Article 134  
Identification of the Author of the Broadcast Work

Broadcasts shall identify the author and the title of the work broadcast, with the exception of cases recognized by standard practice in which the circumstances and requirements of transmission necessitate the omission of identifying elements.

Article 135  
Supplementary Regime

The provisions concerning stage performance contracts shall apply, mutatis mutandis, to broadcasting and to dissemination by any process for the communications of signals, sounds or images.

## SUBSECTION II COMMUNICATION OF BROADCAST WORKS TO THE PUBLIC

### Article 136 Freedom of Reception

The mere reception of a broadcast work, even a public place, shall not require authorization by the author or entitle him to any remuneration.

### Article 137 Equitable Remuneration

The organization of entertainment consisting in the communication to the public of a broadcast work by loudspeaker or by any other analogous means of transmitting signals, sounds or images shall not require authorization by the author but shall entitle him to equitable remuneration.

### Article 138 Supplementary Regime

The provisions of Article 131 and the regime applicable to recitation and instrumental performance shall apply, mutatis mutandis, to the communication of broadcast works to the public.

## SECTION VI WORKS OF THREE-DIMENSIONAL, GRAPHIC AND APPLIED ART

### Article 139 Authors of Works of Architecture and Designer Works

The creators of the overall conception and plans for works of architecture and designer works shall be considered the authors of such works.

### Article 140 Reproduction

1. The reproduction of works of three-dimensional, graphic and applied art shall require authorization by the author.
2. The provisions on publishing contracts shall apply, mutatis mutandis, to the reproduction and sale of the works referred to in the preceding paragraph.
3. The repetition of the building of an architectural work according to the same plan shall likewise require authorization by the author.



Article 141  
Identification of Works

1. Authorization for reproduction shall identify precisely the work to be reproduced, such as by a summary description or a drawing, design or photograph.
2. Reproductions may not be offered for sale without the author having examined and approved a copy thereof.

Article 142  
Identification of the Author

1. It shall be mandatory to identify the author on every copy reproduced.
2. In the case of architectural works, it shall be mandatory to identify the author very legibly, not only on every copy of architectural studies and plans, but also on the construction site and the completed building.

Article 143  
Models or Instruments Used

1. Objects that have served as models and anything else used as a basis for reproduction shall be returned to the author when they are found to be no longer necessary.
2. Unless otherwise agreed, and provided that the author does not wish to acquire them, the instruments created specially for the reproduction of the work shall be destroyed or rendered unusable.

Article 144  
Execution of the Plan

1. The author of an architectural work or of a work of three-dimensional art incorporated in an architectural work has the right to supervise the construction and execution of his work at all stages and in every detail in order to ensure that the construction or execution conforms exactly to the plan, without prejudice to the provisions in the following paragraphs.
2. The proprietor of a work built or executed according to a plan drawn up by another person shall be free, either during construction or execution or after completion of the building, to make such changes to it as he sees fit, but he shall consult the author of the plan in advance, failing which he shall pay compensation for losses and damages.
3. Where there is no agreement between the proprietor and the author of the project, the latter may repudiate his authorship of the work as altered, and the owner of the work shall be prohibited from mentioning the name of the author of the original project for his own benefit.

Article 145  
Exhibition of Artistic Works

1. Only the author may exhibit or authorize another to exhibit his artistic works in public.

2. The disposal of an artistic work does not imply transfer of the copyright in it but does give the acquirer the right, unless otherwise agreed, to exhibit it in public.

Article 146  
Liability for Exhibited Works

1. The entity organizing an exhibition of artistic works shall be liable for the integrity of the works exhibited and shall insure them against fire, theft or robbery, transport risks and any other risk of destruction or damage.

2. The organizing entity shall also keep the exhibited works properly up to the end of the prescribed period of time prior to their return, and may not remove them from the exhibition site before the close of the exhibition.

