

Decree of President of Government of Islamic Republic of Afghanistan regarding signing The Law on the support the right of authors, composers, artists and researchers (Copy Right Law)

Number: 54

Date: 21 July, 2008

Article 1:

I am signing the Law on the support the right of authors, composers, artists and researchers (Copy Right Law) pursuant to the article 79 of Constitution of Afghanistan which is confirmed in 7 chapters and 49 articles based on approval # 18 dated 17/4/1387 of ministerial council.

Article 2:

Minister of Justices and Government Minister in parliamentary affairs are held responsible to present this decree within 30 days from the date of first National Assembly meeting.

Article 3:

The decree from the date of signature shall be enforced and be published along the law in the official gazette.

Hamed Karzai

President of Islamic Republic of Afghanistan

Table of contents of Law on support the right of authors, composers, artists and researchers (Copy Right Law)

Chapter One

General Provisions

Article 1:	Basis
Article 2:	Abbreviated Name
Article 3:	Terms and Expressions
Article 4:	Law Enforcement Source

Chapter Two

Copy right

Article 5:	Copy right protection
Article 6:	Works to be protected
Article 7:	Record:
Article 8:	States of no protection
Article 9:	Author's Rights
Article 10:	Status of enjoying economical rights
Article 11:	Moral Rights
Article 12:	Cession or Transfer of Rights
Article 13:	Selling or cession of the original copy
Article 14:	Publication of the work after the death
Article 15:	Exclusive Right of Phonogram

Chapter Three:

Timeline to use the copyright

Article 16:	Timeline to protect the works
Article 17:	Start Date of the timeline for the protection of the work

Chapter Four

Rights of the Broadcasting Organization and the Performer of Work

Article 18:	Ownership of the work based on an agreement
Article 19:	Reproduction
Article 20:	Obligations of the Broadcasting Organization
Article 21:	Exclusive rights of the Broadcasting Organization
Article 22:	Protection of the performer's rights

Chapter Five

Provisions on the use of a joint work

Article 23:	Use of the privileges of a joint work
Article 24:	Profit from a joint work
Article 25:	Exclusive Right of a joint musical work
Article 26:	Co-authorship of an Audiovisual Work
Article 27:	Concessionaire of Collective Work
Article 28:	Non-prevention of Production or Display of Collective Work

Chapter Six

Corrective Provisions

Article 29:	Court Proceeding
Article 30:	Right of referral to court
Article 31:	Penalties
Article 32:	Order of Confiscation

- Article 33: Sanctions of Infringing lateral Rights**
- Article 34: Protection of Works Created before the Enforcement of this Law**
- Article 35: Broadcasting Order**

Chapter Seven

Miscellaneous

- Article 36: Ownership Right**
- Article 37: Exclusive Right of publicizing and broadcasting correspondences**
- Article 38: Publicizing/broadcasting picture or recording voice**
- Article 39: Reproduce of work**
- Article 40: Situations of Use of work and adoption**
- Article 41: Deposit Certificate**
- Article 42: Public Broadcasting of Work**
- Article 43: Display of Work**
- Article 44: Translation of Foreign Work**
- Article 45: Protection of National Folklore**
- Article 46: Publisher of Work**
- Article 47: Applicable Areas of this Law**
- Article 48: Formulation of Regulations and Procedures**
- Article 49: Date of Enforcement**

The law of support the right of Authors, Composers, Artists and Researchers (Copy Right Law)

Chapter One

General Provisions

Basis:

Article 1:

This Law has been put in effect pursuant to the article 47 of the Constitution of Afghanistan in order to protect the economical and moral rights of the works of an author, writer, **broadcasters**, artist and researcher and the way to profit from the work of ownership rights to organize issues pertaining to the copyright.

~~This Law has been put in effect pursuant to the article 47 of the Constitution of Afghanistan in order to protect the economical and moral rights of the works of an author, writer, artist and researcher and the way to profit from the work of ownership rights to organize issues pertaining to the copyright.~~

Abbreviated Name

Article 2:

Author, writer, artist and researcher in this law are names as those who create.

Terms and Expressions

Article 3:

The terms in this Law have the following meaning:

1. **Work:** Any original literary, artistic, or scientific work, regardless of its type, form of expression, significance, or purpose is a phenomenon that is created through knowledge, art or the initiative of the creator without taking into account the way that it is said, appeared or created.
2. **Audiovisual work:** A work that consists of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied. is a work that is audible or visible via using electronic device or any other instruments.

3. **Collective Work:** a collection of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of its contents, constitutes an intellectual creation. ~~is a work that is created as a result of the participation of natural or legal persons as to each one of them has independently executed a part of the work and is published and broadcasted under the lead of one person as a completed collection.~~
4. **Joint Work:** is a work that is created as a result of the participation of two or several natural or legal persons inseparable from each other and is published and broadcasted as a single collection and each one of them has equal rights.
5. **Excerption Derivative Work:** A work that is derived from one or more pre-existing work(s), such as translations, musical arrangements and anthologies, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, and collections of folklore expressions, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a "derivative work". ~~is a new work that is created from the preexisting work or works of an author.~~
6. **Publication and Broadcast:** Making a work, phonogram, broadcast, or any performance available to the public in any manner, with the consent of the author or the owner of the rights. ~~is the transmission of audio, video or audio-video and its supplements to the public through the use of any mean or mode.~~
- 6-7. **Broadcasting:** The transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also a "broadcasting"; transmission of encrypted signals is "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent
- 7-8. **Reproduction Reprint of work:** Making one or more copy of a work, a phonogram, a broadcast, or any performance of any type or form, in whole or in part, directly or indirectly, in any manner or form, by whatever be the means or the device used to make the reproduction, including permanent or temporary electronic uploading or storage. ~~is to make one or more copies of a work including phonogram, audio or video. To record a work in order to store it temporarily or permanently using any mean which can be perceived also include this definition.~~
- 8-9. **Fixed Work Fixation:** The incorporation of letters, numbers, signs, sounds, images and other elements by means of which a work or object of neighboring rights has been expressed, or the representations thereof, which, in any form or material medium, including an electronic medium that enables the said work or object of neighboring rights to be perceived, reproduced or otherwise communicated through a device. ~~is a work with its contents in a copy, phonogram or its attachments by or under the authority of the author which is created for certain fixed level or permanently which can be perceived, reproduced or communicated repeatedly.~~
- 9-10. **Anonymous Work:** is a work that the author is not readily known or identified.
- 10-11. **Classic Work Compilation:** An anthology of works formed by the collection and assembling of pre-existing materials or data in such a way that the resulting work is creative in

