

## **TRANSLATION**

### **Decree-Law no. 02/2017**

#### **COPYRIGHT AND RELATED RIGHTS CODE**

Whereas, copyright law, also currently known as intellectual property, is still regulated by Decree-Law no. 4698 of 23 February 1972 that approves the Code of Copyright and extends it to S.Tomé and Príncipe by Decree No 679/71, as an overseas territory;

Whereas, when the aforesaid law was first published it represented an important advance, it has understandably, through the passage of time become outdated and the need for it to be replaced has been felt for a long time;

Indeed, during the almost 50 years that the said Decree-law prevailed, several events have contributed to the need for its replacement. The unceasing wave of discoveries, of perfecting and of marketing the technical means capable of supporting or expressing works of the mind demand that specific regulations are put in place;

Considering, in addition, the need to harmonize domestic law with the international texts which have in the meantime appeared, gives rise to a particularly necessary collaboration between Member States in the field of copyright and related rights and has proved to be fruitful;

Considering that the Berne Convention of 9 September 1886, completed in Paris on 4 May 1896, revised in Berlin on 13 November 1908, completed in Bern on 20 March 1914 and revised in Rome on 2 June 1928, in Brussels on 26 June 1948, in Stockholm on 14 July 1967 and in Paris on 24 July 1971, and modified on 28 September 1979, is an international legal instrument of great significance in this matter and of which São Tomé and Príncipe is a party;

In light of the aforesaid, there is an urgent need to review this legislation to ensure that there is adequate protection of authors' and related rights so as to provide motivation and greater intellectual creativity and avoid that the works of authors and performers are subject to the various forms of piracy and counterfeit.

In these terms and under the provisions set out in sub-paragraph c) of article 111 of the Constitution, the State decrees as follows:

#### **Title I Protected Works and Copyright**

#### **Chapter I Protected Works**

Article 1  
**Definition**

1 - Works shall be considered to be intellectual creations in the literary, scientific and artistic fields, howsoever expressed and, as such, are protected in accordance with the provisions of this Code, which protection includes the rights of the respective authors.

2 - Ideas, processes, systems, operational methods, concepts, principles, or discoveries, per se and as such, are not protected in terms of this Code.

3 - For the purposes of this Code, a work is independent of its disclosure, publication, use or exploitation.

Article 2  
**Original Works**

a) Books, booklets, magazines, newspapers and other written material;

b) Dramatic works and musical dramas and their enactment;

c) Conferences, lectures, speeches and sermons;

d) Choreographic works and pantomimes, expressed in writing or in any other form;

e) Musical compositions with or without words;

f) Cinematographic works, television works, phonographic, video and radio recordings.

g) Drawing works, tapestry, painting, sculpture, ceramic and tile works, engraving, lithography and architecture;

h) Photographic works or similarly produced works;

i) Works of applied art, industrial designs or models and design works that constitute an artistic creation, regardless of its respective industrial property protection;

j) Geographic illustrations and maps;

**k)** Projects, sketches and plastic arts related to architecture, town planning, geography or other sciences;

**l)** Slogans or mottos, even those of a promotional nature, if they are original;

**m)** Parodies and other literary or musical compositions, even if inspired by the theme or subject of another work.

Article 3  
**Works deemed to be original**

1- The following works shall be regarded as original works:

a) Translations, Arrangements, Instrumentations, Dramatizations, Cinema adaptations and Other Adaptations of any work, even if the latter has not been the subject of protection;

b) Summaries and Compilations of works, be they protected or not, such as Collections, Encyclopaedias and Anthologies, which by virtue of the selection or arrangement of their contents, constitute intellectual creations;

c) Systematic or Annotated Compilations of texts of Conventions, Laws, Regulations and Administrative or judicial decisions, or decisions by any Organ or Authority of the State or Administration.

2- The protection afforded to these works shall not prejudice the rights granted to the authors of the corresponding original work.

Article 4  
**Title of the work**

1 - The protection granted to the work shall extend to its title, regardless of registration, provided that it is original and cannot be confused with the title of any other work of the same kind by another author which has previously disclosed or published.

2 - The following shall be considered not to have met these requirements:

a) Titles consisting of the generic, necessary or usual name of the subject-matter of works of a certain type;

b) Titles composed exclusively of names of historical, historical-dramatic or literary and mythological characters or of names of living persons.

3 - The title of a work not disclosed or published shall be protected if it complies with the conditions of this article and has been registered together with the work.

Article 5  
**Title of newspapers or  
any other periodical publication**

1 - The title of a newspaper or any other publication shall be protected, provided it is regularly published and duly entered in the relevant registration section of the government department responsible for social communication.

2 - The use of the aforementioned title by a similar publication will only be possible one year after the expiry of the right to publication, communicated in any manner, or after three years of the publication being interrupted.

## Article 6

### **Published works and disclosed works**

1 - A published work is work reproduced with the consent of its author, notwithstanding the manner in which the copies are made, provided that they are effectively made available to the public in a manner that reasonably satisfies the public's needs, taking into account the nature of the work.

2 - The use or disclosure of a work that does not constitute its reproduction pursuant to the provisions of the preceding paragraph shall not constitute publication.

3 - A disclosed work shall mean a work which has been lawfully brought to the knowledge of the public by any means such as the performance of a drama, dramatico-musical or cinematographic work, the performance of a musical work, the recitation of a literary work, transmission or broadcasting, construction of an architectural or plastic work and the exhibition of an artistic work.

## Article 7

### **Exclusion of protection**

1 - The following are not the subject of protection:

a) The daily news and reports of events of simple informative nature, disseminated in any way;

b) Applications, claims, complaints and other texts presented in writing or orally to authorities or public services;

c) Proposed texts and speeches made before assemblies or other collegiate, administrative and political bodies at a national, regional or local level, or in public debates on matters of common interest;

d) Political speeches.

2 - Any full reproduction, either separately, collated or in another form for collective use, of speeches, oratorical pieces and the texts referred to in subparas c) and d) of paragraph 1, may only be made by the author or with his consent.

3 - The use by third parties of the work referred to in paragraph 1, if same is free, shall be limited to achieve the objective required by its disclosure.

4 - The texts referred to in para. 1b) shall not be communicated if they are of a confidential nature or if their disclosure may affect the honour or reputation of the author or any other person, unless a court order to the contrary was given pursuant to the proof of legitimate interests which supersede those justifying the prohibition.