Article 147  
Extension of Protection

1. The provisions in this Section shall also apply to scenery and fashion designs, cartoons for tapestries, models for ceramic panels and enamelled porcelain tiles, stained glass, mosaics, mural designs in relief, advertising posters and designs, book covers and any graphic creations that they may embody where they constitute artistic creations.

Article 148  
Lapse

The copyright in works of applied art shall lapse 25 years after the completion of the work.

SECTION VII  
PHOTOGRAPHIC WORKS

Article 149  
Demarcation of Protection

1. The only photograph that is protected by copyright is that which, by the choice of its subject or the manner of its execution, may be considered a personal artistic creation of the author.

2. Photographs that have mere documentary value, such as photographs of writings and documents, business papers, technical drawings and similar material, shall not be protected.

3. Stills from cinematographic films shall be considered photographs.

Article 150  
Rights of Others

The copyright in a photographic work shall be understood as being without prejudice to the provisions regarding the exhibition, reproduction and marketing of portraits or to the copyright in the work photographed.

Article 151  
Commissioned Photographs

1. Unless otherwise agreed, a commissioned photograph may be reproduced or its reproduction authorized by the person portrayed or by his successors independently of authorization by the photographer.
2. Remuneration shall be payable to the author where a reproduction of the portrait, made by the person photographed or his successors under the foregoing paragraph, has commercial character.

Article 152  
Photographs Published in Periodicals

It shall be lawful, independently of authorization by the author but without prejudice to the right to remuneration, to reproduce photographs published in newspapers, magazines or other periodicals where they relate to persons or current events or are of general interest in any way and the reproduction is intended for inclusion in another similar periodical.

Article 153  
Disposal of Negatives

Unless otherwise agreed, disposal of the negatives of a photographic work shall imply transfer of the economic rights in the work.

Article 154  
Compulsory Information

1. Where the author has affixed his identity or the date on which it was made on the photograph, that information shall also appear on any reproductions that may be made of it.
2. Photographs of works of three-dimensional art shall give the name of the author of the work photographed.

Article 155  
Lapse

The copyright in photographic works shall lapse 25 years after their completion, even if they have never been disclosed or published.

Article 156  
Extension

The provisions in this Section shall be applicable to works produced by any means analogous to photography.

SECTION VIII  
TRANSLATIONS AND OTHER DERIVED WORKS

Article 157  
Authorization by the Author

1. The translation of a protected work may only be done or authorized by the author thereof.
2. The authorization referred to in the preceding paragraph shall require the written form and, unless otherwise specified, shall not imply the exclusive grant of translation rights.
3. The beneficiary of the authorization shall respect the meaning of the original work.
4. To the extent necessary for the intended purpose of the translation, it shall be lawful to make changes to the original work that do not detract from it.

Article 158  
Additional Compensation of the Translator

The translator shall have the right to additional compensation where the publisher, the impresario, the producer or another entity uses the translation in a manner that goes beyond the conditions agreed upon or laid down in this Decree-Law.

Article 159  
Identification of the Translator

The identity of the translator shall appear on the copies of the translated work, on theatre posters, in the information that accompanies radio and television broadcasts, in film credits and in all other promotional material.

Article 160  
Publication of Translations

1. The rules on publication contained in Section I of this Chapter, with the exception of paragraph (3) of Article 73, shall apply, *mutatis mutandis*, to the publication of translations, whether the authorization for translation has been granted to the publisher or to the translator.
2. The publisher may require the translator to make the necessary changes to ensure respect for the work translated and, where that implies a particular graphic layout, the conformity of the translated work with that layout.
3. If the translator does not make the changes referred to in the preceding paragraph within 30 days, the publisher may have them made.
4. The publisher may also have the translation revised by another person where the nature of the work requires special technical knowledge.

Article 161  
Extension

The provisions contained in this Section shall apply, *mutatis mutandis*, to any transformation of a protected work, such as setting to music, orchestration, dramatization and cinema adaptation.