terms of its arrangement or content selection. Compilations include readable databases that are read from a computer or another medium, and collective works. ~~is the compiling and gathering of the existing information or material from the past which is selected, coordinated and organized in a way that the end work is a new collected work. Classic Work also includes collective works.~~

~~11.~~12. **Architectural Work:** ~~The design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard feature. is a work that is composed of cartography or constructional designs.~~

~~12.~~13. **Literary works:** ~~is a work that is created without audio or video and it is created using words, numbers or other literal or numerical symbols. is a work that is created without audio or video and it is created using words, numbers or other literal or numerical symbols without taking into account the origin of material or the mode of its creation.~~

~~13.~~14. **Photography, Painting and Statuary Works:** ~~are Two-dimension and three-dimension works, designing, photography and cartography which are created as a result of innovation and creativity.~~

~~14.~~15. **Metaphorical Work:** ~~is a work where author's nickname, literal or metaphorical name is mentioned.~~

~~15.~~16. **Owner:** ~~is a natural or legal person who holds one or more of the exclusive rights envisaged in this Law.~~

~~16.~~17. **Exhibition of Work:** ~~is is to exhibit or display the work or a copy of it directly or through film, slide, television pictures, motion pictures or any other mean or mode. In the case of a motion picture or other audiovisual work, exhibition includes displaying individual images non-sequentially. to exhibit the work or a copy of it directly or through film, slide, television pictures, motion pictures or any other mean or mode.~~

~~17.~~18. **Execution of the work Public performance:** ~~Any act that may render the work available to the public in any manner, such as acting, a musical performance, or transmission, by wire or wireless means, enabling the public to have direct contact with the work by means of a performance, a phonogram, or an audiovisual recording. is to recite the work with a rhythmic and artistic voice or play it with rhythmic and artistic moves by any mean or mode.~~

~~18.~~19. **The performer of the work Performers:** ~~Actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore. is a person who performs the contents of this Law through any ideal mean or mode.~~

~~19.~~20. **Motion Pictures:** ~~An audiovisual work consisting of a series of related images when shown with sound or without sound imparts an impression of motion. is a work consisted of a series of related images when shown with sound or without sound imparts a special meaning, context or an intention.~~

~~20-21. **Broadcasting Organization:** Any person or authority entrusted with or responsible for broadcasting, is a legal person who has a license to publish, broadcast, promulgate, perform or display a work on behalf of its author.~~

~~21-22. **Lateral rights:** are rights that protect the exhibition, producers, phonograms and broadcasting organizations.~~

~~22-23. **Person:** includes:~~

- ~~- National natural person: is a person who is identified pursuant to the enforced laws.~~
- ~~- National legal person: is a person that is has been established pursuant to the enforced laws as an organization, company, Monopoly ownership, Limited Company, public or private joint stock company, or any other profit making organization.~~
- ~~- Foreign natural person: is a person who is holding a non-Afghan citizenship.~~
- ~~- Foreign legal person: is a person whose legal personality has been identified pursuant to the legal frameworks other than Afghanistan's legal framework.~~

~~23. **Public Culture (National Folklore):** is an expression which include characterized principles of traditional artistic heritage originated or developed by a group of people in the State which reflect their artistic heritage and include the following expressions:~~

- ~~— Oral expressions such as tales, popular poetry and riddles~~
- ~~— Musical expressions: include popular songs accompanied by music or without music~~
- ~~— Motion expressions, include popular Atans (national dance), plays and other special popular artistic and ritual forms~~
- ~~— Identical expressions such as products or popular art such as drawings with lines and colors, engravings, statuary, pottery, needlework, woodwork, mosaic, metalwork, jewelry, knitting, carpet weaving and other textiles.~~
- ~~— Musical instruments~~
- ~~- Different architectural works~~

~~24. **Dissemination of the work Distribution:** The making the original or copies of a work or object of neighboring rights available to the public by sale or other transfer of ownership. broadcasting and distribution of the work through selling, lease, mortgage, loan or any other type of property transformation or transferring it for the purpose of performance and display to the public.~~

~~25. **Recording audio or video:** is a work that is resulted in the fixation of an audio or video into a fixed work by any mean or mode that can be perceived, produced, reviewed, communicated , transferred, performed or displayed again.~~

26. **Transferring the copy right Transfer of Copyright Ownership:** An assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license. ~~ession through sale, mortgage, donation or any other ways in which the copyright of ownership of a work is transferred to another person pursuant to the provisions of this Law.~~
27. **Phonogram:** works that result from the fixation of a series of musical, spoken or other sounds, but not including sounds accompanying an audiovisual work, which are fixed by any method now known or later developed and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Law Enforcement Source:

Article 4:

Ministry of Information and Culture is the main body which implements this Law.

Chapter Two:

Copy right

Copy right protection

Article 5:

The original works of authors shall be protected that are fixed (without taking into account the value, quality, purpose or the mode of its expression) in one of the tangible mediums of expression that is known now or means that will be developed later, which are perceived, reproduced or communicated in a different way either directly or with the aid of a device.