## Article 8

### **Compilations and annotations of official texts**

1 - Compiled or annotated texts referred to in paragraph 1c) of article 3, and their official translations, are not protected.

2 - If the texts referred to in the previous paragraph include protected works, these may be used without the consent of the author and without conferring on him any right in the context of the activity of the public service concerned.

## **Chapter II Authors' Rights**

### **SECTION I Authors' Rights**

#### **Article 9 The content of copyright**

1 - Copyright covers patrimonial rights and personal rights, called moral rights.

2 - In the exercise of the patrimonial rights, the author has the exclusive right to dispose of the work and to enjoy and use it, or to authorize a third party to enjoy or use it, totally or partially.

3 - Notwithstanding his economic rights, and even after their transfer or lapse, the author shall enjoy the moral rights in his work, namely the right to claim paternity and to ensure the authenticity and integrity of his work.

#### **Article 10 Carriers of the work**

1 - The right of the author over the work as an intangible is independent of the right of ownership over the material objects which are used to support its fixation or communication.

2 - The manufacturer and the person acquiring the supports referred to in the preceding paragraph shall not enjoy any of the powers in the copyright.

### **SECTION II Assignment of Copyright**

#### **Article 11 Ownership**

Copyright belongs to the intellectual creator of the work, unless otherwise specified.

#### **Article 12 Recognition of copyright**

Copyright is recognized regardless of registration, filing or any other formality.

Article 13  
**Subsidised Work**

Any person who subsidizes or in any manner finances, totally or partially, the preparation, conclusion or disclosure of a work shall not thereby acquire any of the powers derived from copyright law, unless it has been agreed to in writing.

Article 14  
**Ownership in exceptional cases**

1 - Without prejudice to the provisions of Article 174, ownership of the copyright in a work done on order or on behalf of others, either in compliance of an official duty or an employment agreement, shall be determined in accordance with the provisions of the respective agreement.

2 - In the absence of an agreement, ownership of the copyright in a work carried out on behalf of another person is presumed to belong to its intellectual creator.

3 - In the event that the name of the creator is not mentioned in the work or does not appear in the place intended for this purpose according to universal usage, the copyright shall be deemed to remain the property of the entity on whose behalf the work is carried out.

4 - If ownership of the patrimonial rights belongs to the person for whom the work was carried out, and whether or not the work is disclosed or published, the intellectual creator shall be entitled to special remuneration in addition to the agreed remuneration, in the following circumstances:

- a) The intellectual creation has been diligently carried out but clearly exceeds the responsibility or task entrusted to him;
- b) The work gives rise to uses or benefits not included or envisaged in the agreed remuneration.

Article 15  
**Limitations on use**

1 - In the cases provided for in articles 13 and 14, when the copyright belongs to the intellectual creator, the work may only be used for the purposes specified in the respective agreement.

2 - Any changes to the work may only be effected if expressly agreed to by its creator and only in accordance with the terms agreed upon.

3 - The intellectual creator may not make use of the work in a manner which could adversely affect the purposes for which it was produced.

Article 16  
**Concepts of collaborative work and collective work**

1 – A work that is the creation of a number of persons shall be called:

a) Collaborative work (joint authorship), when same is disclosed or published in the names of all or some of the co-authors, whether or not their individual contributions can be distinguished;

b) Collective work when it was carried out by a natural or legal person and it is disclosed or published in its name.

2 - A random work of art in which the creative contributions by one or more performers were originally envisaged shall be considered collaborative work.

#### Article 17 **Collaborative Work**

1 – Copyright in a collaborative work, in its entirety, belongs jointly to all those that participated in its creation and the joint exercise of this right shall be subject to the rules governing joint ownership.

2 - The indivisible contribution of each of the authors of the work shall be considered to be of equal value, save where expressly agreed to the contrary.

3 - If the collaborative work is disclosed or published only in the name of one or some of the authors, in the absence of an explicit indication by the remaining authors in some part of the work, it shall be presumed that the authors not mentioned have assigned their rights to the author or authors in whose name the work was disclosed or published.

4 - Any person who has simply helped the author to produce, disclose or publish the work, irrespective of the manner in which it was done, shall not be considered a co-author and consequently shall not benefit from the copyright.

#### Article 18 **Individual rights of co-authors of a collaborative work**

1 - Any one of the authors may request the disclosure, publication, exploitation or the modification of the work done in collaboration, and any dispute shall be settled according to the principles of good faith.

2 - Any of the authors may, without prejudice to the joint exploitation of the collaborative work, individually exercise his rights in respect of his personal contribution, if such contribution is capable of being distinguished.

#### Article 19 **Collective Work**

1- Copyright in a collective work is attributed to the natural or legal entity which has organized and directed its creation and in whose name it is disclosed and published.

2- Where it is possible to identify, in the collective work as a whole, the specific creative production of one or more contributors, the principles of collaborative work shall apply to the individual contributions.

3- Newspapers and other periodicals shall be deemed to be collective works and their copyright belongs to the respective enterprises.

#### Article 20

### **Composite Works**

1- Composite work is one which incorporates all or part of a pre-existing work, with the consent but without the collaboration of its author.

2- The rights to the composite work belong exclusively to its author, without prejudice to the rights of the author of the pre-existing work.

#### Article 21

### **Broadcasting Works**

1- Broadcasting works are understood to be those created according to special conditions for the use of sound or visual broadcasting, and includes the adaptations for audiovisual purposes of works originally created for other uses.

2- The authors of the text, the music and its production and adaptation shall be considered to be co-authors of a broadcast work made in collaboration, provided that the work is not one which was initially produced for audiovisual communication.

3- The provisions relating to cinematographic works contained in the following articles shall apply, mutatis mutandis, to the authorship of broadcasting works.

#### Article 22

### **Cinematographic Works**

1- The following shall be considered co-authors of cinematographic works:

a) The director;

b) The writer of the script and the dialogue, if it is a different person, and the author of the musical score.

2- In the case of the adaptation of a work which was not expressly composed for cinema, the authors of the adaptation and the dialogue shall also be considered co-authors.

#### Article 23

### **Use of other works in cinematographic work**

The provisions of article 20 are applicable to the rights of creators who are not considered co-authors in terms of article 22.

#### Article 24

### **Sound or video recordings**

Authors of sound and video works are considered to be the authors of the text or fixed music and, in the latter case, so is the director.



Article 25  
**Architectural works, urban planning and design**

The author of an architectural work, urban planning or design is the creator of its overall concept and respective project.