SECTION IX  
NEWSPAPERS AND OTHER PERIODICAL PUBLICATIONS

Article 162  
Ownership

1. Newspapers and other periodical publications shall be presumed to be collective works, and the copyright therein to belong to their proprietors.
2. The copyright in newspapers and other periodical publications shall not prejudice the copyright in the individual works that they carry, except as provided in this Section.

Article 163  
Titles of Periodicals

1. The title of a newspaper or other periodical publication that meets the conditions contained in Article 4 shall be protected in so far as the publication is issued regularly and is registered with the Publication Information Department as required by the corresponding legislation.
2. The use by another periodical of a title protected under the preceding paragraph shall not be permitted until one year has elapsed since the termination of the publication has been announced, in whatever manner, by the person authorized to do so, or after three years have elapsed since publication actually ceased.

Article 164  
Works Created Under an Employment Contract

1. Unless otherwise agreed, it shall be presumed that the economic rights in journalistic works produced in fulfillment of an employment contract and published or disclosed under the name of their intellectual creator shall belong to the latter.
2. In the absence of authorization by the owner of the copyright in the newspaper or periodical concerned, as a collective work, the works referred to in the preceding paragraph may not be published separately until three months have elapsed since the edition in which they appeared was placed in circulation.
3. In the case of works published as a series, the period referred to in the preceding paragraph shall start on the date of distribution of the issue in which the last work of the series appeared.
4. Unless otherwise agreed, the economic rights in journalistic works created in fulfillment of an employment contract and published or disclosed without the identity of the

intellectual creator being mentioned shall be deemed assigned to the owner of the copyright in the newspaper or periodical, as a collective work, in which the works appeared, and the intellectual creator may not publish them separately without the authorization of the said copyright owner.

Article 165  
Works of Independent Collaborators

1. Unless otherwise agreed, the economic rights in a work produced by an independent collaborator and carried in newspapers or periodical publications, even where it makes no mention of authorship, shall belong to the intellectual creator, who alone may reproduce the work or have it reproduced separately in a similar publication.
2. Without prejudice to the provisions of the preceding paragraph, the owner of the copyright in the newspaper or periodical publication that carries the work may reproduce freely the issues in which the said work was published.

SECTION X  
COMPUTER PROGRAMS

Article 166  
Subject Matter of Protection

1. The protection accorded to computer programs shall apply to the expression thereof, and shall not prejudice the free use of the concepts and principles underlying any elements of the program, such as the logic, the algorithms or the programming language in which the program is written.
2. For the purposes of protection, the relevant preliminary design material and corresponding documentation shall be treated as equivalent to a computer program.

Article 167  
Personal Rights

The personal rights of the author of a computer program shall not include the faculty referred to in subparagraph (c) of Article 7(3).

Article 168  
Ownership

1. A computer program produced within an enterprise shall be considered a collective work.
2. Where the computer program has been produced for another person or on commission, it shall be presumed that the rights in it have been assigned to the person for whom it was made or who commissioned it, unless expressly agreed otherwise or unless the contrary should emerge from the contract, and without prejudice to the provisions of Article 12(4).
3. The person who commissions the program or for whom it is created shall in any case have the right to make alterations to it, unless expressly agreed otherwise.

Article 169  
Renting

Commercial rental may take place without the author's authorization in so far as the computer program is not the main subject of the contract.

PART III  
RIGHTS RELATED TO COPYRIGHT

CHAPTER I  
GENERAL PROVISIONS

Article 170  
Scope

Performers, producers of phonograms and videograms, broadcasting organizations and impresarios shall be protected under the provisions in this Part.

Article 171  
Rights in Works Used

The protection of performers, producers of phonograms and videograms, broadcasting organizations and impresarios shall in no way affect the copyright in works used by them.

Article 172  
Exercise of Rights

The provisions on the methods of exercising copyright shall apply as appropriate to the exercise of related rights.

