

**DRAFT**

**REVISED COPYRIGHT LAW**  
**[Law No.101/III/90 of 27 December 1990]**

**OF**

**THE REPUBLIC OF CAPE VERDE**

**LAW 101/III/90**  
**TITLE I**  
**Works Protected and Copyright**

**Preliminary provisions**

**CHAPTER I**  
**Definition of the Object**

**Article 1**  
**Object**

The present object of this law aims at the protection of literary, artistic and scientific fields work, in whatever form, and the inherent rights of their authors, by stimulating the original intellectual creations in the literary, artistic and scientific domains.

**Article 2**  
**Scope of application**

The rules governing the present law shall apply to:

a) All intellectual creations in the literary, artistic and scientific fields, whether published or not,

1) whose authors are **nationals** of Cape Verde,  
or

2) whose authors are **nationals of another country and ~~or~~ have habitual residence** in the Republic of Cape Verde **or in a country that is a party to an international convention to which Cape Verde is also a party, or**

3) whose authors are **nationals of a country that is party to an international convention to which Cape Verde is also a party;**

4) **protected under the Berne Convention (1971) and whose country of origin is other than Cape Verde**

b) Works that have been first time published in the Republic of Cape Verde, **or in a country that is party to an international convention to which Cape Verde is also a party, or simultaneously in a country that is party to an international convention to which Cape Verde is a party and in a country that is not such a party;** regardless of **the** author's nationality, or country of residence;

c) Works from foreign non-resident authors in the territory of the Republic of Cape Verde, which publications are subsequent to the coming into force of this law, by virtues of and in accordance with the provisions of any international convention to which the Republic of Cape Verde is a party, or is in the process of accession, provided that the reciprocity regime is observed as far as the protection of works from Cape-Verdean authors in those countries go.

d) The rules governing the present law shall apply to

(1) authors of cinematographic works the maker of which has his headquarters or habitual residence in Cape Verde or, regardless of whether an author meets the conditions of this article 2, paragraphs (a) and (b), authors of cinematographic works the maker of which has his headquarters or habitual residence in a Cape Verde or a country that is party to an international convention to which Cape Verde is also a party;

(2) authors of works of architecture erected, or of other artistic works incorporated in a building or other structure located, in, a country that is party to an international convention to which Cape Verde is also a party

e) For purposes of this article 2, paragraph b), a work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

### **Article 3 Copyright protection**

1. The protection granted by the present law shall

a) **not be subject to** any formality, filling or registration, whatever their type, form of expression, content, merits, objective or operational method of the works to which they apply;

b) be independent of protection in the country of origin of the work for works having a country of origin other than Cape Verde;

c) be given to authors in respect of works for which they are protected under the Berne Convention (1971) whose country of origin is other than Cape Verde, the same as granted to Cape Verde nationals;

d) be given to authors who are not nationals of the country of origin of the work, the same as granted to Cape Verde nationals.

2. Author's right to work shall be independent of the right to claim authorship in the material objects used for its usage and the industrial property rights that are likely to exist on the works.

### **Article 4 Limitations of use**

Under the present law, the inherent rights granted to the authors on their literary, artistic and scientific works, shall be in accordance with the overall objectives and interests of the Republic of Cape Verde, and with the principles underlying the social need for a wide dissemination of those works.

## **Article 5**

### **Definition of Copyright**

1. Copyright shall grant to the creator of literary, artistic and scientific works, exclusive rights to enjoy and dispose of his work, to exploit it and to use it, or to authorize its total or partial exploitation or use by a third party.
2. Copyright shall include personal rights and property rights, termed moral rights.
3. Property rights may be transmitted by all means foreseen in the moral rights, but only under the terms of this law.

## **Article 6**

### **Other definitions**

For the purpose of this law, the following terms have the following meanings:

- a) *Works* - are original intellectual creations in the literary, artistic and scientific domain, which protection is extensive to their authors from the moment of their creation, under the terms of this law;
- b) *A published work* - shall mean a work reproduced with the consent of its author, however the copies are produced, provided that they are effectively made available to the public in such a way as to meet their—reasonable requirements of the public, having regard to the nature of the work; the performance of a dramatic, dramatic-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.
- c) *First time published work* - is a work which first publication has been carried out either in the Republic of Cape Verde or in a country that is party to an international convention to which Cape Verde is also a party, or simultaneously in a country that is party to an international convention to which Cape Verde is a party and in a country that is not such a party;
- d) *Joint authorship and collective work* - a work that has been created by a number of persons, disclosed or published in the names of all or some of the co-authors, whether or not it is possible to distinguish their individual contributions ;
- e) *A collective work* - is a work that shall belong to the single or collective entity that has organized and directed its creation by initiative, with the understanding that it will be disclosed or published by the latter under his own name.
- f) *A composite work* - shall be deemed to be a work incorporating all or part of a pre-existing work with the consent, but without the collaboration of its author; (\*\*how are “public domain works” treated under this definition – they can be “pre-existing works?”)

g) *Audiovisual work* - is the showing of related images which impart the impression of motion with or without accompanying sounds, or the making of the recorded sounds audible at a place or at places susceptible of being made visible and audible, by allowing its perception, in an ephemeral manner.

h) *Folkloric parodies* - a set of works created in the territory of the Republic of Cape Verde, and other literary or musical compositions, even if inspired by the theme or subject of another work by anonymous or unidentified authors, or works lawfully disclosed or published, whose identity is not revealed, by generations and shall constitute as result, one of the fundamental elements of the Cape Verde's cultural and traditional property.

i) *Communication to the public* - means the making of a literary, artistic and scientific work available to the public in such a way that members of the public may access these works from any means chosen by them;

j) *Public performance* - means the recitation, playing, dancing, acting, or otherwise performing the work, either directly or by means of any device or process performed in public by any means.

k) (\*\*no text at this point in the copy of the law provided to me)

l) *Reproduction* - is the making of one or more copies of a literary, artistic and scientific work in any form, any material and by any manner, including in graphic form or a sound recording or musical work;

m) *Broadcast works* – shall mean those works created for the specific purposes of audio or visual broadcasting, on the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission by satellite is also re-broadcasting where the means for decrypting are provided to the public by the broadcasting organization.

n) *Distribution* - is the act of placing at the public's disposal, directly or indirectly, a significant amount of to cinematographic works, phonographic works or video graphic works, for sales or rental purposes.

o) *A Computer program* - is a set of [statements or instructions](#) expressed in words, codes, schemes or in any other form, when incorporated in a medium that the computer can read, or causing the computer to perform or achieve a particular task or result, including its description, logorythm and back-up documents;

p) *Country of origin* – [for purposes of this law the definition of “country of origin” in Article 5\(4\) of the Berne Convention \(1971\) shall be applicable;](#)

q) *Related rights* – means the judicial protection ensured to the performers, artists or interpreters for their performances. (\*\*how is applicable “judicial protection” determined?)

r) Literary and artistic works – includes every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatic-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography.

## **Article 7**

### **Original works**

1. Original intellectual works in the literary, scientific and artistic fields, whatever their type, shall be object of copyright, and include in particular.