Article 26  
**Technical Personnel**

Without prejudice to the related rights which they may be entitled to, natural or collective persons in their capacity as employees, technical representatives, designers, constructors or similar, may not claim any of the rights related to copyright in relation to the production and distribution of the works referred to in articles 21 et seq.

**Chapter III**  
**Authors and Literary or Artistic names**

Article 27  
**Paternity of the works**

- 1- Unless otherwise provided, the author is the intellectual creator of the work.
- 2- The author shall be deemed to be the person whose name is indicated in the work as such, according to customary usage, or who is in any way declared or communicated to the public as being the author.
- 3- Unless otherwise provided, any reference to the author shall include the successor and the transferee of his rights.

Article 28  
**Identification of the author**

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

Article 29  
**Protection of the name**

- 1- 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 if it is of a different nature, or with the name of a person who is well-known in the history of literature, the arts or science, shall not be permitted.
- 2- If the author is a relative or related to another person previously known by the same name, he may make a distinction by adding another name to indicate the kinship or relationship.
- 3- No person may use the name of another author on his own work, even with his consent.
- 4- The injured party due to the unlawful use of a name in contravention of the provisions of the preceding paragraphs shall have the right to seek appropriate legal measures to

avoid confusion among the public as to the identity of the author, including the right to cease the use of the name.

#### Article 30

### **Works of anonymous authorship**

1- 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 anonymously, shall be considered to be the author's representative and shall be responsible for defending the relevant rights against third parties, unless the author has expressed the contrary.

2- The author may at any time reveal his identity and authorship of his work, whereupon the powers of representation referred to in the previous paragraph shall immediately cease.

## **Chapter IV**

### **Duration**

#### Article 31

### **General Rule**

In the absence of any special provision, the author's rights shall lapse 70 years after the death of the creator of the work, even if the work was only disclosed or published posthumously.

#### Article 32

### **Collaborative and collective works**

1- Copyright in works of joint authorship as a whole shall lapse 70 years after the death of the last surviving author.

2- Copyright in collective works or in works originally attributed to a collective entity shall lapse 70 years after the first lawful disclosure or publication, unless the individuals who created it have been identified in the versions of the work made available to the public.

3- With regard to individual contributions that can be distinguished, the duration of copyright attributed to each author in works of joint authorship or in collective works shall be in accordance with the provisions of Article 13.

#### Article 33

### **Anonymous works and works deemed anonymous**

1- The duration of protection of anonymous works or works lawfully disclosed or published without the identity of the author shall be 70 years following disclosure or publication.

2- Where the use of a name that is not the author's own leaves no doubt as to the author's identity or if his identity is revealed within the period referred to in the preceding paragraph, the duration of protection shall be that granted to works disclosed or published in the author's own name.

#### Article 34

## **Cinematographic or Audiovisual works**

Authors' rights in cinematographic or any other audiovisual work shall expire 70 years after the death of the last surviving of the following persons:

- a) The director;
- b) The author of the screenplay or the adaptation;
- c) The author of the dialogue;
- d) The author of the musical compositions specifically created for the work.

### Article 35

#### **Work Published or disclosed in Parts**

1- If the various parts, volumes or episodes of a work have not been published simultaneously, the legally established periods of protection shall be applied to each part, volume or episode.

2 - The same principle shall also apply to issues and numbers of collective works published periodically such as newspapers and magazines.

### Article 36

#### **Computer Programs**

1- The right assigned to the intellectual creator relating to the creation of the program shall lapse 70 years after his death.

2- If the right was originally assigned to a person other than the intellectual creator, the right shall lapse after the date on which the program was first lawfully published or disclosed.

### Article 37

#### **Foreign Works**

Works that have originated in a foreign country shall enjoy the period of protection provided for in the law of the country of origin, provided it does not exceed the periods established in the preceding articles.

### Article 38

#### **Public Domain**

1- The work shall fall into the public domain when the limits of protection established in this decree have expired.

2- Any work which has not been lawfully published or disclosed within 70 years from the date of its creation, if the time period is not calculated from the death of the author, shall also lapse.

Article 39  
**Works in the Public Domain**

1- Any party who, after the expiry of copyright, lawfully publishes or discloses an unpublished work shall enjoy for 25 years after the publication or disclosure, the same protection as that arising from the patrimonial rights of the author.

2- Critical and scientific publications of works which have fallen into the public domain shall enjoy protection for 25 years from the date of its first lawful publication.

Chapter V  
**Transfer and Encumbrance of the  
Patrimonial Content of Copyright**

Article 40  
**Right of Disposal of Patrimonial Rights**

The original owner of the copyright, his successors or transferees, may:

- a) Consent to the use of the work by third parties;
- b) Transfer or encumber, in whole or in part, the patrimonial content of the copyright of his work.

Article 41  
**Manner of Consent**

1- A mere consent given to a third party to disclose, publish, use or exploit the work by any means shall not be considered to be a transfer of the copyright in the work.

2- The consent referred to in the preceding paragraph may only be granted in writing, and shall be considered non-exclusive and subject to payment.

3- The written consent shall peremptorily and specifically show the authorised form of disclosure, publication and use, as well as the relevant conditions governing duration, place and price.

Article 42  
**Limitations on Transfer and Encumbrance**

Powers granted for the protection of moral rights and other rights excluded by law may not be the subject of either voluntary or compulsory transfer or encumbrance.

Article 43  
**Partial Transfer or Encumbrance**

1- The object of partial transfer or encumbrance shall be the forms of use designated in the relevant agreement.

2- Any contract which has as its object the partial transfer or encumbrance of authors' rights shall be in writing with notarially certified signatures, failing which it shall be null and void.

3- The transfer certificate shall indicate the rights that are being alienated and the conditions for their exercise, namely, the duration and place of their exercise and, if the transaction involves payment, the amount thereof.

4- If the transfer or encumbrance is temporary and no duration has been established, the maximum duration shall be presumed to be twenty five years in general and ten years for photographic or applied art works.

5- The exclusive right granted shall lapse if after a period of seven years the work has not been used.

#### Article 44 **Total transfer**

The total and permanent transfer of the patrimonial content of copyright may only be effected by public deed identifying the work and indicating the relevant remuneration, failing which it shall be null and void.

#### Article 45 **Usufruct**

1- Copyright may be the subject of legal or voluntary usufruct.

2- Unless otherwise stated, the usufructuary may only use the work which is the subject of usufruct for any purpose involving its transformation or modification with the consent of the copyright owner.