Works to be protected

Article 6:

(1) Works of authorship include the following non-exhaustive categories:

1. *Literary works, such as book, pamphlet, brochure, essay, play and other academic technical and artistic writings;*
2. *Poem, melody, song and compose that has been written, recorded or published using any mean;*

3. Audiovisual work, such as those created for the purpose of performance on a movies scene or broadcast from radio or television that has been written, recorded or published using any mean, including cinematographic works and motion pictures;
4. Musical work, including any accompanying words, which has been written recorded or published by any mean;
5. Painting, picture, design, drawing, ~~innovate original geographical graphical~~ (NOTE: this may simply be a translation issue) cartography, linear writings, engraving, lithography, decorative lines and other decorative and imaginary works which have been created using any simple or combinatory mean or mode;
6. Statuary (sculpture);
7. Photography work that has been created using an original mode;
8. Original work of handicraft or industrial art (carpet designs, rugs, felt carpet and its attachments etc.);
9. Original work which has been created based on the public culture (folklore) or national cultural heritage and art;
10. Technical work with an original aspect, such as illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science;
11. Computer programs;
12. Derivative works;
13. Dramatic works, including any accompanying music;
14. Pantomimes and choreographic works;
15. Architectural works;
16. Compilations of data or other material, whether in machine readable for 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. (Per Article 10.2 of the TRIPS Agreement);
17. Collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections. (Per Article 2(5) of the Berne Convention); and

~~(1) — 18. Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work. (Per Article 2(3) of the Berne Convention,). The following works shall be protected:~~

- ~~1— Book, pamphlet, brochure, essay, play and other academic, technical and artistic writings;~~
- ~~2— Poem, melody, song and compose that has been written, recorded or published using any mean;~~
- ~~3— Audiovisual work for the purpose of performance on a movies scene or broadcast from radio or television that has been written, recorded or published using any mean;~~
- ~~4— Musical work which has been written recorded or published by any mean;~~
- ~~5— Painting, picture, design, drawing, innovate geographical cartography, linear writings, decorative lines and other decorative and imaginary works which have been created using any simple or combinatory mean or mode;~~
- ~~6— Statuary (sculpture);~~
- ~~7— Photography work that has been created using an innovative mode;~~
- ~~8— Innovative work of handicraft or industrial art (carpet designs, rugs, felt carpet and its attachments etc.);~~
- ~~9— Innovative work which has been created based on the public culture (folklore) or national cultural heritage and art;~~
- ~~10— Technical work with an innovative aspect;~~
- ~~11— Computer programs~~
- ~~12— Derivative works;~~

~~(2) The provisions of this Law shall apply to all other works eligible in accordance with all international treaties, agreements and conventions that Afghanistan is a party to.~~

~~(3) Protection under the provisions of this Law shall apply to expressions, but not to ideas, procedures, and methods of operation or mathematical concepts.~~

~~"(4) Protection under the provisions of this Law shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information."~~

Record:

Article 7:

- ~~(1) he author may record the work, name; title and logo of his/her work in the Ministry of Information and Culture. However, copyright protection under this Law shall not be contingent on such recording. How to apply, record and other issues related to this shall be communicated~~

~~through a different procedure. The author can record the work, name, title and logo of his/her work in the Ministry of Information and Culture. How to apply, record and other issues related to this shall be communicated through a different procedure issued from the Ministry of Information and Culture.~~

- (2) The author can apply to present his/her works to the Ministry if it includes the followings:
- 1- Name of author or authors or person with lateral rights.
 - 2- Contents of the work or issue of lateral right.
 - 3- Two copies of the work or issue of lateral right.
 - 4- An exact correspondence on the characteristics of the work or issue of lateral right
 - 5- Written correspondence from the author regarding the ownership of the work or lateral right

States of no protection

Article 8:

- (1) The provisions of this Law shall not protect works which are in contradiction with the provisions of the Law.
- ~~(2) The subject matter of copyright includes derivative works that has been presented by the author where the use of preexisting material has been differentiated. This right does not extend to any kind of the copyright in the preexisting material. The subject matter of copyright includes Derivative Works that has been presented by the author where the use of preexisting material has been differentiated. This right does not extend to any kind of the copyright in the preexisting material.~~
- ~~(3) Collective works shall be protected without prejudice to the copyright in each of the works forming part of such collections.~~
- ~~(2)(4) The protection of compilation shall not extend to preexisting data or material included in them, and shall be without prejudice to any copyright in such data or material.~~

Author's Economic Rights

Article 9:

Authors or other owners of copyrights have the exclusive rights to exercise, authorize or prohibit the following with respect to their protected works:

- reprinting (reproducing), including sound and visual recording
- preparation of derivative works

- any public distribution, including distribution of derivative works, as well as commercial rental to the public of originals or copies of protected motion pictures and computer programs, except in the case of rentals involving a computer program which itself is not the essential object of the rental.

- public performance of derivative works, as well as dramatic, dramatic-musical and musical works.

- Communication to the public of performances of works, including derivative works, and, during the full term of the author's rights in an original dramatic or dramatico-musical work, the same rights with respect to translations thereof.

-broadcasting and other wireless communications, public communication of broadcast by wire or rebroadcast, and public communication of broadcast by loudspeaker or analogous instruments of literary and artistic works.

-public recitation, and communication to the public of recitations, of literary works and, during the full term of the author's rights in original literary works, the same rights with respect to translations thereof.
~~The author has the exclusive copyright to publish, broadcast, present and perform the work and has the right to enjoy economically and morally his name and his work.~~

Status of enjoying economical rights

Article 10:

(1) Subject to the provisions of Article 47 of this Law, the Author shall enjoy the provision of this Law as long as his work has not been published, printed or broadcast before Afghanistan in any other country.

(2) The party whose name appears on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author. This provision shall be applicable where a metaphorical name (pseudonym) adopted by the author appears on a work, where the metaphorical name (pseudonym) leaves no doubt as to the author's identity.