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

3. The existence of a work is independent of its disclosure, publication, use or exploitation by any means.

4. The object of copyright shall include the following:

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

b) lectures, lessons, addresses and sermons and related dissertation works, prepared for oral delivery or writing or other material form;

c) dramatic and dramatico-musical compositions and their production;

d) musical compositions, with or without words;

e) works of choreographic type or mime entertainment, which are expressed in written or any other form ;

f) audio-visual works including cinematographic, television, phonographic, video and radio phonic works;

g) works of applied art, including works of design that constitute artistic creations, painting, drawing, tapestry, sculpture, pottery, glazed tiles, engraving, lithography, pictorial illustrations and designs for works of arts;

h) photographic works and works produced by processes analogous to photography;

- i) works of applied art, industrial designs, and works of design that constitute artistic creations, whether or not protected as industrial property;
- j) illustrations, plans, maps, plans concerning architectural works, town planning, sketches, applied arts, geographical or topographical or sciences or other sciences;
- l) computer programs, [whether in source or object code, shall be protected as literary works](#);
- m) parodies and other literary musical compositions.

## **Article 8**

### **Derivative works**

The following shall be deemed to be original works, and the protection granted to them shall not prejudice the rights recognized to the authors of the corresponding original work:

- a) translations, adaptations, arrangements [of music other alterations of a literary or artistic work](#), instrumentations, dramatizations, even if it has not been the subject of protection, [provided, that the adaptation into any other artistic form of a cinematographic production derived from a literary or artistic work shall, without prejudice to the authorization of the author of the cinematographic production, remain subject to the authorization of the author of the original work](#);
- b) collections of literary works such as anthologies, encyclopaedias, dictionaries and abridgements or selections which, by reason of the selection [and arrangement of their contents, constitute intellectual creations without prejudice to the copyright in each of the works forming part of the collection](#);
- c) systematic or summaries and collections of texts of conventions, laws, regulations, decrees, administrative or legal decisions, or decisions by any body or authority of the State or administration.
- d) parodies and other literary or musical compositions, even if inspired by the theme or subject of another work.
- e) [compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.](#)

## **Article 9**

### **Titles of Works**

The protection granted to literary, scientific and artistic works shall extend to its title, provided that it shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, and is original cannot be confused with the title of any other work of the same nature by another author which has previously been disclosed or published, and not consisting of the generic, necessary or habitual designation of the subject matter of works of a certain kind, names of historical or literary and mythological personages.

## **Article 10**

### **Unprotected works**

1) The following may not be protected:

- a) news of the day and reports of events given simply for information, however disclosed, [or to miscellaneous facts having the character of mere items of press information](#);
- b) official texts, of a legislative, administrative or legal nature, petitions, allegations, complaints and other texts submitted in writing or orally to public authorities or services [and official translations of such texts](#);
- c) political speeches, except when assembled by their authors;
- d) [ideas, procedures, methods of operation or mathematical concepts as such, regardless of the form in which they are described, explained, illustrated, or embodied in a work.](#)

## **CHAPTER II**

### **Rules on Copyright Ownership of works**

## **Article 11**

1) Unless otherwise provided in the legal provisions or conventions, otherwise expressed for moral rights, ownership of copyright belongs to the author of the work, or the physical persons who created it, considering in such cases those who deemed that ownership of copyright has been carried out on behalf of a name or pseudonym, and communicated to the public, with no regard for the means used in such communication.

2) Any entity that has in any way subsidized or financed the preparation, conclusion, disclosure, or publication of a work, communicated as public interest, shall not thereby obtain any of the powers derived from the copyright, unless there is written agreement or a legal provision to the contrary.



3) Without prejudice for the copyright law, ownership of copyright in a work made to commission or on behalf of another person, either in fulfilment of official duties or under an employment contract, shall be determined in accordance with the relevant agreement. (\*\*Is it intended the agreement should be a "written agreement?")

## **Article 12**

### **Identification of the author**

1. The author may indicate his authorship either by using his own name in full or in part, his initials, a pseudonym, or any other conventional symbol.
2. The use of a literary, artistic or scientific name liable to be confused with another name previously used in a disclosed or published work, even where it is of a different nature, or the use of the name of a person who is well-known in the history of literature, the arts or science, shall not be permitted.

## **Article 13**

### **Works by anonymous author**

Any person who discloses or publishes a work with the consent of the author using a name which does not reveal the author's identity or authorship of his work, shall be deemed to be the author's representative and shall be responsible for defending the author's relevant rights, unless the author has specified otherwise.

## **Article 14**

### **Joint authorship and collective work**

1. Unless otherwise stipulated, copyright in a work of joint authorship, when it has been disclosed or published in the names of all or some of the co-authors, as a whole shall belong to all those who collaborated therein the parts belongs to them and shall be deemed to be of equal value, and the joint exercise of this right shall be subject to the regulations governing joint ownership.
2. For a work of joint authorship, when it is possible to distinguish the individual contributions of a work that has been carried out by a single or collective collaborators, any of the authors may individually exercise his rights, related to his individual contribution provided that the latter can be distinguished and it is not affected by the usage of the common work.

## **Article 15**

### **Collective works**

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

2) Where it is possible to distinguish the individual contributions of some or all of the authors in a collective work, the provisions on individual contributions to works of joint authorship cited in nº 2 of article 14 shall apply.

3) Newspapers and other periodicals shall be deemed to be collective works and copyright therein shall belong to the respective enterprises.

## **Article 16**

### **Composite works**

1) The rights pertaining to a composite work shall belong exclusively to its author, without prejudice to the rights of the author of the pre-existing work, incorporating all or part of it.

## **Article 17**

### **Folkloric parodies**

1. Ownership of copyright in Cape-Verde folkloric parodies belong to the State, which exercises that right through the cultural governmental department in charge of the cultural area, without prejudice for those who have collected, transcribed, arranged or translated, provided that they are in essence originally authentic.

2. The set of Cape -Verde folkloric parodies and other works created abroad without the authorization of the authorities, can only be imported or distributed in the territory of the Republic of Cape Verde, under authorization of the government department in charge of the Cultural area and shall constitute as result, one of the elements of the Cape Verde's cultural and traditional property.

## **Article 18**

### **Determination of Ownership in special cases**

1. Without prejudice to the moral rights, ownership of copyright in a work carried out in fulfilment of official duties, under an employment contract, shall remain the property of the person or entity on whose behalf the work is carried out and is responsible for its production, and in the absence of any agreement, it shall be deemed that ownership of copyright in a work carried out on behalf of another person belongs to the intellectual creator.

2) In the absence of the provisions of nº 1, the creator shall be entitled to special remuneration, in addition to the agreed remuneration and whether or not the work is disclosed or published.

3) Without prejudice for the collaborators and their subsequent contributions or pre-existing incorporated works, in accordance with paragraph 2 of articles 14, 15 and 16, ownership of copyright belongs to :

a) its author, when dealing with cinematographic works (**\*\*\*to the extent this law is interpreted to mean that authors who have brought contributions to the making of a cinematographic work are owners of copyright in the work, this law should**

provide – according to Berne Article 14bis(2)(b) – “that such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.”

– \*\*\*also, - according to Berne Article 14bis(2)(c) if this is the case, this law should indicate whether there should be a written agreement or written act of the same effect that makes the foregoing limitation applicable if the maker of the cinematographic work has his headquarters or habitual residence in Cape Verde - \*\*\*if protection is claimed in Cape Verde and the limitation is deemed applicable, this law should provide for such agreement or act. – related to these points is –Berne Article 14bis(3)- which provides that unless the national legislation provides to the contrary, the provisions of Article 14bis (2)(b) shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, or to the principal director thereof)

b) the visual or sound broadcasting, for cases of radio or television broadcasting programmes ;

c) its respective author or editor, in the case of journals, revues, or other periodic publications ;

d) the entry that shall promote its elaboration, in the case of computer programmes.