#### Article 46 **Security**

1- The patrimonial content of copyright may be pledged as security.

2- Any execution shall apply specifically to the right or rights that the debtor has pledged as security in respect to the work or works indicated.

3- The creditor does not acquire any rights to the supports of the work.

#### Article 47 **Attachment and Seizure**

The author's patrimonial rights on all or some of his works may be subject to attachment or seizure, and the provisions of article 46 shall be applied to the sale in execution.

#### Article 48 **Anticipated alienation of Authors' Rights**

1- The transfer or encumbrance of copyright in future work may only apply to works which the author may produce within a maximum period of ten years.

2- If the contract relates to works produced over a longer period, its effects shall be limited to the period referred to in the paragraph above and the stipulated remuneration shall be proportionally reduced.

3- Any contract providing for the transfer or encumbrance of future works without a time limit shall be invalid.

#### Article 49

### **Additional Compensation**

1- If the intellectual creator or his successors, in transferring or encumbering the right of exploitation against payment of a consideration, suffers serious economic loss due to the obvious disproportion between the income acquired and the profit made by the beneficiary, they may claim an additional compensation from the proceeds of the exploitation.

2- In the absence of agreement, the additional compensation referred to in the previous paragraph shall be fixed taking into account the normal proceeds of exploitation of the whole range of similar works of the author.

3- If the price of the transfer or encumbrance of the copyright is fixed as a share in the proceeds derived from the exploitation by the beneficiary, the right to additional compensation shall only apply if the percentage established is significantly lower than that customarily paid in transactions of the same nature.

4- The right of compensation shall lapse if it is not exercised within two years from the date of becoming aware of the serious patrimonial damage suffered.

#### Article 50

### **Attachment and seizure of Unpublished or Incomplete Works**

1- If they are incomplete, unpublished manuscripts, sketches, drawings, paintings or sculptures, whether or not they have been signed, shall be exempt from attachment and seizure, unless the author so offers them or consents thereto.

2- Where the author has unequivocally revealed his intention to distribute or publish the aforesaid work, the creditor may seize or attach the corresponding author's rights.

#### Article 51

### **Copyright in an Unclaimed Estate**

1- If copyright forms part of a deceased estate which has been declared unclaimed by the State, the said right shall be excluded from the winding up of the estate and the regime established in the Code of Civil Procedure shall be applicable.

2- If the State has not used or consented to the use of the work after the expiry of a period of ten years following the date upon which the estate was declared unclaimed, the work shall fall into the public domain.

3- If, on the death of one of the co-authors of the work done in collaboration, his estate is forfeited to the State, the copyright of the work as a whole shall belong to the remaining authors.

#### Article 52

#### **Re-publication of Out of Print Works**

1- If the owner of the right to re-publish a work which has gone out of print refuses to exercise it or to authorize its re-publication, any interested person, including the State, may seek a court order to do so.

2- The court order shall be granted if it is in the public interest to re-publish the work and if the refusal was not based on reasonable moral or material grounds, which shall exclude financial reasons.

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

4- The provisions of this article shall apply, mutatis mutandis, to all forms of reproduction if the transferee of the rights in a work already disclosed or published does not satisfy the reasonable needs of the public.

#### Article 53

#### **Procedure**

1- The court order shall be granted in accordance with the procedure relating to the withdrawal of consent and shall indicate the number of copies to be printed.

2- The order is subject to appeal which has a suspensive effect, and the decision shall be final.

#### Article 54

#### **Resale Rights**

1- An author who has alienated an original work of art that is not a work of architecture or applied arts, his manuscript or the copyright on his work, is entitled to a share of 6% on the price of each transaction.

2- If two or more transactions take place within a period of less than two months or within a longer period but in such a way that it may be assumed that the author is intentionally being deprived of the right to his share, the increase in the price referred to in the preceding paragraph shall be calculated according to the last transaction.

3- The right referred to in paragraph 1 of this article is inalienable, may not be waived and is imprescriptible.

4- The cost of transaction for the purposes of attributing the right to a share and fixing its amount shall be reduced by the verified expenditure on advertising, representation and other similar actions involved in promoting and selling the works and the corresponding inflation indexes.

Article 55  
**Acquisition by prescription**

Authors' Rights may not be acquired by prescription.

**Chapter VI**  
**Moral Rights**

Article 56  
**Definition**

1-Regardless of the patrimonial rights he may have and notwithstanding that he may have alienated or encumbered them, the author has, during his lifetime, the right to claim the authorship of his work and to ensure its authenticity and integrity by opposing any mutilation, distortion or other alteration thereof and, in general, to oppose any act that may affect his honour and reputation.

2- The aforesaid right is inalienable, may not be waived, is imprescriptible and shall endure after the author's death in accordance with the provisions of the following article.

Article 57  
**Exercise of rights**

1- Provided that the work does not fall in the public domain, the exercise of these rights shall, on the death of the author, belong to his successors.

2- The State, through the Ministry of Culture, shall be responsible to protect the authenticity and integrity of works in the public domain.

3- On the death of the author, the Ministry of Culture shall be responsible for taking adequate measures to protect works which are not within the public domain but whose authenticity or cultural standing have been threatened, in cases where the owners of the copyright have been notified thereof and have failed to exercise their rights without any reasonable justification.

Article 58  
**Reproduction of "Ne Varietur" Work**

Where the author has partially or totally revised his work and has made or authorized its disclosure or publication "ne varietur", his successors or third parties may not reproduce the work in any of the previous versions.

Article 59  
**Modifications of the Works**



1- Modifications of work without the consent of the author shall not be permitted, even in those cases where use of the work without such consent is lawful.

2- In the case of anthologies to be used for educational purposes, the necessary modifications may be made provided that the author does not object to them according to the provisions of the following paragraph.

3- The author's consent shall be requested by registered letter with acknowledgment of receipt and he shall have one month from the date of registration to make his position known.

#### Article 60

### **Modifications of Architectural Projects**

1- The author of architectural or plastic works plans that are carried out by others and incorporated in the architectural work has the right to supervise its construction or implementation in all its stages and details, so as to ensure that the works conform exactly to the plans of which he is the author.

2- Where the works are built according to the plans, the building contractor may not, during the construction or after completion, make any changes without prior consultation with the author of the plans, failing which he may be liable for damages.

3- In the absence of agreement, the author may repudiate authorship of the modified work, and the proprietor shall not thereafter be permitted to use, for his personal benefit, the name of the author of the original project.