(3) Where a work is anonymous or pseudonymous, other than in cases referred to in paragraph (2) of this Article, a publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author in the protection and enforcement of the author's rights. However, this paragraph shall no longer apply once the author reveals his identity and establishes his claim to authorship of the work.
~~The Author shall enjoy the provision of this Law as long as his work has not been published, printed or broadcast before Afghanistan in any other country.~~

Moral Rights

Article 11:

- (1) The moral rights of the work are confined to the author and are non-transferrable.
- (2) The author has the the following moral rights:

- 1- Mention or no mention of his/her name or his/her metaphorical name.
 - 2- B"Ban to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the author's work that would be prejudicial to his honor or reputation." ~~an on any kind of use from his/her work that negates the reputation and credibility of the author~~
 - 3- Whenever an employee during the scope his/her employment creates a work using the facilities of the employer, the work belongs and is owned by the employer unless there has been a different agreement on that **in writing**. ~~Objection on any kind of alternation, change of form or possession of the work.~~
- (3) Whenever an employee during the scope his/her employment creates a work using the facilities of the employer, the work belongs and is owned by the employer unless there has been a different agreement on that.

Cession or Transfer of Rights

Article 12:

- (1) The author a work protected by the provisions of this law can transfer in writing **one or more** of economic rights of his work to another person with the clear mention of the timeframe, modality of the transfer, purpose, place and amount of it. ~~The author a work protected by the provisions of this law can transfer in writing the economic rights of his work to another person with the clear mention of the timeframe, modality of the transfer, purpose, place and amount of it.~~
- (2) The author cannot stop the person whom he has transferred the rights, but can withdraw to publish or broadcast his work or can bring a change in that, in which case he has to compensate for the losses of the person whom he had transferred the rights previously.
- (3) The honor of the moral rights enshrined in this Law shall be transferred to the legal inheritor of the author after his/her death. Where author dies without an inheritor, the rights shall be undertaken by the Ministry of Information and Culture.
- (4) If the author advises in his testament for a certain date of his work to be published or not, his testament will be fully taken into account.
- (5) If an author, his/her partners or one of his co-authors has no legal inheritor, the share of their economical rights shall be attributed to the Ministry of Information and Culture after their death.

Selling or cession of the original copyrights to employment:

Article 13:

(1) Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.

(2) An artist, writer and composer or, after his/her death their legal successor, shall enjoy the inalienable right to an interest in any sale of his original work of art or original manuscript subsequent to the author's first transfer of the work. This protection may, however, be claimed in Afghanistan only if legislation of the author's country so permits, and to the extent permitted by national legislation. ~~Sell or cession of the original copy of the work by the author shall not be considered as his rights transfer.~~

(3) Whenever an employee during the scope his/her employment creates a work using the facilities of the employer, the work belongs and is owned by the employer unless there has been a different written agreement on that

Publication of the work after the death

Article 14:

Whenever the inheritors or successors of the author do not publish the work and Ministry of Information and Culture deems this in the interest of the public, the Ministry shall notify the inheritors and successors in writing. If they do not publish the work in one year effective from the date of the notification, the Ministry shall issue the order to publish the work and shall pay a reasonable amount to the beneficiaries of the author/s.

Exclusive Right of Phonogram

Article 15:

The producer of the phonogram shall have the following exclusive rights:

- 1 ————— Direct or indirect reproduction of the phonogram in different forms.
- 2 ————— Leasing the copy of the phonogram.
- 3 ————— Providing the phonogram through selling it.

Chapter Three:

Timeline to use the copyright

Timeline to protect the works

Article 156:

1. Works stated in Article six of this Law shall be protected under the following circumstances:

- (1) Fifty calendar years after *the author's* death, unless the author has decided *differently in writing or unless otherwise set forth in this Article 16.*
- (2) Joint works of *authorship* shall be protected for fifty years after the death of the last author.
- (3) Works published or broadcast with metaphorical (pseudonym) names shall be protected for fifty years after the first year of *lawful* publication. If the author is identified, the provisions of the clause 1 of this Article shall apply.
- (4) Works not published during the life cycle of the author and in the case of the joint work, that have not been published during the life cycle of the last author, shall be protected for fifty years effective from the first year of *lawful* publication and broadcast.
- (5) Audiovisual works shall be protected for fifty years effective from the first year of *lawful* publication or broadcast.
- (6) Photography works shall be protected fifty years effective from the first year of *lawful* publication or broadcast. *If the photography work is not published, then fifty years from the making of such a work. Paintings are artistic works that should be protected for the minimum term of life of the author plus fifty years)*

~~(1) Provision s in the article six of this Law shall be protected under the following circumstances:~~

- ~~1—Works published or broadcast during the life cycle of the author shall be protected fifty calendar years after his/her death unless the author has decided differently.~~
- ~~2—Joint works published or broadcast during the life cycle of the authors shall be protected for fifty years after the death of the last author.~~
- ~~3—Works published or broadcast with metaphorical (pseudonym) names shall be protected for fifty years after the first year of the publication. If the author is identified, the provisions of the clause 1 of this article shall apply.~~
- ~~4—Works not published during the life cycle of the author and in the case of the joint work, that have not been published during the life cycle of the last author, shall be protected for fifty years effective from the first year of publication and broadcast.~~

~~5—Audiovisual works shall be protected for fifty years effective from the first year of the publication or broadcast.~~

~~6—Photography and painting works shall be protected fifty years effective from the first year of publication and broadcast.~~

~~(2) Provisions of the article 15 of this Law for the publication of the audiovisual work in the case of not being publicized and broadcast, effective from the date of phonogram's fixation shall be protected for fifty years.~~

Start and Termination Date of the timeline for the protection of the work

Article 167:

~~(1) If the timeline of the protection under Article 15 of this Law starts from the date of the publication and broadcast, therefore the first date of the publication shall be the date for the protection timeline unless the author when reproducing the work brings fundamental changes in the work in way that results into a new work. If the work consists of several components or is published in different phases, the timeline for the protection shall be accounted for each component as a separate work.~~