### **CHAPTEER III**

#### **Duration of the rights and public domain**

#### **Article 19**

##### **General rules**

1) Without prejudice for the provisions of article 24, the duration of the present copyright for the economic exploration of the literary, artistic and scientific work, shall comprise those during the author's lifetime, and shall lapse 50 years after the death of the creator of the work, even in the case of works disclosed or published posthumously.

2) In the legislation of a foreign country attributes to the copyright a different time period from that stated previously, the duration of the right claimed in the territory of the Republic of Cape Verde for any other original work from that country shall be established in nº 1.

#### **Article 20**

##### **Works of joint authorship and collective works**

1) Copyright in works of joint authorship as a whole shall lapse 50 years after the death of the last surviving author. (\*\*Cape Verde may want to change to 70 years after death – which is a period many countries are now using)

2) Copyright in collective works or in works originally attributed to a collective entity shall lapse 50 years after the first disclosure or publication.

3) With regard to individual contribution that can be distinguished, the duration of copyright attributed to each author in works of joint authorship or in collective works shall lapse 50 years after his death.

4) In cases of collective work belonging to the singular entity, the copyright shall be 50 years from the end of the calendar year of authorized publication, or if there is no authorized publication within 50 years from the making the work, then copyright shall elapse 50 years from the end of the calendar year of making.

5) In the case of *inter vivos* transmission or alienation in executive process, the deadline of fifty years shall be counted in relation to the facts of transmission or alienation.

### **Article 21** **Posthumously works**

The protection of copyright for Posthumously works, benefiting the authors' successors, shall lapse 50 years after the author's death.

### **Article 22** **Anonymous and pseudonymous works**

1) The copyright of anonymous and pseudonymous works, shall lapse 50 years after it is lawfully disclosed or published, or if not lawfully disclosed or published within 50 years from the making of the work, then the term shall lapse 50 years from the end of the calendar year of making of the work.

2) If the author's identity is revealed before the established deadline,—or the pseudonym adopted by an author leaves no doubt as to his identify, the duration of protection granted shall be that established in paragraph 1 of article 19.

### **Article 23** **Audio-visual and cinematographic works**

1) Copyright of audiovisual works shall elapse 50 years after its communication to the public, upon disclosure within the same time period or, if not so communicated within 50 years from the end of the calendar year of making such works, then copyright shall elapse 50 years from the end of the calendar year of making.

2) Copyright of fictions works, phonograms or video grams, as well as pre-existing incorporated in an audiovisual works, are ruled by article 19, nº 1.

3) For cinematographic works the protection term is 50 years after work made publicly available with author's consent, or if not so publicly available within 50 years from making, then the term is for 50 years after making.

## **Article 24**

### **Phonograms**

The term of the protection to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place.

## **Article 25**

### **Broadcasts**

The term of protection granted pursuant to article 81 n2 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

## **Article 26**

### **Photographic works, works of applied art and computer programs**

Copyright in photographic works, in works of applied arts and computer programs shall lapse 25 years after [their making](#).

## **Article 27**

### **Calculation of the date of lapsing**

- 1) The dates of lapsing for the copyright established in the previous articles shall be shall be calculated from the 1<sup>st</sup> of January of the subsequent year for the facts referred in it and shall take effects up until the following that in which the period of protection ended.
- 2) Where the various parts or volumes of a work have not been published simultaneously, or in different time periods, the legal period of protection referred to previously in n° 1 shall apply to each part or volume.
- 3) The previously stated principles in n° 2 shall also apply to issues and numbers of collective works published periodically such as newspapers and magazines.

## **Article 28**

### **Folkloric parodies**

The copyright of folkloric parodies is unlimited in time.

## **Article 29**

### **Falling into the public domain**

1. A work shall fall into the public domain, whenever the rights conferred by the present law are expired in relation to the respective authors or their successors.
2. The following pertain to the public domain:
  - a) the works in relation to which the deadlines stated in articles 19 to 25;

b) the works of deceased authors which heritage has been declared in favour of the State, after ten years without its direct usage or authorization of usage by the third parties ;

c) folkloric parodies works.

3. The usage and exploration, for financial means of works that have fallen into the public domain is free on condition that such utilization accounts for the moral rights, to the previous authorization of the Government board in charge for Culture and the payment of a tax fee to be fixed by the Government Members in charge of Culture and Finances, for promotional and cultural development and the social assistance to the Cape Verde authors.

## **CHAPTER IV**

### **Transfer of rights**

#### **Article 30**

#### **Patrimonial rights**

1. The author of a protected work under the present law is conferred exclusive rights to practice or authorize use of the work by third parties under the following acts [and as set forth in Article 49](#):

a) the publication or reproduction of the work in any way and its subsequent distribution to the public ;

b) the communication of the work to the public in any way, namely the performance, execution, sound or visual broadcasting ;

c) the translation, adaptation, arrangement or any other transformation of the work.

2. The various methods of usage and economic exploration of the work are independent from one another, and the exercise of one part by of it by the author shall not affect the other part.

#### **Article 31**

#### **Authorization and transmission regimes**

1) Following the provisions of the rights conferred by the previous article, the author may:

a) authorize the use and exploration of the work by a third party in full or part of it;

b) transfer the patrimonial rights to the third parties in full or part of it.

2) In any case, the act authorizing for the use or exploitation of the work or the transfer of its subsequent rights of authorization must show specifically the

authorized form of exploration, as the relevant conditions governing duration, place, price and remuneration without prejudice, in the last case for the norms and tariffs to be established under the terms of article 110.

3) The authorization and transfer shall not affect, in any case, the moral rights.

### **Article 32 Authorization**

Simple authorization granted to a third party to use or exploit a work in any way shall not imply full or partial transfer of copyright regarding the work stated in the written document.

### **Article 33 Transfer**

1. The sole object of partial transfer or assignment shall be limited to the means of usage and exploitation duly indicated in the respective act, in which it is stated in writing.

2. Where the transfer or assignment is temporary and no duration has been laid down, it shall be considered that the maximum duration shall be 25 years in general but the exclusive right granted may lapse after a period of seven years of non usage.

3. Under penalty of nullity, the total and permanent transfer may only be effected by public deed identifying the work.

### **Article 34 Advance payment for future works**

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 10 years.

2. Where a contract concerns works produced over a longer period, its effects shall be limited to the period mentioned in the preceding paragraph and the remuneration provided for shall be reduced accordingly.

3. Any contract providing for transfer or assignment of future works without any time limit shall be null and void.

### **Article 35 Operation of the patrimonial rights ("operation ?")**

1. Patrimonial rights conferred to the copyright in future works may only apply to:

a) legal or voluntary usufruct.

b) seizure, for assuring the payment of the debts of the author's responsibility.

c) seizure and attachment

2. Unpublished manuscripts, sketches, drawings, paintings or sculptures, whether signed or not, shall be exempt from seizure and attachment when they are unfinished unless the author offers them or consents thereto.