#### Article 61

### **Moral Rights in the Event of Attachment**

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

2- If, in the event case mentioned above, the author retains the proofs without justification for a period exceeding sixty days, the printing may proceed without his review.

#### Article 62

### **Right of Withdrawal**

The author of a disclosed or published work may at any time withdraw it from circulation and terminate its use in whatever form it may be, provided that he has justifiable moral reasons therefor and compensates the interested parties for any loss they may suffer.

## **Chapter VII**

### **International System**

#### Article 63

### **Jurisdiction of the Laws of São Tomé and Príncipe**

The laws of São Tomé and Príncipe shall have exclusive jurisdiction to adjudicate on the protection to be assigned to a work, without prejudice to ratified or approved international conventions.

#### Article 64

### **Protection of Foreign Works**

The works of foreign authors or of which their country of origin is a foreign country shall enjoy the protection afforded by Santomean law, subject to reciprocity, unless the contrary is stipulated in any international convention to which São Tomé and Príncipe is bound.

#### Article 65

### **Country of origin of the Published Works**

- 1- The country of origin of the published works is the country of first publication.
- 2- In the event that a work is published simultaneously in several countries that grant different periods of copyright protection, in the absence of any applicable international treaty or agreement, the country of origin shall be deemed to be the country that grants the lesser period of protection.
- 3- If a work is published in two or more countries within a period of thirty days calculated from the first date of publication, inclusive, it shall be deemed to have been published simultaneously in several countries.

#### Article 66

### **Country of origin of Unpublished Works**

- 1- The country of origin of unpublished works shall be deemed to be the country of origin of the author.
- 2- However, in the case of works of architecture and of graphic or visual arts, the country in which the said works are built or incorporated in a building, shall be regarded as the country of origin.

## **Title II**

### **Use of the Work**

#### **Chapter I General Provisions**

#### **Section I Modes of Use**

#### Article 67

### **Use and enjoyment**

- 1- An author shall have the exclusive right to enjoy and use his work, in whole or in part, including, in particular, the right to disclose, publish and exploit it economically in any direct or indirect form, within the limitations of the law.

2- From an economic perspective, the protection of the pecuniary benefits resulting from such exploitation is the fundamental objective of the legal protection.

Article 68  
**Forms of use**

1 - Exploitation and, in general, use of the work, may be undertaken according to the type and nature of the work and in any method whether currently known or not.

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

a) Publication, either by printing or by any other method of graphic reproduction;

b) Public performance, recitation, execution, exhibition or display;

c) Cinematographic reproduction, adaptation, performance, execution, distribution and projection;

d) Fixing or adapting any device used for mechanical, electric, electronic or chemical reproduction and the public performance, transmission or retransmission by such means;

e) Diffusion by photography, telephotography, television, radio or by any other process for reproducing signals, sounds or images, as well as public communication by loudspeaker or similar instruments, by wire or wireless means, in particular, by radio waves, optical fibre, cable or satellite, whenever such communication is carried out by an organization other than the original one;

f) Any form of distribution of the original or copies of the work, such as by sale, rental or lease;

g) Translation, adaptation, arrangement, instrumentation or any other transformation of the work;

h) Any use in another work;

i) Direct or indirect reproduction, temporary or permanent, by any means and in any form, in whole or in part;

j) Making the work available to the public, by wire or wireless means, in order to make it accessible to any person from an individually chosen place and time;

k) Construction of architectural works according to a plan, whether or not it is a repetition.

3 - The owner of the copyright shall have the right to decide freely upon the procedures and conditions of use and exploitation of the work.

4 - The various forms of use of the work are independent of each other and the use of any of these forms by the author or authorized person shall not preclude the author or third parties from adopting the remaining forms of use.

Article 69  
**Incapacitated Authors**

An incapacitated intellectual creator may exercise his moral rights provided he is naturally able to do so.

Article 70  
**Posthumous Works**

1 - The author's successors shall have the right to decide on the use of his undisclosed or unpublished works.

2 - A successor who discloses or publishes a posthumous work shall have the same rights thereto as its author would have if he had disclosed or published the work during his lifetime.

3 - Save in the case of impossibility or delay in the disclosure or publication of the work due to serious moral considerations that fall to be adjudicated by the courts, and without prejudice to the rights provided for in the preceding paragraph, if the successors do not use the work within twenty five years after the death of the author, they may not oppose its disclosure or publication.

Article 71  
**Right of translation**

The right to use a work without the prior consent of the author implies the right to translate or transform the work in any manner and to the extent necessary for its use.

**Section II**  
**The Management of Copyright**

Article 72  
**Powers of Management**

The powers relating to the administration of copyright may be exercised by the owner of the copyright or his duly authorized representative.

Article 73  
**Agents of the Author**

1 - National and foreign associations and organizations established to administer authors' rights shall carry out this function as agents of the respective copyright owners, by virtue of the author being a member thereof or registered as a beneficiary of their services.

2 - The associations or organizations referred to in paragraph 1 above shall have legal capacity in civil and criminal proceedings to defend the legitimate interests and rights of their principals in matters of copyright law, without prejudice to the rights granted to a representative expressly nominated by the interested party to do so.

Article 74  
**Registration of Agents**

1 - The mandate referred to in the preceding article, expressly granted or resulting from the aforesaid capacity mentioned therein, shall be subject to registration in the Office responsible for the registration of Intellectual Property.

2 - The registration is made on application by the agent, accompanied by documentary evidence of the mandate, and if the document is in a foreign language, a translation may be required.

3 - The fees payable for the registrations referred to herein and the corresponding certificates are established by Ministerial decree.

Article 75  
**Scope**

1 - The reproduction rights shall exclude temporary acts of reproduction which are transient or accessory, which are an integral and essential part of a technological process and whose sole purpose is to enable a transmission in the network between third parties by an intermediary, or the lawful use of a protected work which does not, per se, have any economic significance. In so far as they comply with the conditions set out, acts which enable the browsing of networks and temporary storage shall be permitted, as are those that enable the effective functioning of transmission systems, provided that the intermediary does not modify the contents of the transmission and does not interfere with the lawful use of the technology in accordance with the good practices recognized by the market, to obtain data on the use of the information and, in general, all processes of transmission that are purely technological.