~~(2) Where the term of protection under Article 16 of this Law is calculated on a basis other than the life of a natural person, the protection term shall be calculated from the end of the calendar year of authorized publication, or, if there is no authorized publication within fifty years from the making of the work, from the end of the calendar year of the creation of the work. If the timeline of the protection starts from the date of the publication and broadcast, therefore the first date of the publication shall be the date for the protection timeline unless the author when reproducing the work brings fundamental changes in the work in way that results into a new work. If the work is consisted of several components or is published in different phases, the timeline for the protection shall be accounted for each component as a separate work.~~

Chapter Four

Rights of the Broadcasting Organization and the Performer of Work

Ownership of the work based on an agreement

Article 178:

~~If an author based on a contract creates a work for the owner of the broadcasting organization, the rights of this work belongs to the author and not to the owner of the broadcasting organization unless~~

~~the agreement states differently. If an author based on a contract creates a work for the owner of the broadcasting organization, the rights of this work belongs to the owner of the broadcasting organization unless the agreement states differently.~~

Term of protection for Broadcasting Organizations Reproduction

Article 189:

~~The term of protection for broadcasts of broadcasting organizations shall commence from the end of the calendar year in which the broadcast took place and shall last for twenty years from the end of the calendar year in which the broadcast took place. The broadcasting organization has the right to reproduce its publications; this right is reserved twenty years effective from the date of publication.~~

Obligations of the Broadcasting Organization

Article 1920:

Broadcasting organization or other persons who lawfully print, publish, disseminate or replicate works enshrined in the article 6 of the this Law are obliged to record the number of publication, copies, records, disseminations, issue and serial number on the musical page and audio page with the date and name of the print house or broadcasting organization or firm accordingly.

Exclusive rights of the Broadcasting Organization

Article 201:

~~Broadcasting organizations shall have the following exclusive rights with respect to their broadcasts:~~

- ~~1- Fixation of broadcast ;~~
- ~~2- reproduction of fixations;~~
- ~~3- rebroadcasting by wireless means;~~
- ~~4- communication to the public~~

~~of television broadcasts. The broadcasting Organization has the following rights:~~

- ~~1 ————— Reproduce a relevant publication~~
- ~~2 ————— Public awareness.~~
- ~~3 ————— Recording the relevant publications~~
- ~~4 ————— Reproduction of the recorded relevant publications~~

Rights of Producers of Phonograms; Term of Protection

Article 21

(1) The producer of the phonogram shall have the following exclusive rights:

1- Direct or indirect reproduction of the phonogram in any forms.

2- Leasing originals or copies of the phonogram.

3- Distributing the phonogram.

(7) Rights of producers of phonograms shall last until the end of a period of fifty years computed from the end of the calendar year in which the fixation was made

Rights of Producers and Performers; Term of Protection Protection of the performer's rights

Article 22:

(1) Performers shall have the right to prevent the following:

1- the unauthorized aural fixation of their unfixed performances;

2- the reproduction of such a fixation;

3- the unauthorized broadcasting by wireless means and the communication to the public of their live performances.

(2) Performer's rights shall be attributed to him/her for fifty years computed from the end of the calendar year in which the performance took place. ~~Performer's rights shall be attributed to him/her for fifty years effective from the first year of the performance of the work.~~

Chapter Five

Provisions on the use of a joint work

Use of the privileges of a joint work

Article 23:

(1) If more than one person has participated in the creation of a work, each one of them is entitled as the owner of the economical rights and each owns the copyright in the work. ~~If more than one person has participated in the creation of a work, each one of them is entitled as the owner of the economical rights.~~

(2) Co-authors can use the economical rights of the work independently unless all co-authors have agreed differently in writing.

(3) Co-authors can take action against the violation of the copyright. This right is also transferrable to the inheritors of the co-authors.

(4) Disputes caused from the 1, 2 and 3 clauses of this article shall be settled by authorized courts.

Profit from a joint work

Article 24:

If a work has been created by more than one person and each one's role is identified, each one of them can use their share without causing any damage to the profit of others, unless it has been agreed upon differently.

Exclusive Right of a joint musical work

Article 25:

- (1) If a musical work is created due to a joint work, composer has the right to sanction the display, performance, publication, reproduction or replay of the whole work to the public, providing that he/she causes no damage to the right of the writing components of the author.
- (2) Provision enshrined in the first clause of this article shall apply to the art works of Atan with music or other similar works.
- (3) The author of the literal components of the work has the copyright of his components but he/she cannot use these components as a source or in other similar works unless there has been a different agreement.

Co-authorship of an Audiovisual Work

Article 26:

1-It includes the following individuals:

1. Author of the scenario or the written idea;
2. Author of the dialogue;
3. Editor of the existing literary Work, adapting it to the Audiovisual Work;
4. Composer of the music especially composed for the Audiovisual Work;
5. Producer, if he or she exercises an effective control and provides positive intellectual input to realize the Work in all its aspects.
6. Director

2-Where the Audiovisual Work is amended or extracted from another previous Work, the Author of the previous Work shall be considered as a co-Author of the new Work. His or her name shall be explicitly mentioned in reference to the amendment or extraction.

3- If any of the co-Authors of an audiovisual Work fails to complete his or her assigned part, the remaining co-Authors shall not be prevented from using the part already accomplished, notwithstanding his or her rights as a co-Author if his or her failure to complete the Work was justifiable. Where his or her failure was of his or her own free will, without justifiable reasons, he or she shall be deprived of any rights that may accrue to him by virtue of the part he or she has accomplished.

Concessionaire of Collective Work

Article 27:

If a work is created as a result of collective Work, the one who leads the work shall be considered the real concessionaire of the Work and reserves the copyright, unless otherwise agreed.

Non-prevention of Production or Display of Collective Work

Article 28:

If the Authors of a literary text, scenario and dialogue, and the Producer and music composer collectively create an Audiovisual Work, neither of them shall have the right to prevent the production or display of such Work, without prejudice to the moral and economic rights of the dissenter.