3. Where the author, by his direct acts, shows his intention to disclose or publish the works referred to above, the creditor may obtain seizure and attachment of the corresponding copyright regarding the results of the economic exploration of the work.

4. The seizure, in accordance with this article does not confer to his creditor any rights as far as material support for the work is concerned.

### **Article 36** **Re-edition of works out of print**

1) Where the owner of the right to reedit refuses to use his right or to authorize another edition after the work has become out of print, any interested party, including the State, may seek legal authorization to reedit the work.

2) The legal authorization shall be granted provided that re-edition of the work is in the public interest and that the refusal was not based on justified moral or material reasons, excluding financial reasons.

3) The owner of the right to publish shall not be deprived of his right to undertake or authorize future editions.

4) The provisions of the present article shall be compatible with the provisions of the Penal and Civil Code.

5) The court shall determine the number of the samples to be reproduced and the amounts to be paid, in the absence of an agreement between the parties.

6. Appeals against the decision may be lodged with the Court of Appeal, which will give final judgment, and they shall have suspense effect.

### **Article 37** **Surviving rights**

1) An author who has transferred an original work of art or his own original manuscript or copyright in his own work, shall have the right to participation of surviving rights and the increase in the remuneration that shall be calculated according to the last transaction only.

2) Participation shall consist of an added value percentage on the increase of the price obtained in case that exceeds 10%.



3) This article shall not apply if the increase in price results exclusively from the currency depreciation.

### **Article 38**

#### **Additional compensation**

1) Where the intellectual creator or his successors in title, having transferred or assigned their right to exploit their work financially, suffer grave economic prejudice as a result of evident disproportion between their revenue and the profits earned by the beneficiary of the rights, they may claim additional compensation to be reflected in the results of the exploitation.

2) The additional compensation referred to in the preceding paragraph shall be fixed taking into account the payment for transfer or assignment of copyright is fixed in the form of participation in the income derived by the beneficiary from exploitation, the right to additional compensation shall only apply where the percentage established is evidently lower than that customarily paid in transactions of the same nature.

### **Article 39**

#### **Prescription**

Copyright may not be acquired by prescription.

## **CHAPTER V**

### **Moral rights**

### **Article 40**

#### **Definitions**

1) The moral rights over a copyright work shall be:

a) the right to claim authorship of a work and to ensure its authenticity and reference to the name or pseudonymous, heteronymous, or any distinctive sign whenever it is published, reproduced or communicated to the public;

b) the right to oppose the destruction, mutilation, distortion or other modification thereof and, in general, opposing any act which denatures the work and is liable to be prejudicial to his honour and reputation ;

c) the right to make any alterations of his work prior to, or to withhold it from publication ;

d) the author of a disclosed or published work may at any time withdraw it from circulation at any time and in any form of exploitation previously authorized for, except for the provisions of article 4 ;

e) the right to have access to the unique sample of the work, when used by third parties, in order to exercise the right of publication, disclosure or communication to the public ;

#### **Article 41**

##### **Non-transferable nature of moral rights**

1. The moral rights defined in article 39 shall be perpetual, inalienable and imprescriptibly and shall continue after the death of the author.
2. The State shall be responsible for the defense of the authenticity and totality of works within the public domain and this right shall be exercised by the Ministry of Culture.

#### **Article 42**

##### **Modification of works**

- 1) Modification of works without the author's consent shall not be permitted, even where use of the work without such consent is lawful.
- 2) Where the author has partially or wholly revised his work and has effected or authorized the disclosure *ne varietur*, his successors or third parties may not reproduce any of the previous versions.
- 3) In some cases authorization for the necessary modifications may be given, provided that the author does not object to them, or they do not affect the overall originality of the work;
- 4) Where a work is executed according to a project, the proprietor of the work may not, either during or after building, introduce any alterations without previously consulting the project's author, under penalty of compensation for damages.

#### **Article 43**

##### **Right of withdrawal**

The author of a disclosed or published work may at any time withdraw it from circulation and may terminate its use in any form, provided that he has justifiable moral reasons, but he shall compensate the interested parties for the prejudice caused, save for the provisions of article 4.

#### **Article 44**

##### **Moral rights in cases of pledge or attachment of copyright**

- 1) Where the purchaser of copyright in an attached and published work decides to publish it, the right to revise the proofs, to correct the work and, in general, the moral rights, shall not be affected.

2) In the case mentioned in the preceding paragraph, where the author retains the proofs without justification for a period exceeding thirty days, the printer may proceed without the revision.

## **CHAPTER VI**

### **Article 45 Exercise**

Copyright may be exercised by its owners or through agents appointed by them legally or voluntary.

### **Article 46 Posthumous works**

1) Upon the death of the author, following the provisions of article 114, in accordance with the Civil Code, the author's successors shall exercise the moral rights over the exploration of the undisclosed or published posthumous work, save in cases where the author has prohibited by any means its disclosure or publication.

2) Following the provisions of article 28, once the exploitation has been authorized for, successors shall enjoy the same rights as the author in respect to the work.

3) In the cases the opinion diverges amongst the successors regarding the exploration of the work, and serious moral rights shall be decided by the courts, and the opinion of the majority shall prevail on request through a petition addressed to the court where the process of heritage lies.

### **Article 47 Authors' representatives**

The national and foreign associations and bodies set up to administer copyright shall carry out that function as the representatives of the respective owners of copyright by reason of the fact that such owners are associates or members or are registered as beneficiaries of the services concerned.

### **Article 48 Authors in a state of incapacity**

1. An intellectual creator in a state of incapacity may exercise his moral through their legal representatives, regarding the patrimonial rights.

2. Moral rights may also be exercised by them upon agreement.

## **TITLE II Use of Works**

### **CHAPTER I General provisions**

#### **Article 49 Procedures regarding forms of Use**

1. The author of a literary, artistic and scientific work, shall have the exclusive right to enjoy and use or exploit his work, either in whole or in part, including, the right to authorize third parties in particular to disclose, publish and exploit it.

2. The author shall, have the exclusive right to carry out or to authorize the following, either by himself or by his representatives:

a) reproduction and publication either by printing or by any other method of graphic fixing or adapting any apparatus used for mechanical, electric, electronic or chemical reproduction, including reproduction by sound or visual recording;

b) performance, recitation, execution, exhibition or display to the public of the work and translations thereof, including public performance by any means or process and any communication to the public of the recitation;

c) its audiovisual registration and respective public communication by any means ;

d) diffusion of the work and translations thereof to the public by photography, telephotography, television, radio or by any other process for producing and diffusing signals, sounds or images, as well as public communication by loudspeaker or analogous instruments, and subsequent public communication by any means, including any communication to the public by wire or by re-broadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;

i) regulations applicable to this law shall prescribe the conditions under which the rights mentioned in this paragraph 47(d) may be exercised and shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by the competent Cape Verde authority;

ii) permission granted with respect to the rights mentioned in this paragraph 47(d) shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast and regulations applicable to this law shall prescribe conditions for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts;

e) direct or indirect appropriation in any form such as the sale or rental of copies of the work reproduced, provided, that in respect of at least computer programs

and cinematographic works, authors and their successors in title shall have the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works, subject to an exception in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of on authors and their successors in title, and subject to an exception in respect of computer programs regarding rentals where the program itself is not the essential object of the rental;

f) translation, adaptation, arrangement, instrumentation or any other transformation of the work or use in another work, including the cinematographic adaptation and reproduction of the work as well as the distribution, public performance, and communication to the public of the work thus adapted or reproduced;

3. The owner of the copyright shall have the exclusive right to decide freely upon the procedures and conditions of the work's use and exploitation, without prejudice for the provisions of articles 39 n° 2 and 102.