2 - The following uses of a work without the consent of the author shall be lawful:

a) The reproduction for exclusively private purposes on paper or any similar medium, using any kind of photographic technique or process with similar results, with the exception of musical scores, as well as the reproduction on any medium made by a natural person for private use and without any direct or indirect commercial purpose;

b) The reproduction and making available to the public by means of social communication and for the purposes of information, discourses, speeches and lectures given in public places which do not fall within the categories provided for in Article 7, either as excerpts or in a summarized form;

c) Regular selections of periodic press articles in the form of press reviews;

d) Fixation, reproduction and public communication by any means of short excerpts from literary or artistic works when their use in reports of current events is justified for the purposes of information;

e) Partial or total reproduction of a work that has previously been made available to the public, provided that such reproduction is carried out by a public library, public archives, public museum, a documentation centre for non-commercial use or a scientific or teaching institution, and such reproduction and the corresponding number of copies are not for

public use and are restricted to the needs of the activities of these institutions and are not aimed at obtaining a direct or indirect economic or commercial advantage, including the reproductions necessary to preserve and archive a work.

f) Reproduction, distribution and making available to the public for didactic and education purposes of parts of a published work, provided that it is intended exclusively for teaching in such establishments and are not aimed at obtaining a direct or indirect economic or commercial advantage;

g) Inclusion of citations or summaries from the works of others, whatever the type or nature, in support of one's own opinions or for purposes of critique, discussion or teaching, and to the extent necessary to achieve such purpose;

h) Inclusion of short excerpts or fragments of the works of others for the purposes of teaching;

i) The reproduction, public communication or making available to the public for people with disabilities of works directly related to and strictly to the extent required by the said deficiencies, and provided that it is not, directly or indirectly, for profit;

j) The performance and public communication of hymns or officially adopted patriotic songs as well as works of a religious character, during religious practices or services;

k) Use of works for the purpose of advertising a public exhibition or sale of artistic works, to the extent necessary to promote the event, but excluding any other commercial use;

l) The reproduction, communication to the public or making available to the public, articles on current economic, political or religious topics or of broadcast works or other subjects of like character, provided that rights have not been specifically reserved;

m) The use of works for the purposes of public security or to ensure the proper conduct or reporting of administrative, parliamentary or judicial proceedings;

n) the communication or making available to the public for the purpose of research or private study, to individual members of the public through dedicated terminals in libraries, museums, public archives and schools, protected works not subject to purchase or licensing conditions, and which are included in their collections of goods;

o) Reproductions made by non-profit social institutions, such as hospitals and prisons, when same is broadcast;

p)The use of works, such as works of architecture or sculpture, made to be kept permanently in public places;

q) The incidental inclusion of a work or other protected subject-matter in other material;

r) Use in connection with the demonstration or repair of equipment;

s) The use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building

3- The distribution of lawfully reproduced copies, to the extent justified by the objective of the reproduction, shall also be lawful.

4- The methods of exercising the uses provided for in the preceding paragraphs, shall not affect the ordinary use of the work or cause unjustified prejudice to the legitimate interests of the author.

5- Any contractual clause that seeks to eliminate or prevent the normal exercise by the beneficiaries of the uses set out in paragraphs 1, 2 and 3 of this article shall be invalid, without prejudice to the right of the parties to agree on the respective forms of exercise, in particular as regards the value of a fair remuneration.

#### Article 76 **Requirements**

1 – The unrestricted use referred to in the preceding article shall be subject to the following conditions:

a) Where possible, the name of the author and the publisher, the title of the work and any other identifying particulars;

b) In respect of paragraphs 2 a) and e) of the preceding article, an equitable remuneration to be paid to the author and, on a similar basis, to the publisher, by the entity carrying out the reproduction;

c) In respect of paragraph 2h) of the preceding article, an equitable remuneration to be paid to the author and publisher;

d) In respect of paragraph 2 p) of the preceding article, an equitable remuneration to be paid to the rights-holders;

2- In respect of paragraphs 2 b), d), e) f), g) and h) of the preceding article, the works reproduced or cited shall not be liable to confusion with the works of those who use them, nor may the reproduction or citation be so extensive so as undermine any interest in those works.

3- Only the author shall have the right to assemble in a volume the works referred to in paragraph 2b) of the preceding article.

#### Article 77 **Comments, Annotations and Debates**

1- The reproduction of the work of another author without his consent under the pretext of commenting on or annotating it shall not be permitted. Comments or annotations may be published separately with references to the chapters, paragraphs or pages of the other author's work.

2- An author who, in a book or booklet, reproduces his articles, letters or other arguments published in newspapers or magazines may also reproduce the opposing replies and the opposing party or parties shall have the same right, even after publication by the author.

#### Article 78

### **Publication of protected works**

1- Any person who publishes manuscripts held in public or private libraries or archives may not oppose their subsequent publication by another party, unless such publication is no more than a reproduction of the previous excerpt.

2- Any person who has carried out a fixation, establishment or re-establishment of a text likely to materially change its current tradition may also oppose the reproduction of their disclosed excerpt of an unprotected work.

#### Article 79

### **Lectures**

1- Lectures by teachers may only be reproduced by third parties with the consent of the authors, even if they are presented as the personal responsibility of the person publishing them

2 - Unless otherwise specified, the publication shall be deemed to be for the use of students.

#### Article 80

### **Procedure for Braille**

The reproduction or any kind of use using Braille or any other method for the visually impaired of lawfully published works shall always be permitted, provided that such reproduction or use is not for profit.

#### Article 81

### **Other uses**

The following reproduction is also permitted:

a) A single copy, for purposes of exclusively scientific or humanitarian interest, of works not yet commercially available or impossible to obtain, for the period necessary for their use;

b) For exclusively private use, provided that it does not affect the normal exploitation of the work and does not cause unjustified prejudice to the legitimate interests of the author and provided it is not used for any public communication or marketing purposes.

#### Article 82

### **Compensation for the reproduction or recording of works**

1- The sale price of any mechanical, chemical, electric, electronic or any other device used to fix and reproduce works, as well as any material support for fixing and reproduction obtained by any such method, shall include a sum to be allocated to compensate the authors, artists, performers or performing artists and the phonographic and videographic editors and producers.



2- The amount of the sum referred to above, its collection and distribution shall be defined by Ministerial decree.

3- The provisions of paragraph 1 of this Article shall not apply when the devices and media therein referred are acquired by audiovisual communication organizations or phonogram or videogram producers exclusively for use in their own productions or by organizations which use them exclusively as aids for the visually or aurally handicapped.