Article 173  
Private Use and Fair Use

The protection afforded by related rights shall not cover:

- a) private use;
- b) the use of excerpts from a performance, phonogram, videogram, broadcast or show for the purpose of information or criticism, or any other among those permitted by the quotations or summaries referred to in subparagraph (f) of Article 61;
- c) use for exclusively scientific or educational purposes without gainful intent;
- d) ephemeral fixation by a broadcasting organization;
- e) fixations or reproductions made by public bodies or the providers of services for reasons of special documentary interest or for archives;
- f) other cases in which the use of a work is lawful without the author's consent.

Article 174  
Extension of Protection

1. Notwithstanding the provisions of Articles 177, 184 and 190, performers, producers of phonograms or videograms and broadcasting organizations protected by international treaties applicable on the Territory shall also enjoy protection under those treaties.
2. The protection referred to in the preceding paragraph shall be granted subject to material reciprocity, except where precluded by the treaty.

Article 175  
Presumption of Consent

Where in spite of duly proven diligence on the part of the prospective user, it has not been possible to reach the owner of related rights, or where the latter has not responded within eight or 20 days, depending on whether or not he resides on the Territory, he shall be presumed to have consented to the use requested, without prejudice to the right to remuneration for that use.

CHAPTER II  
PERFORMERS

Article 176  
Definition

Performing artists, generically designated as performers, are actors, singers, musicians, dancers and other persons who present, sing, recite, declaim or in any way perform literary or artistic works.

Article 177  
Conditions for Protection

The protection of performers under this Chapter shall depend on the fulfillment of any of the following conditions:

- a) the performer is resident on the Territory;



- b) the performance takes place on the Territory;
- c) the performance is fixed on a phonogram or videogram, or the unfixed performance is included in a broadcast, and the phonogram, videogram or broadcast in question is protected under this Decree-Law.

Article 178  
Rights of Performers

The performer's authority shall be required for:

- a) the broadcasting or the communication to the public, by any means, of his performance, except where the performances used have already been broadcast or fixed;
- b) the fixation of performances that have never been fixed;
- c) the reproduction of a fixation of his performances that has not been authorized where the reproduction is for purposes different from those agreed to, or where the fixation has been made under the provisions of Article 173 and the reproduction is for purposes different from those provided for in that Article.

Article 179  
Authority to Broadcast

a) In the absence of agreement to the contrary, authority to broadcast a performance implies authorization of:

- a) the fixation of the performance;
- b) the broadcasting and reproduction of the fixations provided for in the preceding subparagraph;
- c) the broadcasting of the fixations provided for in subparagraph (a) by a broadcasting organization other than the authorized one.
- d) However, the performer shall be entitled to supplementary remuneration where the following activities not included in the original contract are undertaken:
  - a) rebroadcasting by the authorized broadcasting organization or another;
  - b) retransmission within the meaning of paragraph (3) of Article 189;
  - c) commercialization of fixations made for broadcasting purposes.
- e) The rebroadcasting and retransmission of a performance under the preceding paragraph shall entitle the performers who participated in the rebroadcasting and retransmission to receive, collectively, 20 per cent of the remuneration originally fixed
- f) The commercialization referred to in subparagraph (c) of paragraph (2) shall entitle the performers to receive, collectively, 20 per cent of the amount that the broadcasting organization which has fixed the performance receives from the purchaser.

g) The performer may agree with the broadcasting organization on conditions different from those referred to in the preceding paragraphs, but may not renounce the rights provided for therein.

Article 180  
Identification of Performers

The performer shall be identified by his name or pseudonym, in full or abbreviated form, whenever his performances are disclosed, except where otherwise agreed or where such identification is made unnecessary by the nature of the use, in particular in the case of exclusively aural musical programs, without any form of graphic expression, and those referred to in Article 134.

Article 181  
Representation of Performers

1. Where several performers participate in a performance, the leader of the group shall, in the absence of agreement, exercise the relevant rights.
2. In the absence of a leader of the group, the director shall represent the actors and the orchestra conductor or choirmaster shall represent the orchestra or the choir respectively.