### **Article 50 Unrestricted use**

1. The following uses of a work without the consent of the author shall be lawful, at the absence of equitable remuneration to be paid to the author and to the publisher by the body that has carried out the reproduction, and mention, wherever possible, shall be made of the name of the author and of the publisher, of the title of the work and other elements are made, so as to enabling it to be identified and its genuine integrity are respected for:

a) the performance, execution, cinematographic exhibition and communication of broadcasted works in private places, for non-commercial purposes, or in schools for didactic or research purposes of professional training ;

b) reproduction by photography or by an analogous process of a work for exclusively didactic purposes, research or training purposes by libraries, archives and non-commercial documentation centres, scientific institutions or schools, provided that the samples being reproduced o not exceed the final purposes for which they were meant to serve;

c) the reproduction of works from television or film series previously exposed in public places, where representatives of media have taken part.

d) reproduction by social communication channels for information purposes of speeches, statements and lectures given in public, either as excerpts or in the form of summaries, where representatives of media have taken part.

e) inclusion of quotations or summaries from another author's work, whatever their type or nature, in support of one's own opinions or for purposes of criticism, discussion or teaching, on condition that they are not extensive so as to harm the normal exploitation of the work or interest for the stated work ;

f) performance of national anthems or officially adopted patriotic songs, as well as works of a religious character, during religious rites or services ;

f) performance of national anthems or officially adopted patriotic songs, as well as works of a religious character, during religious rites or services;

g) Reproduction or other forms of use employing brail or another system for blind persons of lawfully published works shall be permitted, provided that such reproduction or use is not for profit-making purposes.

h) reproduction, translation, adaptation, arrangement or any other transformation for exclusive individual and private use ;

i) quotation from a work which has already been lawfully made available to the public, provided making the quotation is compatible with fair practice and the extent of quotation does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

j) utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice; where such use is made, mention shall be made of the source and of the name of the author if it appears thereon;

k) reproduction by the press and the broadcasting or the communication to the public by wire, articles published in newspapers or periodicals on current economic, political or religious topics in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved; where such use is made the sources must always be clearly indicated;

l) reproduction by the press and the broadcasting or the communication to the public by wire, broadcasts on current economic, political or religious topics in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved; where such use is made the sources must always be clearly indicated;

2. The author who has reproduced in a book or “opuscule”, articles, published letters in newspapers, magazines, that may cause conflicts with other people shall also publish the answers from the adverse party at the same level and by any means, even after the publication by the other party.

3. The author who has reproduced manuscripts existing in libraries, public archives shall not oppose to these manuscripts being republished by third parties, following the original, except for cases in which such publication by the third party is an original reproduction from the person who first published that work.

4. Regulations applicable to this law shall prescribe the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the information purpose, be reproduced and made available to the public:

## **Article 51**

### **Licensing regime**

1. For exclusively didactic or research purposes in scientific domains, it is lawful, without the consent of the author, the purchase of a non-exclusive license, translation and publication in the Portuguese language or the national language, of any work that has been previously disclosed and the author has not withdrawn from circulation, or reproduction on condition that the following are considered:

a) 7 years have elapsed upon the first publication or reproduction in the original language, or 3 years for the Portuguese or in the national language, without the translation being previously published or the samples being out of print at that period;

b) The petition of a license is a proof that petition has been deposited, requesting for the translation, publication or reproduction by the author;

c) Once the translation, publication and reproduction of a work is carried out and samples are distributed in the Republic of Cape Verde, except for exports of those meant for the Cape-Verde citizens residing out of the country or organizations representing them, which prohibit their commercialization;

d) Remuneration shall be paid to the author for the rights of translation, publication and reproduction, in accordance with the international patterns, in a convertible money currency.

2. The license which is object of this code shall also be granted to a sound audiovisual broadcasting agency, based in the Republic of Cape Verde, upon the exclusive reasons mentioned above, provided that the translation and reproduction are carried out from a previously reproduced material. This license may also include analogous texts incorporated or integrated in fictions or audiovisual works, destined for schools or scientific purposes.

3. The author' title and name shall be stated in all the original samples being translated, published or reproduced.

4. The competence over the grant of a license referred to in 1 and 2 of this code, are not transferable, and are exclusive for the governmental department in charge for the area of culture.

## **Article 52 Procedure**

1. In the case of a legal dispute on the basis of the previous article and enforcement of rights protected under this Law, the provisions of the Civil Code shall apply

a) In order that the author of a literary or artistic work protected by this Law shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in Cape Verde, it shall be sufficient for his name to appear on the work in the usual manner even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.

b) The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.

c) In the case of anonymous and pseudonymous works, other than those referred to in paragraph a) above, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights; provided, however, that the provisions of this paragraph c) shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work.

d) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of Cape Verde, the regulations applicable to this Law shall designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights.

2. The process shall be carried out in the tribunal court of the domiciliation of the petitioner, under a payable compensation by the depositor of the complaint.

3. The decision of the court, has a suspense effect by the Supreme Court of Justice.

## **Chapter II Special Uses**

### **Section I Publishing**

#### **Article 53 Publishing contracts**

A publishing contract shall mean a contract by which an author grants a third party, subject to the conditions stipulated in the contract or provided for in the legislation, an authorization to reproduce graphically, on his own behalf, a



specified number of copies of a work or series of works, the third party being responsible for the distribution and sale of the work or works.

#### **Article 54**

##### **Other contracts**

1) Agreements by which the author gives the following responsibilities to a third party shall not be considered publishing contracts:

a) the production by the third party of a specified number of copies of a work and its stocking, distribution and sale, the parties having agreed between them to divide the profits or losses of the corresponding exploitation;

b) the stocking, distribution and sale of copies of the work against payment of a commission or any other form of remuneration.

c) production by the third party of a specified number of copies of a work and its stocking, distribution and sale, on behalf of the owner of the right and at his risk, against payment of a fixed or proportional sum;

d) The agreement upon which the bearer of the copyright protection of a work shall authorize third parties to produce, at the parties own expenses, certain reproduced samples and assure its distribution or sales provided that both profits and losses are shared among them, in the act of exploitation.

2. Contracts referred to in the preceding subparagraphs a) and by those governing contracts on the provision of services in respect of subparagraphs b) and c), are governed by the rules of contracts regarding service rendering and normal procedures related to trade.

3. Contracts corresponding to the situations mentioned in the preceding subparagraphs shall be regulated by the conditions stipulated therein, and subsidiarily by the legal provisions governing participatory associations in respect of subparagraphs a) and by those governing contracts on the provision of services in respect of subparagraphs b) and c), and additionally by customary usage.

#### **Article 55**

##### **Form and Content**

1. The contract of editing shall be in writing, and shall state the deadline for the delivery of the work, and subsequent conclusion, number of printed copies, price per unit, amounts to be paid, terms of payment and resolutions.

2. The contract of edit may be object of one or more original existing or future publications, under elimination in such cases of the provisions of article 35.