Chapter Six

Corrective Provisions

Court Proceeding

Article 29:

Court proceedings against the violators of the provisions of this law may take place on the basis of a written request from the individual whose rights have been infringed.

Right of referral to court; Remedies

Article 30:

(1) **The owner of a right in a work , protected by the provisions of this law, or any of his or her successors or hirers, can refer to the court to report violations of the terms of this law**~~Author/Owner of the right of the Work, protected by the provisions of this law, or any of his or her successors or hirers, can refer to the court to report violations of the terms of this law.~~

(2) **mentioned in the (1) paragraph of this article and based on the circumstances, shall take have the authority to take any of the following measures**~~The Court regarding the complaints mentioned in the (1) paragraph of this article and based on the circumstances, shall take one of the following decisions:~~

1. Grant injunctions to prohibit the committing of infringements.
2. **Order the seizure and destruction or disposal outside the channels of commerce of infringing goods or any part thereof, with no compensation to any party, and in such a way as to avoid any harm to**

the right holder Order the seizure of the infringing copies or any part thereof;

3. Order the seizure and disposal outside the channels of commerce of materials and implements used to create infringing goods, without compensation to any party, and in such a manner as to minimize the risks of further infringements ~~Seizure of infringing copies and implements used in the Reproduction;~~

4. Order appropriate compensation, and/or payment of the claimant's expenses, including appropriate attorney's fees ~~Ordering the appropriate compensation.~~

5. Order recovery of profits attributable to the infringement ~~Seizure of profits attributable to the infringement.~~

6. Order the ban and closing down the establishment engaged in infringement ~~Ordering the destruction of piracy and illegal copies.~~

7. Ordering the ban and closing down the establishment engaged in infringement.

(3) A person committing one of the following acts may be sentenced to up to one year of imprisonment: ~~A person committing one of the following acts may be sentenced to up to one year of imprisonment.~~

- 1- manufacture or imports of any devices or instruments and implements with an intention of using them to deactivate any devices or instruments preventing or limiting the Reproduction of a Work, a sound recording, or a broadcast, or if meant to undermine the quality of the Work.
- 2- Manufacture or import of any devices or instruments and implements with the intention of using them to enable the reception of codified programs broadcast or communicated to the public in any other way, including programs communicated through satellite, or if they facilitate such transmission to Person not entitled to receive such programs.

a. Broadcast, remove or modify of any electronic data relating to copyright without authorization of the owner

3- Broadcast, remove or modify of any electronic data relating to copyright without authorization of the owner

(4) The court shall have the authority to order, in accordance with applicable Laws, regulations, provisional measures to prevent an infringement of any rights under this Law, or to preserve evidence relevant to an alleged infringement. Where appropriate, such measures may be adopted without notice or hearing afforded to the defendant, in particular where any delay is likely to cause irreparable harm to a right holder, or where there is a demonstrable risk of destruction of evidence

Penalties

Article 31:

(1) Persons found guilty of willful copyright infringement on a commercial scale in Afghanistan shall be sentenced to at least one but no more than three years' imprisonment, and shall be fined an amount of at least 50,000 but not more than 100,000 Afghanis. In both cases, the adjudicating court may order seizure, forfeiture and destruction of infringing goods, and of any materials or implements used to commit the violation. Sanctions imposed under this paragraph must be sufficient under the circumstances to provide a deterrent to future violations. Any Person who publishes a Work he or she does not own, in the time frame mentioned in Article (19) of this law, without a certified written authorization from the Author of the Work, with a consideration of the circumstances shall be punished by imprisonment for a period up to one year or with a fine of not less than (50,000.00 Afs) and not more than (100,000.00 Afs), or by either punishment.

(2) Any Person who repeats broadcast and show of a Work or a part of a Work without a certified written agreement from the Performer of the Work, in the time frame mentioned in Article (22) of this law, with a consideration of circumstances shall be sentenced to at least one but no more than three years' imprisonment, and shall be fined an amount of at least 50,000 but not more than 100,000 Afghanis ~~shall be punished by imprisonment for a period up to one year or with a fine of not less than (50,000.00 Afs) and not more than (100,000.00 Afs),~~ or by either punishment.

(3) Any Person who Publishes broadcasts, airs the translation of the Work under his own name or somebody else name, without a written agreement from the Author of the Work, with a consideration of circumstances shall be sentenced to at least one but no more than three years' imprisonment, and shall be fined an amount of at least 50,000 but not more than 100,000 Afghanis ~~shall be punished by imprisonment for a period up to one year and or with a fine of not less than (50,000.00 Afs) and not more than (100,000.00 Afs),~~ or by either punishment.

(4) The amounts mentioned in paragraphs (1,2,3) of this article may be amended by a suggestion of the Supreme Court and approval of Council of Minister and endorsement of the President [of the Islamic Republic of Afghanistan].

Protection of Defendants Order of Confiscation

Article 32:

The court may order a claimant who has abused enforcement procedures and caused corrective provisions to be taken to provide to a party wrongfully enjoined or restrained adequate compensation for the resulting injury. The court may also order the claimant to pay the defendant expenses, which may include appropriate attorney's fees. The court may, in the circumstances mentioned in Articles (30, 31) of this law, confiscate infringing copies of the Work and all implements and papers used in the Reproduction.

Sanctions of Infringing lateral Rights

Article 33:

Sanctions and injunctive measures mentioned in this Chapter are equally applicable to address violations of related rights. Sanctions and conservatory measures mentioned in articles (30,31 and 35) of this law is also applicable for the violation of the lateral Rights.

Protection of Works Created before the Enforcement of this Law

Article 34:

(1) Works provided in Article 6 of this Law that have been produced before the enforcement of this law and have not already fallen into the public domain, shall be protected by the provisions of this law. (1) Works provided in Article 6 of this Law that have been produced before the enforcement of this law, shall be protected by the provisions of this law.

(2) Any Person who has used the Work of others without a written agreement up to the date when the enforcement of this Law began, he/she shall not have the right to publish, broadcast, perform, re-present, unless obtaining a written agreement from the producer or his legal representative.