## **CHAPTER II Special Uses**

### **Section I Publishing**

#### **Article 83 Publishing Contracts**

A publishing contract shall be a contract in terms of which the author authorizes a third party to produce for his own account and subject to the conditions stipulated in the contract or provided for in legislation, a specified number of copies of a work or set of works, and wherein the third party is responsible for the distribution and sale of the works.

#### **Article 84 Other contracts**

1- Agreements by which the author obliges a third party to undertake the following, shall not be considered publishing contracts:

a) To produce for his own account a specified number of copies of a work and ensure its storage, distribution and sale, the parties having agreed to divide among them the profit or loss of their exploitation;

b) To produce a specified number of copies of a work and ensure its storage, distribution and sale, for the account and at the risk of the rights-holder, against payment of a fixed or proportional sum;

c) To ensure the storage, distribution and sale of copies of his work against payment of a commission or any other form of remuneration.

2- Contracts reflecting the abovementioned situations shall be governed by the conditions stipulated therein and subsidiarily by the legal provisions governing joint ventures in the case of subparagraph a) and by those governing contracts for the provision of services in respect of subparagraphs b) and c), and additionally by customary usage.

#### **Article 85 Object**

Publishing contracts may have as their object one or more existing or future, published or unpublished works.

Article 86  
**Contents**

1- Publishing contracts shall mention the number of editions concerned, the number of copies for each edition and the retail price of each copy.

2- If the number of editions has not been contractually specified, the publisher shall only be authorized to produce one edition.

3- If the publishing contract is silent on the number of copies to be made, the publisher shall be obliged to produce at least two thousand copies of the work.

4- Where the publisher produces less copies than agreed upon, he may be required to make good the number and, should he fail to do so, the copyright owner may agree with a third party to produce the outstanding number of copies, at the publisher's expense, without prejudice to his right to be compensated for damages.

5- If the publisher produces copies in excess of the agreed number, the copyright owner may judicially attach the additional copies and take possession of them, and the publisher shall forfeit the cost of such copies.

6- Where the publisher has already sold either all or some of the additional copies or where the copyright owner has not sought their judicial attachment, the publisher shall compensate the author for damages.

7- The author shall have the right to verify, personally or through his representative, the number of copies published and, for this purpose and in terms of the law, he may require an audit of the accounts of the publisher or the enterprise that made the copies if the latter does not belong to the publisher; the author may also resort to other means that do not interfere with the production of the work, such as placing his signature or seal on each copy.

Article 87  
**Form of contract**

1- Publishing contracts shall only be valid if reduced to writing.

2- The invalidity of the contract by reason of it not being reduced to writing shall be attributed to the publisher and may only be invoked by the author.

Article 88  
**Effects**

1- Publishing contracts shall not imply the permanent or temporary transfer to the publisher of the right to publish the work, but shall merely imply the authority to reproduce and commercialize the work according to the specific terms of the contract.

2- An authorization to publish the work shall not give the publisher the right to translate, transform or adapt the work to other types and forms of use, this right being reserved to the author.

3- Save for the provisions of article 103, para.1 or any provision to the contrary, publishing contracts shall prevent the author from undertaking or authorizing new editions of the same work in the same language, either in the country or abroad, until the previous edition is exhausted or the stipulated period has expired, unless circumstances arise that prejudice the interests of the edition and require that the work be revised or updated.

#### Article 89

### **Obligations of the Author**

1- The author shall provide the publisher with the necessary means to fulfil the contract, in particular, he shall deliver the original version of the work to be published within the agreed deadlines and in a way that enables the publisher to reproduce it.

2 - The original version referred to above belongs to the author, who has the right to demand its return as soon as the publication is completed.

3 - If the author unjustifiably delays in handing over the original version so as to compromise the expectations of the editor, the latter may terminate the contract, without prejudice to his right to claim damages.

4- The author shall warrant that the publisher exercises the rights arising from the publishing contract as against any opposition and disputes raised by third parties as a result of their rights in the work, but does not warrant against opposition and disputes simply created by third parties.

#### Article 90

### **Obligations of the Publisher**

1 - The publisher undertakes to publish the work with due care so that the reproduction may be carried out in accordance with the conditions agreed upon and to assiduously and diligently further the promotion and sale of the copies produced, failing which he shall be liable to the author for damages.

2- Unless otherwise agreed, the publisher shall commence reproduction of the work within a period of 6 months from the date of delivery of the original version and shall terminate it within 12 months from the aforesaid date, except in duly proved cases of force majeure, when the reproduction shall be completed within six months after the expiry of this period.

3- Lack of financial resources to cover publication costs and an increase in the latter shall not be considered cases of force majeure.

4- Where the work deals with a subject of major topical interest or is of such a nature that any delay in publication would cause the interest and opportunity to be lost, the editor shall be obliged to commence the reproduction immediately and to conclude it within a period that will avoid the loss caused by such a delay.

#### Article 91

## **Payment**

- 1 - Publishing contracts shall be subject to payment.
- 2- The author's remuneration is established in the publishing contract and may consist either of a fixed amount to be paid for the entire publication, a percentage of the cover price of each copy, the allocation of a certain number of copies or any other form of agreed payment, according to the nature of the work, and a combination of such forms of payment may also be used.
- 3 - In the absence of an agreement regarding the author's remuneration, the latter shall be entitled to 25% of the cover price of each copy sold.
- 4- If the remuneration consists of a percentage of the cover price, increases and reductions of the price shall be applied in the calculation.
- 5- Save in the case referred to in article 99, the publisher can only determine price reductions with the author's agreement, unless he pays him the remuneration corresponding to the previous price.

### Article 92

#### **Liability for Payment**

The publishing price shall be due on completion of the publication, within the period and under the conditions laid down in Article 90, unless the agreed form of remuneration makes the payment subject to further circumstances, in particular, the total or partial disposal of the copies produced.

### Article 93

#### **Orthographic Update**

Except for the author's option regarding the aesthetic nature of the spelling, any update in the spelling in accordance with the prevailing official rules shall not be deemed to be a modification of the work.

### Article 94

#### **Proofs**

- 1- The publisher shall provide the author with a set of galley proofs, a set of page proofs and the draft design of the cover, and the author shall correct the composition of the pages and give his opinion regarding the draft cover whereafter, under normal conditions, he shall return the proofs within a period of twenty days and the draft cover within five days.
- 2 - If the publisher or author delays in furnishing or returning the proofs, one may notify the other by registered letter with acknowledgment of receipt, so that the publisher may furnish, or the author return, the proofs within another agreed period which may not be further extended.