## **Article 56**

### **Obligations of the author**

The author is obliged to:

- a) Furnish the publisher with the means necessary to fulfil the contract, in particular, by handing over within the agreed period the original version of the work to be published in a way that enables the publisher to reproduce it. The original version referred to in the preceding paragraph shall be the property of the author and he shall have the right to require its return after publication.
- b) The author shall guarantee to the publisher the exercise of rights deriving from the publishing contract against opposition and disputes arising from the rights of third parties in the work to which the contract refers, but not against opposition and disputes simply engendered by third parties.
- c) Where the author unjustifiably delays handing over the original version so that the expectations of the publisher are jeopardized, the latter may cancel the contract, without prejudice to any claim for compensation for damages, except for the dispositions of articles 56 and 58 of the present law.

## **Article 57**

### **Obligations of the publisher**

- a) The publisher shall execute, promote, reproduce or publish the work with all due care so that reproduction can be carried out in accordance with the conditions agreed upon, within the deadline stipulated in the editing contract.
- b) The respect for the integrity of the work, 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, and only upon his consent.
- c) The publisher shall provide the author with a set of galley proofs, a set of page proofs and the draft design of the cover. The author shall correct the composition of these pages and shall give his opinion regarding the cover, under normal conditions, he shall then return the proofs within a period of 30 days and the draft design within a period of five days.
- d) On each copy of the work, the publisher shall mention the name or pseudonym of the author or another designation identifying him, and adopted by the author himself.
- e) Care shall be taken so as the reproduction of the publication is carried out in a conventional manner, in order to promote both the trade and distribution of the samples;
- f) The author shall be paid for his rights, by means and forms previously agreed upon, and oversight shall take place at the enterprise that carried out the reproduction of the samples.

g) The original work shall be returned to the author, for being object of the reproduction, after the process is accomplished.

2) Except for the author's option regarding the aesthetic nature of the spelling, modernization of spelling and correction of grammar errors, in accordance with the official rules in force shall not be deemed to be modification of the work, if the author gives consent for that.

### **Article 58**

#### **Production of samples**

The publisher that publishes samples in an inferior number than the conventional, may be compelled to complete it, and refusal to doing that is liable to compensation of losses and prejudices, for the publishing of the missing samples.

### **Article 59**

#### **Production of samples**

For the cases in which the publisher has published samples in an superior number than the conventional, the author may apprehend the samples, for being his property.

### **Article 60**

#### **Rendering of accounts**

1) Publishing contracts shall be subject to payment.

2) The author's remuneration shall be that laid down in the publishing contract and it may consist either of a fixed lump sum to be paid for the edition as a whole, a percentage of the price of each copy, the attribution of a certain number of copies, or payment on some other basis, according to the nature of the work, and a combination of such forms may be used. In the cases where remuneration consists of a percentage of the price of each copy, increases and reductions in this price shall affect its calculation. The publisher shall only determine reductions in the price with the author's agreement, unless the latter's remuneration corresponds to the previous price.

3) Where the remuneration due to the author depends on the results of sales or payment is dependent on the development of sales, the publisher shall render his accounts to the author within an agreed period or, if no period has been agreed, every six months, except for the cases in which a different deadline has been agreed upon

4) The non-compliance for nº 3, the author has the right to demand from the editor the legal accounts and auditing.

**Article 61**  
**Liability of sale of copies at reduced prices or by weight**

Where a work has not been exhausted within the agreed period of time or, failing such agreement, within a period of ten years as from the date of publication, the publisher shall have the possibility of selling the remaining copies at a reduced price or by weight, or of destroying them. The publisher shall notify the author so that he may exercise his right of priority to acquire the remaining copies at a price fixed on the basis of profits from sale at a reduced price or by weight.

**Article 62**  
**Works completed**

1. The author who has contracted one or more publishers for each publication separately, may contact another publisher for a complete publication of his work.
2. The contract for the full publishing of an author's work allows the editor to edit it separately from the works included in that edition, without prejudice for the above stated regulation.

**Article 63**  
**Future works**

In the case of future publications, article 32 shall apply.

**Article 64**  
**Transfer of publishing rights**

- 1) The authorization for the editing of a work regardless of transmission does not confer the right to translate, adapt or transform the work that is object of a contract.
- 2) Without the author's consent, the publisher may not transfer his rights under the publishing contract to third parties, either gratuitously or against payment, unless the transfer is the result of the dissolution of his establishment, and the granting of the rights emerging from the publication contract, does not confer the right to translate, adapt or transform the work that is object of a contract.
- 3) Where such dissolution causes or leads to moral prejudice for the other contracting party, the latter shall have the right to cancel the contract within a period of six months from the date of being informed of such dissolution, the publisher having the right to claim compensation for damages.
- 3) The inclusion of rights deriving from the publishing contract in the publisher's participation in any commercial company shall be deemed to be transfer of such rights within the meaning of this Article and shall therefore be subject to the author's consent.

## **Article 65**

### **Cancellation of contracts**

1) Publishing contracts may be cancelled:

a) Where the author dies or is unable to complete his work after having handed over a substantial part thereof, his successors may cancel the contract, compensating the publisher for damages. However, if they do not do so within a period of six months, the publisher may cancel the contract or consider it fulfilled in respect of the part handed over, subject to payment of the corresponding remuneration to the successor or representative, following the terms of the Civil law.

b) Where, at the death of the individual publisher, his establishment does not continue with one or several of his successors;

c) Where the author does not hand over the original version of his work within the time limit agreed or where the publisher does not terminate publication within the time limit, unless there is a duly proven case of force majeure;

d) If duly notified by the author for the completion of work, within the terms of the contract, the editor may only be published if a clear distinction is made between the original part and the addition, together with an indication of the latter's authorship.

## **SECTION II**

### **Article 66**

#### **Performance and execution**

Under a performance contract the author authorizes the representation before an audience of a dramatic, dramatic-musical, choreographic, mime or other similar work, by means of dramatic fiction, singing, dancing, music or other appropriate means, either separately or together, anywhere in public, and at any particular time or place under payable or unpaid admission fee.

### **Article 67**

#### **Performance and execution**

The authorization for performing or executing a broadcasted or cinematographic work or any mode of reproduction or other means, or communication of the event for which the work is used, are not covered by this article.

### **Article 68**

1. The entrepreneur in charge of the organization of the event stated above, the entrepreneur shall indicate clearly on the programs, posters and other forms of publicity the name, pseudonym or other identifying sign adopted by the author, under the author's previous authorization.

2. Under a performance contract, the author authorizes an impresario to promote performance of the work and the latter shall do so in accordance with the conditions agreed. A performance contract, unless otherwise agreed, it shall not give the impresario the exclusive right of direct communication of the work by this means.

3) The entrepreneur shall hold the rehearsals necessary to ensure performance under satisfactory technical conditions and, in general, make every effort customary in such circumstances to ensure the performance's success. The entrepreneur shall have the work performed according to the text furnished by the author and he may not make any changes such as deletions, substitutions or additions, without the author's consent.

### **Article 69**

#### **Rights of the author**

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

a) introduce into the work, independently of the other party's consent, the changes he deems necessary, provided that they do not alter its general structure nor detract from its dramatic or theatrical interest, nor prejudice the programming of rehearsals and performances;

b) be consulted regarding casting and attend rehearsals;

c) attend the performance himself or through his representative, be consulted regarding the choice of artistic collaborators, and give the necessary indications regarding interpretation and direction;

d) object to performance where he considers that there have not been sufficient rehearsals; however, he may not make undue use of this possibility and unjustifiably delay performance, in which case he shall be liable for damages;

e) they shall have free access to the premises during the performance for verification process.