(3) The violators of the provisions of paragraph (2) of this Article, with a consideration of circumstances, shall be punished by imprisonment for a period up to one year and or with a fine of not less than (50000.00 Afs) and not more than (100000.00 Afs), or by either punishment.

Broadcasting Order

Article 35:

In case of recurrence, the sanctions provided in Article 31, shall be doubled, and the Court may also order to Publicizing or broadcasting the judgment in one of mass-media chosen by and at the expense of the petitioner party.

Chapter Seven

Miscellaneous

Ownership Right

Article 36:

Total transfer of future Works shall be null and unacceptable.

Exclusive Right of publicizing and broadcasting correspondences

Article 37:

The Author shall have the exclusive right to publish his or her letters. However, Author in any case can give the right of control over the exercise of that right to the recipient without any restriction and limitation. The Author shall have the exclusive right to publish his or her letters. However, he may not exercise such right without the permission of the recipient, where the Publication is likely to be prejudicial to the latter.

Publicizing/broadcasting picture or recording voice

Article 38:

(1) A Person who takes photographs, films, portraits or records voice of a Person shall be prohibited from publishing, displaying or distributing the original or copy of picture, film or voice record of the said person; this provision shall not apply if the Publication of the photograph or portrait was done on the occasion of a public event, or if relating to public figures or world known celebrities, or if authorized by public authorities for the public interest.

~~(2) The Person represented in the photograph, portrait, film, or recorded voice, may authorize its Publication in newspapers and magazines and other similar Publications or electronic transferors, without the authorization of the photographer, unless otherwise agreed.~~

Reproduce of work

Article 39:

(1) Reproduce of published Work is permitted by a natural person without the Author's authorization provided that it is exclusively for the personal use, the followings are exceptions:

- 1- Reproduction of architecture Work in the form of a building or construction. R
- 2- Reproducing in copy form of copying documents (Reprography) or photography of all or an important part of book of musical Work.
- 3- Reproducing all or part of database digitally. Reproduction [adaptation] of a computer program mentioned in the (2) paragraph of this Article is not included.

~~(2) The making of a single copy or adaptation of a computer program by the rightful owner of a copy of that computer program shall be allowed for the purposes that follow: The Reproduction, in a single copy, or the adaptation of a computer program by the rightful owner of a copy of that computer program and publishing it shall be allowed for the purposes that follow:~~

- 1- For the use of computer programming and to an extent and purpose for which the program is designed.
- ~~2—~~For the purpose of archive and documenting [keeping documents] and papers or changing a rightful computer program, provided that the version of the computer program is destroyed, lost or unusable.

~~(3) Any person may make quotations from a work which has already been lawfully made available to the public, provided that such use is compatible with fair practice, does not exceed the volume justified by the purpose for which the quotation is made."~~

Situations of Use of work and adoption

Article 40:

(1) It shall be lawful to reproduce short Works or extracts of Works for teaching purposes in educational institutions the activities of which do not serve direct or indirect commercial gain, provided that:

1. The act of Reproduction is an isolated one occurring, if repeated, each occurring should be on separate and unrelated occasions.
2. There is no collective license available for Reproduction by a competent authority in the collective management of rights of which the educational institution is or should be aware.
3. The name of the Author and the title of the Work shall be indicated on all copies.

(2) The Reproduction is permitted where the copy is made with the aim of preserving the original copy or, when necessary, replacing a lost, destroyed or rendered unusable copy in the permanent collection of another similar library or archive, provided that: ~~Copying and replication of a Work for the purpose of using it, is lawful under the~~ following conditions:

If the user does not make direct or indirect commercial gains-

Where the published article is a summary or an extract ~~of the~~of the Work and Reproduction is to satisfy the personal needs, provided that:

- The library or archive makes sure that the copy will be used solely for the purposes of study, scholarship or research, and if repeated, each occurring should be on separate and unrelated occasions, and

- There is no collective license available for Reproduction by a competent authority in the collective management of rights of which the library or archive is or should be aware.

(3) The Reproduction is permitted where the copy is made with the aim of preserving the original copy or, when necessary, replacing a lost, destroyed or rendered unusable copy in the permanent collection of another similar library or archive, provided that:

-It is impossible to obtain such a copy under reasonable conditions;

- The act of Reproduction or photocopy is an isolated one occurring case.

Optional Registration and Deposit Certificate

Article 41

(1) Owners of copyrights and related rights may register and deposit copies of their works at the Ministry of Information and Culture. The Ministry shall deliver to such owners a certificate, specifying the date of registration and deposit, the subject matter and nature of the right, and the name of the owner, subject to the payment of the required fees. Such certificate shall constitute evidence of the authenticity of the data included therein. ~~The Ministry of Information and Culture shall deliver to the Owners of rights or the Owners of Neighboring Rights a certificate, specifying the date of deposit, the subject matter and nature of the neighboring right and the name of the holder or Owner, subject to the payment of the required certification fees. Such certificate shall be an evidence of the authenticity of the data included therein.~~

(2) The fees for issuing deposit certificates mentioned in paragraph (1) of this Article shall be determined by a decision of the Councils of Ministers upon the proposal of the MoIC.