Article 182  
Lapse

The rights of performers shall lapse 50 years after the performance.

CHAPTER III  
PRODUCERS OF PHONOGRAMS AND VIDEOGRAMS

Article 183  
Definition

A producer of phonograms and videograms, generically designated as a producer, is a natural or legal person who first fixes, either separately or together and for commercial purposes, sounds and images from any source.

Article 184  
Conditions for Protection

The protection of producers under this Chapter shall depend on the fulfillment of any of the following conditions:

- a) the producer is resident or effectively domiciled on the Territory;
- b) the fixation of sounds or images, either separately or together, takes place on the Territory;

c) the phonogram or videogram is published first, or simultaneously, on the Territory, simultaneous publication being understood as being the publication referred to in paragraph (3) of Article 52.

Article 185  
Rights of Producers

The producer's authority shall be required for:

- a) direct or indirect reproduction of the phonogram or videogram;
- b) distribution to the public of originals or copies, including commercial rental but excluding lending;
- c) importation and exportation of copies made without his consent.

Article 186  
Reference to Other Provisions

The provisions of paragraphs (2) and (4) of Article 27 and Article 79 shall apply, mutatis mutandis, to producers and to the authorization of reproduction of phonograms and videograms.

Article 187  
Identification of the Producer

The identity of the producer or of his representative shall appear on each copy of a phonogram or videogram or on its packaging.

Article 188  
Lapse

The rights of producers of phonograms and videograms shall lapse 50 years after fixation.

CHAPTER IV  
BROADCASTING ORGANIZATIONS

Article 189  
Definitions

1. A broadcasting organization is an entity that effects transmissions of sound or visual broadcasts.
2. Broadcasting means the dissemination of sounds or images, separately or together and by wire or wireless means, including electromagnetic waves, optic fibers, cable or satellite, for reception by the public.
3. Retransmission means the simultaneous transmission by one broadcasting organization of the broadcast of another broadcasting organization.

Article 190  
Conditions for Protection

The protection of broadcasting organizations under this Chapter shall depend on the fulfillment of one of the following conditions:

- a) the effective seat of the organization is located on the Territory;
- b) the transmission of broadcasts originates in a broadcasting station located on the Territory.

Article 191  
Rights of Broadcasting Organizations

1. The retransmission of the broadcasts of a broadcasting organization shall be subject to authorization by that organization.

2. The broadcasting organization shall also be entitled to equitable remuneration for the following acts:

- a) the fixation of its broadcasts;
- b) the reproduction of fixations of its broadcasts where fixation has not been authorized, or where the fixation is of an ephemeral nature and the reproduction is intended for purposes different from those for which the fixation was made;
- c) the communication of its broadcasts to the public in public places where an admission fee is charged.

Article 192  
Lapse

The rights of broadcasting organizations shall lapse 20 years after the broadcast.

CHAPTER V  
ENTERTAINMENT ORGANIZERS

Article 193  
Definition

An entertainment organizer is the person who organizes entertainments of any kind, including artistic productions and sporting events in particular.

Article 194  
Rights of Entertainment Organizers

The organizer of entertainments to which access is restricted may prohibit:

- a) the filming of performances in any medium without his consent;

b) the mere recording, without his consent, of the musical performance or any other essentially sound entertainment;

c) the communication to the public in the course of the performance, without his consent, of the images and sounds of the performance by broadcasting or any other means.

#### PART IV COLLECTIVE MANAGEMENT

##### Article 195 Collective Management Agencies

Collective management of copyright and related rights may only be exercised by legal persons with headquarters on the Territory that engage in that activity as their principal objective.

##### Article 196 Registration of the Agency

1. Collective management agencies shall be registered with the Department of Economic Services (hereinafter referred to as “the DSE”) at least 30 days before they start to operate.

2. For the preceding provision to take effect, the collective management agency shall submit to the DSE:

a) a certified copy of its statutes, with a mention wherever possible of the holders of the various administrative positions;

b) a list of holders of rights and of agencies of the same type located in other legal systems that it represents or proposes to represent.