### **Article 70**

#### **Suppression of passages in the work**

For the contract of performance, where a judicial decision compels the suppression of a passage in the work thereby compromising or altering its general theme, the author shall have the right to withdraw the work and to cancel the contract without incurring any liability.

### **Article 71**

#### **Presumption of gratitude**

The authorization of performance for amateurs shall be free of charge.

**Article 72**  
**License and visa authorization**

In such cases where the above stated are dependent upon, a visa or official authorization shall be purchased from the competent authority, upon consent by the author.

**Article 73**  
**Cancellation of contract**

- 1) Performance contracts may be cancelled in the following cases:
- a) cases legally or contractually established, upon which there are manifestations of dislikes;
  - b) cases under suspension or prohibition of the performance by the authorities or where the public obviously and continuously does not attend performances.
  - c) If the work is incomplete or his author is deceased or physically incapable.

**SECTION III**  
**Fiction and audiovisual communication**

**SUB-SECTION I**  
**Cinematographic works**

**Article 74**  
**Contract of transmission of cinematographic work**

1. Performance of the work, in whole or in part, through transmission by audio or visual broadcasting, reproduction on phonograms or videograms, filming or presentation, shall require the author's written consent, in addition to authorization by the show's impresario and its performers.
2. The above stated authorization implies the right of reproduction, distribution, exhibition for financial purposes.
3. The above stated authorization shall not cover broadcasting or cinematographic or video gram reproduction or their exploration and communication to the public by any means.

**Article 75**  
**Producer**

- 1) The producer shall be the entrepreneur of the film and as such he shall organize the execution of the cinematographic work, guarantee the necessary means, and assume the corresponding technical and financial responsibilities;

2) for the defence of the rights in the cinematographic work, the producer shall be deemed to be their representative for this purpose and he shall account for the technical demands.

#### **Article 76**

##### **Identification of the authors**

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

2) Where the cinematographic work is an adaptation of a pre-existing work, it shall mention the latter's title, as well as the author's name, pseudonym, or other identifying sign, are recognised under the final provisions of article 16.

#### **Article 77**

##### **Conclusion of the work**

A complete cinematographic work is considered when the author or producer agreed on the grounds that they shall preserve the corresponding matrix which he may not under any circumstances destroy.

### **SUB-SECTION II**

#### **Phonographic and Video graphic Fixing**

##### **Article 78**

##### **Phonographic and video graphic fixing contracts**

1) The author's authorization shall be required for fixing a work. Fixing shall mean the separate or combined incorporation of sounds or images in a sufficiently stable and durable material carrier to allow them to be perceived, reproduced or communicated in any way within a non-ephemeral period.

2) The authorization shall be given in writing and it shall allow the recipient to fix the work and to reproduce and sell the copies produced. Authorization to perform the fixed work in public, or to broadcast or transmit it in any way, shall also be given in writing, and it may be given to a different entity than that authorized to fix the work.

3) Purchase of a phonogram or video gram shall not give the purchaser the right to use it for any public execution or transmission, reproduction, resale or rental for commercial purposes.

##### **Article 79**

##### **Works that have already been fixed**

Any musical works and corresponding texts that have been the subject of commercial phonographic fixing without opposition by the author may be fixed anew. The author may put an end to exploitation if the technical quality of fixing



jeopardizes satisfactory communication of the work regardless of the author's consent, to whom a compensation shall be due.

### **Article 80**

#### **Obligations of the producer**

- 1) Any person who promotes or organizes the performance or recitation of a literary, musical, or dramatic-musical work, before a public audience, must display the corresponding program on the premises in advance, showing as far as possible the designation of the work and identification of the author.
- 2) Where the program is not displayed or communicated works that are performed or recited.

## **SECTION III**

### **Broadcasting and Other Processes for the Reproduction of Signals, Sounds and Images**

#### **Article 81**

##### **Authorization**

Audio or visual broadcasting of a work by any means, whether live or retransmitted, shall be subject to the author's authorization from the organizing board.

#### **Article 82**

##### **Limitations as to authorization**

1. Where the work has been fixed for commercial purposes with the author's consent, including specifically the corresponding communication or audio or visual broadcasting, it shall not be necessary to obtain special consent for each communication or broadcast, without prejudice to the moral rights and to the right to equitable remuneration.
- 2) The faculty stated above, confers to the author of the work the right to a previous compensation, that is exclusive for communication of the work in a public place by any means used to diffuse signals, sounds or images in the Cape - Verde territory.

#### **Article 83**

##### **Ephemeral fixing by the broadcasting organization**

1. Without prejudice for the provisions of article 64, the ephemeral fixing, and audiovisual broadcasts previously authorized for are exclusive for the effects of transmission by the board, which was authorized to carry out the registration for the maximum period of six months.
2. The registration referred above are not transferable nor compensated by any means

**Article 84**  
**Identification of the author**

Broadcasting stations shall indicate the name or pseudonym of the author together with the title of the broadcast work, with the exception of those cases recognized by customary usage in which the circumstances and requirements of the broadcast enable such indications to be omitted.

**SECTION IV**  
**Creation of Graphic and Applied Art**

**Article 85**  
**Copyrights**

1) The author alone may exhibit or authorize a third party to exhibit works of art in public, as stated in paragraphs g), h), i), and j) of article 7 n° 4 as well as works of applied art based on folkloric parodies bear the following rights:

a) to use or authorize third parties to make public use of the work;

b) to reproduce or authorize third parties to reproduce the work;

2) Save conventions of the contrary, the alienation of such works comprises the right to expose them;

3) Whenever any of the work has not been made available to the public or reproduced, mention shall be made of the author's name, pseudonymous or any other identification sign.

**Article 86**  
**Photographic works**

1) The choice of a photograph's subject and the conditions of its creation must be deemed to be a personal artistic creation by the author before a photograph may qualify for protection and in order to protect a photographic work, it shall be an artistic creation and the provisions contained in this section shall not apply to photographs of writings, documents, business papers, technical drawings and similar objects.

2) Transfer of the negative of a photographic work shall imply transfer of the rights referred to in the preceding article, unless otherwise stipulated.

3) The giving for reproduction and communication by the person photographed or by his heirs or transferees, without the photographer's consent and where the name of the photographer appeared on the original photograph, it shall also appear on the copies.

4) The author of a photographic work shall have the exclusive right to reproduce, disseminate and sell the work, subject to the restrictions concerning exhibition,

reproduction and sale of portraits and without prejudice to copyright in the reproduced work in the case of photographs of works of plastic art.

## **Section VI**

### **Newspapers and Other Periodical Publications Article 85**

#### **Article 87**

##### **Copyright Protection**

1. Without prejudice for the provisions of the special legislation, and n° 3 of article 15 of this code, Copyright in published works, even where they are not signed, in newspapers or periodicals shall belong to the respective owners and they alone may undertake or authorize reproduction separately or in the said publication, unless there is written agreement to the contrary.