Public Broadcasting of Work

Article 42

Lectures, addresses and other works of the same nature which are delivered in public may be reproduced by the press, broadcast, communicated to the public by wire, or made the subject of public communication as set out in Article 9(6) of this Law, when such use is justified by its inforamatory purpose. Nevertheless, the author shall enjoy the exclusive right of making a collection of his works. ~~The press or other information media may publish, without the authorization of the Author, speeches, lectures, as well as legal proceedings or similar Works displayed openly to the public, provided that the name of the author is clearly indicated.~~

Playing or performing certain works Display of Work

Article 43

The musical bands of arms forces may, without the authorization of the author, play or perform a published musical work, provided that such playing or performance does not directly or indirectly produce any financial revenue, prejudice any right holder's legitimate interests in the work, or conflict with his normal exploitation of the work. ~~Musical bands or arms forces may,~~

~~without the authorization of the Author, play or Perform published Work in as much as such playing or performance does not produce directly or indirectly any financial revenue.~~

Translation of Foreign Work

Article 44:

- (1) ~~Notwithstanding the provisions of Article 9 of the Law, any Afghan citizen may obtain from the Ministry of Information and Culture a non-exclusive and non-assignable license for the translation of a foreign work, published in a printed form or any other form, into a language in general use in Afghanistan, and for the publication of this translation in a printed form or any other form, after three years from the date of the first publication of this work and provided that no translation of this work was previously published in the State by the owner of the translation right or with his or her consent or upon the depletion of the translated editions. Any Afghan citizen may obtain from the Ministry of Information and Culture a non-exclusive and non-assignable license for the translation of a foreign Work, published in a printed form or any other form, and for the Publication of this translation in a printed form or any other form, after three Years from the date of the first Publication of this Work and provided that no translation of this Work was previously published in the State by the owner of the translation right or with his or her consent or upon the depletion of the translated editions.~~
- (2) **Any Afghan citizen may obtain from the Ministry of Information and Culture a non-exclusive and non-assignable license to reproduce and publish any published work according to the following conditions:** ~~Any Afghan citizen may obtain from the Ministry of Information and Culture a non-exclusive license to reproduce and publish any published Work according to the following conditions:~~
 - 1- Broadcasted Work of poetry, theater, music or art book.
 - 2- **Lapse of seven years from the first publication of works of fiction, poetry, drama and music, and for art books, or after five years from the first publication of all other works.** ~~Lapse of seven Years from the first Publication of novel, or after five Years from the first Publication of all other Works~~

3- Copies of the Work were not distributed in the State to satisfy the needs of the public or for school or university education by the Owner of the Reproduction right by or with his or her consent and for a price similar to the prices of similar Works in the State, and

4- The published copy is sold according to the provisions of this paragraph for a price which is similar or less than the price provided for in Section (2) of this paragraph.

- (3) The translation licenses provided for in paragraph (1) of this Article are granted for the purposes of school and university education or research, whereas Reproduction licenses, provide for in (2) paragraph of this Article are granted only for the use in school or university education.
- (4) Where a translation or Reproduction license is granted, the Author of the original translated or reproduced Work shall be entitled to a fair compensation in conformity with the criteria of economic rights applied for voluntary licenses between Persons in the State and Persons in the Author's country.
- (5) The conditions and procedure of grant of licenses, provided for in this Article, are regulated by the Ministry of Information and Culture in a separate regulation.

Protection of National Folklore

Article 45:

~~National folklore shall be the public property of the State, the Ministry of Information and Culture, shall protect National Folklore by all legal means.~~

Publisher of Work

Article 46:

~~*The Owner or maker shall always be considered the publisher of the Work and shall have all Publication rights of the tape and its copies.*~~ ~~The Producer shall always be considered the publisher of the Work and shall have all Publication rights of the tape and its copies.~~ He or she shall act, during the period of exploitation of the tape, on behalf of the co-Authors of the Audiovisual Work and their successors, as to the terms of the display and exploitation of the tape without prejudice to the rights of the Author of the literary and musical Works in publishing their Works by other means, unless otherwise agreed.

Applicability Applicable Areas of this Law

Article 47

(1) The provisions of this Law shall apply to the following Works:

1-Work of Afghan Authors (Citizens of Afghanistan) or Afghanistan habitual Permanent Residents or of citizens or habitual residents of countries with which Afghanistan has concluded applicable intellectual property treaties.

2-~~Works, without a consideration of their author's country of origin or residence, that are published in another country for the first time, and also published within 30 days within Afghanistan or within any other country referenced in paragraph 1(1) of this Article. Works, without a consideration of their Authors country of origin or residence, that are published and broadcast in an other country for the first time and it is published and broadcast in Afghanistan also within 30 days.~~

3- Authors of audiovisual works whose producers have their headquarters or habitual residence in Afghanistan, or in any other country referenced in paragraph 1(1) of this Article. Audiovisual Works whose Producers have their headquarters or Permanent Office in the State [Afghanistan].

4-Architecture works that have been produced in Afghanistan, or in any other country referenced in paragraph 1(1) of this Article, or other artistic works that have been incorporated in a building or other structure located in Afghanistan, or in any other country referenced in paragraph 1(1) of this Article. Architecture Works that have been produced in the State or any Artistic Work that have been composed inside a building or house in the State.

5-Performers whose performance takes place in Afghanistan, or in any other country referenced in paragraph 1(1) of this Article; any performance incorporated in a phonogram protected under paragraph 1(6) of this Article; and any unfixed performance carried by a broadcast protected under paragraph 1(7) of this Article.

6-Producers of phonograms who are citizens or habitual residents of Afghanistan, or of any other country referenced in paragraph 1(1) of this Article, as well as phonograms first fixed or published in any such country. A phonogram first published outside any such country but also published, within thirty days of its first publication, in such a country, shall be considered as first published in such a country.

7-Broadcasting organizations

headquartered in Afghanistan, or in any other country referenced in paragraph 1(1) of this Article, and broadcasts transmitted from a transmitter situated in any such country

(2) The provisions of this Law shall apply to Works, performances, Phonograms or broadcasts in existence at the time of its entry into force, provided that the protection period had not lapsed under a previous legislation.

(3) The provisions of this Law shall not apply to contracts concerning Works artistic performances, Phonograms or broadcasts, which were concluded prior to its entry into force.

Formulation of Regulations and Procedures

Article 48

The Ministry of Information and Culture for the better implementation of the provisions of this Law, shall issue procedures, rules and regulations.

Date of Enforcement

Article 49

This Law shall enter into force as from the date of its Publication in the Official Gazette. Starting from its enforcement provisions inconsistent with this law shall be repealed.