##### Article 197 Representation Before the Court

1. Collective management agencies shall have the right to bring court action to protect the legitimate rights and interests of the parties represented by it with respect to copyright and related rights, except where the said parties object thereto.

2. Where the litigation concerns the personal rights of the party represented, the collective management agency may bring court action only on procurement of special powers of attorney.

##### Article 198 Obligation to Provide Information

Collective management agencies are obliged to provide any interested party with information concerning the holders of copyright and related rights that they represent, and also the conditions governing use of their repertoire.

Article 199  
Obligatory Communication

Collective management agencies are obliged to communicate the following to the DSE, within 30 days after their approval or adoption:

- a) amendments to their statutes;
- b) changes in the composition of their administrative organs;
- c) changes in the list of parties that they represent;
- d) agreements entered into with other entities of the same type, with entities representing users or with broadcasting organizations.

Article 200  
Certificates and Fees

1. The DSE shall supply information and shall issue certificates concerning the registrations provided for in Article 196 and the communications provided for in the preceding Article to any person who so requests.
2. The fees payable for registration and for the issue of certificates shall be fixed by Governor's Decision.

PART V  
CRIMINAL AND ADMINISTRATIVE INFRINGEMENTS

CHAPTER I  
GENERAL PROVISIONS

Article 201  
Determination of Severity of Penalty

When determining the severity of the penalties for the offenses provided for in this Decree-Law, the court shall have particular regard to the quantity of illegal copies brought into circulation and the economic benefits gained by the offender.

Article 202  
Liability of Legal Persons

1. With respect to the fines, indemnities and other payments to which offenders are condemned for infringements provided for in this Decree-Law, legal persons shall be jointly liable where offenders acted in their name and in the collective interest.
2. Mere associations and de facto groupings shall be equivalent to legal persons.

CHAPTER II  
ADDITIONAL PENALTIES

Article 203  
Applicable Additional Penalties

1. The following additional penalties may be inflicted with respect to the offenses referred to in this Decree-Law:
  - a) a good conduct bond;
  - b) temporary prohibition from exercising certain activities and professions;
  - c) temporary closure of establishments;
  - d) permanent closure of establishments;
  - e) publication of the sentence.
2. Additional penalties may be combined.
3. Failure to submit to additional penalties, even through an intermediary, shall make the offender guilty of the offenses provided for in Article 317 of the Criminal Code.

Article 204  
Commitment to Good Conduct

1. A good conduct bond obliges the party concerned to deposit for a period of six months to two years, which shall be specified in the sentence, an amount of 10,000 to 3,000,000 patacas at the discretion of the court.
2. A good conduct bond shall be ordered as a matter of principle where the court hands down a suspended sentence.
3. Where the offender is found guilty of committing any of the offenses provided for in this Decree-Law within the period set, the bond shall be forfeited to the Territory.

Article 205  
Temporary Prohibition from Exercising Certain Activities or Professions

1. The court may order temporary prohibition from exercising certain activities or professions under the following circumstances:
  - a) where the offense is committed in flagrant and manifest abuse of the profession, or in the pursuit of an activity undertaken in execution of a public assignment or with the authorization or approval of the public authorities;
  - b) where an infringer has been previously condemned to additional penalties for an offense provided for in this Decree-Law, except where more than five years have elapsed between the commission of the two offenses, which period shall not include any time during which the infringer is deprived of freedom by virtue of a court ruling.

2. The duration of the prohibition shall be a minimum of two months and a maximum of two years.

3. The provisions of paragraphs 3 and 4 of Article 61 of the Criminal Code shall apply as appropriate.

#### Article 206

##### Temporary Closure of Establishments

1. Temporary closure of establishments may be ordered for a minimum of one month and a maximum of one year where the offender is sentenced to imprisonment for more than six months for an offense provided for in this Decree-Law.