2. Copyright in journalistic works produced in fulfilment of an employment contract that bear an indication of authorship, whether a signature or some other means, shall belong to the author. Unless authorized by the company owning the newspaper or publication concerned, the author may not publish the work referred to in the preceding paragraph separately until three months after the date of circulation of the publication in which it appeared.

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

#### **Article 88**

##### **Current affairs works**

The articles stated above for economic, political cultural and religious discussions may be reproduced by the press, on condition that copyright is not reserved, and the author's name and pseudonymous as well as origin of the article are indicated.

## **TITLE III**

### **Protection of related rights**

#### **Article 89**

##### **General provisions**

Related rights shall constitute the legal protection that assures to the performers, interpreters, and performers of phonographic and ideograms broadcasting works, full rights over their performance.

## **Article 90**

### **Protection for performers**

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization:

a) the fixation of their unfixed performance and the reproduction of such fixation;

b) the reproduction, without their consent, of a fixation of their performance:

i) if the original fixation itself was made without their consent;

ii) if the reproduction is made for purposes different from those for which the performers gave their consent;

iii) if the original fixation was made in accordance with any of the exceptions that are applicable by reason of regulations referred to in paragraph d) of this Article 87a, and the reproduction is made for purposes different from those referred to in such provisions.

d) The regulations that apply to this Law may provide for exceptions to the protection guaranteed by this Article 90 as regards:

i) private use;

ii) use of short excerpts in connection with the reporting of current events;

iii) ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts;

iv) use solely for the purposes of teaching or scientific research.

2. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

3. Performers shall also have the possibility of preventing the broadcasting and the communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation.

4. If broadcasting was consented to by the performers, the regulations that apply to this Law shall govern the protection against re-broadcasting, fixation for broadcasting purposes and the reproduction of such fixation for broadcasting purposes and shall also govern the use by broadcasting organisations of fixations made for broadcasting purposes; provided, that such regulations shall

not operate to deprive performers of the ability to control, by contract, their relations with broadcasting organisations.

5. Notwithstanding anything in this Law, once a performer has consented to the incorporation of his performance in a visual or audio-visual fixation, the provisions of paragraph 1) of this Article 90 shall have no further application.

### **Article 91**

#### **Protection for producers**

Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms and the right to authorize or to prohibit the commercial rental to the public of their phonograms.

### **Article 92**

#### **Secondary uses of phonograms**

If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonograms, or to both. The regulations that apply to this Law may govern the conditions as to the sharing of this remuneration, in the absence of agreement between these parties.

### **Article 93**

#### **Protection for broadcasting organizations**

1. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization:

- a) the fixation of broadcasts,
- b) the reproduction of fixations of broadcasts,
- c) the reproduction of fixations of broadcasts made in accordance with any of the exceptions that are applicable by reason of regulations referred to in paragraph d) of this Article 87a, if the reproduction is made for purposes different from those referred to in such provisions.
- d) the re-broadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same.
- d) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; regulations that apply to this Law determine the conditions under which this right may be exercised.

#### **Article 94**

##### **Content**

The rights of performance and interpreters are protected by the recognition of their stated rights.

#### **Article 95**

##### **Application**

Related rights are applied without prejudice for those recognised to the authors upon the publication of their works.

#### **Article 96**

##### **Delivery**

The rules governing related rights shall apply to their authors.

#### **Article 97**

##### **Pre-requisites**

Performers, producers, and broadcasting organizations who meet the conditions for national treatment under the applicable provisions of articles 2, 3, 4, 5, and 6 of the Rome Convention, 1961, International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting organisations shall be granted national treatment under this law.

#### **Article 98**

##### **Authorization**

1. The artist, performer or interpreter, enjoys the right to exclusivity of both authorization and fixations or reproduction, broadcasting and public communication of his works.

2) Authorization shall, be in writing

#### **Article 99**

##### **Limitations**

1. The performance right under a working contract agreement, belongs to the entity or the person that organized it, except otherwise expressed.

2. The artist enjoys the right to request that his name is indicated in all the works of interpretation and performance, during his lifetime, to avoid any mutilation, or attempts that may harm his prestige and reputation.

3. Upon the artist's death and for a period of fifteen years, the artist's successors shall enjoy the rights stated in n° 2.

**Article 100**  
**Deadline for the protection**

It shall last forty years from the day of submission of the object of protection.

**TITLE IV**  
**Infringement of Copyright law**

**Article 101**  
**Violation of ownership rights**

1. Violation of the above stated right, by any means or through partly or full reproduction of a literary, artistic or scientific work, without the authorization of his author by exceeding the limits of the authorization shall be considered a crime of usurpation.
2. It is considered a counterfeit all those who fraudulently present or utilize, a creation of literally, artistic or scientific work, in part or full.

**Article 102**  
**Penalties**

1. The crimes in the preceding article are of public nature and shall be punished with a prison sentence liable to one year and a fine of about double, depending upon the nature of the infraction committed.
2. Simple negligence is also punishable with a fine of 100.000\$00 (one hundred thousand CVE).

**Article 103**  
**Violation of moral rights**

The above stated punishment shall apply to:

- a) anyone with pretence to being the author of a literally, artistic or scientific work ;
- b) anyone attempting against the genuine or integrity of a literally, artistic or scientific work ;

**Article 104**  
**Usage of a counterfeit work**

The same punishment shall apply to those who import, sell, or put to sell by any means of distribution to the public, a counterfeit work that has been published in Cape Verde or abroad.

## **Article 105**

### **Criminal proceedings**

1. Except for the stipulated in article 102, criminal proceedings are not only of a complaint or participation nature.
2. As far as folkloric parodies, that have fallen into public domain, the complaint shall be submitted from the governmental board in charge of the culture sector.

## **Article 106**

### **Apprehensions**

1. The owner of the copyright may require to the court the apprehension of samples of counterfeit works, independently of their nature and form of infringement as instruments of counterfeit.
2. Apprehension is of responsibility of the legal authorities, who may extend that functions to the administrative and justice boards.

## **Article 107**

### **Civil responsibility**

The emerging responsibility from the infringements stated above, is independent from the criminal procedure of its origin. The legal measures may be exercised in combination with the penal actions.

## **Article 108**

### **Precautionary measures**

The copyright of literally, artistic or scientific work requires from the judicial, administrative authorities of the place where the violation occurred, the immediate suspension of any form of communication to the public, of the work in effect, without authorization.

## **Article 109**

### **Evidence of law Infringement**

Under the penal code the terms are applicable to the civil servants, police personnel or other agents as referred in article 110.

## **TITLE V**

### **Final provisions**

## **Article 110**

### **Organizational management**

The management of patrimonial and moral right, as stipulated in this law, shall be conferred to the authors' public and private agencies, with competence over the matter, to act in the name of their agents, for the granting of the necessary authorization for both the use and exploitation of their works and receipt of the



subsequent compensation, for the distribution, in view of the authors ' moral rights, upon infraction being committed, which require the courts to proceed to the application of the precautionary dispositions foreseen in the law.

**Article 111**  
**Promulgation**

All legislation prior to this act shall be revoked.

**Article 112**  
**Coming into force**

The present notice comes into effect 30 days thereafter its publication.

Viewed and approved by the Council of Ministers on 29 November 1990.

The President of the National Assembly - Abílio Duarte.

Promulgated on the 26 December 1990.

Published,

The President of the Republic - ARISTIDES MARIA PEREIRA