2. The application of this penalty shall not be obstructed by the transfer of the establishment or by the assignment of rights of any kind related to the exercise of the profession or activity, except where the acquirer was acting in good faith at the time of the acquisition.

3. Temporary closure of establishments shall not constitute a valid reason for the dismissal of workers, or a basis for suspension or reduction of the payment of relevant remuneration.

#### Article 207

##### Permanent Closure of Establishments

1. Permanent closure of establishments may be ordered under the following circumstances:

a) where the offender has been previously sentenced to imprisonment for offenses provided for in this Decree-Law, and the circumstances show that the previous sentence or sentences did not constitute adequate prevention of the offenses;

b) where the offender has been previously condemned to the penalty of temporary closure of establishments;

c) where the offender is sentenced to imprisonment for an offense provided for in this Decree-Law that has resulted in considerable loss or damage or affected a large number of persons.

2. The provisions of paragraph (2) of the preceding Article shall apply to the permanent closure of establishments.

#### Article 208

##### Publication of the Sentence

1. Where the court imposes the additional penalty of publication of the sentence, that penalty shall be enforced by the affixing of an official notice and the publication of an announcement at the expense of the condemned party, and the provisions of the Civil Procedure Law on the summoning of unreliable persons by publication shall apply, *mutatis mutandis*.



2. The publication of the sentence shall be in the form of extracts from the verdict, which shall include elements of the offense and the sanctions imposed, and also the identity of the offender or offenders.

3. The official notice shall be affixed, for a period of no fewer than 15 days, at the establishment itself or on premises where the acts were committed, in such a way as to be easily visible to the public.

### CHAPTER III OFFENSES

#### Article 209 Appropriation of Protected Works

1. Those who, with intent to cause prejudice to others or secure unlawful gains for themselves or for third parties, make or authorize use, as their own creations, of works that are mere reproductions, in whole or in part, of the works of others, thereby causing prejudice to the authors concerned, shall be punished with imprisonment for a term not exceeding three years, or with a fine not exceeding 360 days.

2. Where the work appropriated is unpublished, the offense shall be punished with imprisonment for a term not exceeding four years, or with a fine not exceeding 480 days.

3. Criminal proceedings shall be initiated on a complaint.

#### Article 210 Violation of Unpublished Works

1. Anyone who, knowing or having reason to know the intention of the holder of the right of publication or disclosure, even where it is a presumed intention, publishes or discloses an unpublished work against the latter's wishes, shall be punished with imprisonment for a term not exceeding one year, or with a fine not exceeding 240 days.

2. Criminal proceedings shall be initiated on a complaint.

#### Article 211 Counterfeiting of Protected Works

1. Those who, with intent to secure unlawful gains for themselves or for third parties, directly or indirectly reproduce, in whole or in part, on an industrial scale, the protected works, phonograms or videograms of others without the authority of the holder of the right of reproduction, shall be punished with imprisonment for one to four years.

2. The attempt shall also be punishable.

#### Article 212 Commercialization of Unlawful Copies

1. Those who, with intent to secure unlawful gains for themselves or for third parties, knowing or having reason to know of the appropriation or counterfeiting, sell, offer for sale,

store, import, export or otherwise distribute on an industrial scale copies of appropriated works or copies of counterfeited works, phonograms or videograms, whether made inside or outside the Territory, shall be punished with imprisonment for a term not exceeding two years or with a fine not exceeding 240 days.

2. The attempt shall also be punishable.

#### Article 213

##### Neutralization of Protective Devices

1. Anyone who, with intent to make or permit others to make unlawful copies, uses, manufactures, imports or commercializes any equipment designed to neutralize a technical device that the holders of the right of reproduction of protected works, phonograms or videograms use to prevent or hamper unauthorized reproduction shall be punished with imprisonment for a term not exceeding two years or with a fine not exceeding 240 days.

2. The attempt shall also be punishable.

#### Article 214

##### Removal or Alteration of Information

1. Anyone who, with intent to infringe or permit others to infringe the rights provided for in this Decree-Law, removes or alters any notice, information or code used by a holder of rights on the original or copies of a protected work, phonogram or videogram so as to identify that work, phonogram or videogram, or the rights in it, or the holder of those rights, shall be punished with imprisonment for a term not exceeding two years or with a fine not exceeding 240 days.

2. Anyone who, with the same intent, removes or alters any notice, information or code used by a holder of rights on the original or copies of a protected work, phonogram or videogram so as to identify the terms on which the work, phonogram or videogram may be used, or the origin of the copies shall receive the same punishment.

3. In the cases provided for in the preceding paragraphs, the attempt shall also be punishable.

### CHAPTER IV

#### ADMINISTRATIVE INFRINGEMENTS

#### Article 215

##### Infringements in Collective Management

1. The exercise of the activity of collective management of copyright and related rights by a natural person or a legal person domiciled outside the Territory shall be punished with a fine of 50,000 to 500,000 patacas.

2. The exercise of the activity of collective management of copyright and related rights by an organization domiciled on the Territory but not registered with the DSE in accordance with Article 196 shall be punished with a fine of 40,000 to 400,000 patacas.

3. Failure by a collective management agency to make the obligatory communications provided for in Article 199 shall be punished with a fine of 10,000 to 40,000 patacas.

#### Article 216

##### Repetition of Administrative Infringements

1. In the event of repetition of the infringements referred to in this Decree-Law, both the minimum and maximum limits of fines shall doubled.
2. There shall be repetition where the same infringement is committed less than one year after a previous one that has given rise to a final condemnatory decision.

#### Article 217

##### Competence for Imposition of Fines

The DSE shall be competent to impose fines for the infringements provided for in this Decree-Law.

#### Article 218

##### Payment of Fines

1. A fine shall be paid within 30 days from the date of notification of the condemnatory decision imposing it.
2. Where a fine is not paid within the period specified in the preceding paragraph, it shall be subject to enforced collection in accordance with taxation procedures, and the certificate attesting the condemnatory decision imposing it shall serve as a warrant for collection.
3. Appeals from fines imposed shall lie to the Administrative Tribunal.

#### Article 219

##### Destination of Proceeds from Fines

The proceeds from fines imposed and collected under this Decree-Law shall constitute revenue for the Territory.

### PART VI FINAL PROVISIONS

#### Article 220

##### Protection Under Other Legal Provisions

The provisions of this Decree-Law shall not prejudice the protection provided under unfair competition, industrial property or any other legislation.

Article 221  
Application in Time

1. The protection provided by this Decree-Law shall cover the works, phonograms, videograms, performances and broadcasts whose term of protection under it has not expired, without prejudice to legal transactions validly conducted under the previous legislation.
2. The protection of entertainment organizers shall cover only those performances that take place after the entry into force of this Decree-Law.
3. The exclusive rights of commercial rental provided for in this Decree-Law shall cover only those copies acquired by the renter after January 1, 2000.

Article 222  
Legislation Repealed

1. Decree-Law No. 46980 of April 27, 1966, as extended to Macao by Governor's Decision No. 679/71 of December 7, 1971, both of which were published in the Official Bulletin on January 8, 1972, is hereby repealed.
2. The following are also repealed:
  - a) Articles 65 to 68 of Decree-Law No. 13725 of May 27, 1927, as extended to Macao by the Declaration of the Directorate General of the Central Services of the Ministry of Colonies of April 29, 1930, and published in the Official Bulletin on June 21, 1930;
  - b) Decree-Law No. 19/85/M of March 9, 1985;
  - c) Law No. 4/85/M of November 25, 1985;
  - d) Article 2 of Decree-Law No. 17/98/M of May 4, 1998.

Article 223  
Entry into Force

This Decree-Law shall enter into force on October 1, 1999.

Approved on July 30, 1999.

Publication is hereby ordered.

Acting Governor:        *Vitor Rodrigues Pessoa.*