3- The notice referred to above is a condition for a claim for damages resultant from a delay in publication.

4 -The author shall have the right to make typographical corrections in the galley proofs or the page proofs and the costs thereof shall be borne by the publisher.

5 - Unless otherwise agreed, the cost of corrections, amendments or additions to the text that are not justified by new circumstances shall be borne in full by the publisher if they do not exceed 5% of the cost of printing and above this percentage the costs shall be borne by the author.

#### Article 95 **Amendments**

1 - Without prejudice to the foregoing provisions, after the death of the author, publishers of dictionaries, encyclopaedias or educational works may update or supplement such works by means of notes, addenda, footnotes or small alterations in the text.

2- The updates and alterations referred to above shall be duly marked whenever the respective texts have been signed or contain doctrinal matter.

#### Article 96 **Accountability**

1- If the remuneration due to the author depends on the results of the sale or if the payment is subject to the progress of the sales, the publisher shall furnish the author with accounts within an agreed time period or, if the period has not been agreed upon, twice a year, on 30 June and 31 December of each year.

2- For the purposes of the preceding paragraph, the publisher shall furnish the author by registered letter within 30 days following the expiry of the time period, a statement reflecting the situation regarding sales and returns during the period in question, together with payment of the corresponding amount.

3 - The publisher shall always provide the author or his representative with details of his accounts, indispensable for a proper verification of the statement referred to in the preceding paragraph.

#### Article 97 **Identification of the Author**

On each copy of the work, the publisher shall mention the name or pseudonym of the author or any other designation identifying him.

#### Article 98 **Printing**

1- No printing may be done without the consent of the author.

2- If the page proofs and the draft design for the cover are returned without a declaration to the contrary, it shall imply consent for printing.

#### Article 99

### **Sale of copies at reduced prices or by weight**

- 1- If the publication of the works is not sold out within the agreed time limit or, in the absence of an agreement, within five years from the date of publication, the publisher may sell the existing copies at a reduced price or destroy them.
- 2- The publisher shall notify the author so that he may exercise his right of pre-emption to acquire the remaining copies at a price equivalent to the profits fixed on the basis of the profits from a sale at a reduced price or by weight.

#### Article 100

### **Transfer of Copyright**

- 1 - The publisher may not, without the author's consent, transfer to third parties, either for free or for consideration, his rights arising from the publishing contract, unless the transfer results from the sale of his business.
- 2- If the sale of the business causes or may cause non-material loss to the other contracting party, the latter shall be entitled to cancel the contract within six months from the date of being informed of such sale, and the publisher shall have the right to claim damages.
- 3 - Should the rights arising from the publishing contract be included in the publisher's interest in any commercial company, this shall be deemed to be a transfer of such rights within the meaning of this article and shall therefore be subject to the author's consent.
- 4- Should the rights be allocated to some of the members of the publishing company as a result of a judicial or extra-judicial liquidation, it shall not be considered a transfer of the rights arising from the publishing contract.

#### Article 101

### **Death or incapacity of the Author**

- 1 - If the author dies or is unable to complete the work after delivering a substantial part thereof, his successors may terminate the contract, compensating the publisher for damages; however, if they fail to do so within three months the publisher may terminate the contract or consider it fulfilled in respect of the delivered part, subject to payment of the corresponding remuneration to the successor or representative.
- 2 - If the author has expressed the desire that the work should not be published and not completed, the contract shall be terminated and the incomplete work may not under any circumstances be published and the publisher shall be reimbursed for any copyright fees he may have paid.
- 3- An incomplete work may only be completed by a person who is not the author with the latter's written consent.

4- Notwithstanding the consent referred to above, the completed work may only be published if a clear distinction is made between the original and the added parts of the work, together with an indication of the authorship of the added part.

Article 102  
**Insolvency of the Publisher**

1 - If in the winding up of the insolvent estate of the publisher all or substantial amounts of copies of the published work stocked by the publisher are to be sold at reduced prices, the trustee of the insolvent estate shall give prior notice to the author of not less than twenty days so that he may take the steps he deems necessary to defend his material and moral interests.

2 - The author shall retain his right of pre-emption to acquire the works auctioned at the highest price reached.

Article 103  
**Complete Works**

1 - An author who has concluded contracts with one or more publishers for the separate publication of each of his works shall retain the right to conclude a contract for the publication of a complete or combined edition of his works.

2 - Unless otherwise agreed, a contract for the complete publication of the works shall not entitle the publisher to separately publish any of the works contained therein and shall not affect the author's right to conclude contracts for the separate publication of any of them.

3 - An author who exercises any of the rights referred to above shall do so in such a way that the benefits guaranteed to the publisher in the earlier contract are not affected by the subsequent contract.

Article 104  
**Future Works**

1- The provisions of Article 48 shall apply to publishing contracts in respect of future works.

2- If the publication of a future work has been agreed without the contract specifying the time limit for handing the work over to the publisher, the latter shall have the right to request that the time period be judicially stipulated.

3- At the request of the author and on sufficient grounds, the time stipulated in the contract may be judicially extended.

4- If the work covered by the contract is to be written as it is being published, in volumes or instalments, the contract shall stipulate the approximate number and length of the volumes or instalments, applying a margin of tolerance of 10 percent, unless otherwise agreed.

5 - If without the prior consent of the publisher the author exceeds the limits mentioned, he shall not be entitled to any additional payment and the publisher may refuse to publish the additional volumes, issues or pages, however the author may cancel the contract, compensating the publisher for the costs incurred and the proceeds expected from the publication. If part of the work has already been sold, the proceeds obtained shall form the basis for calculating the compensation.

Article 105  
**Reprints or Successive Editions**

1- Where the publisher has been authorized to publish several editions, the conditions laid down for the original edition, in case of doubt, shall apply to subsequent editions.

2- Before undertaking a new edition, the publisher shall give the author the opportunity to intervene in the text to make small corrections or refinements that do not involve substantial modification of the work.

3- Even if the price has been fixed, the author shall nevertheless have the right to additional remuneration where, with the publisher's agreement, he has substantially modified the work such as recasting or amplifying it.

4- A publisher who undertakes to publish successive editions of a work shall publish them uninterruptedly so that copies are always available on the market, failing which he shall be liable for any damages incurred.

5- Cases of force majeure may constitute an exception to the provisions laid down in the preceding paragraph, although lack of financial resources to cover the cost of the new publication costs or an increase in such costs shall not be considered cases of force majeure.

Article 106  
**Termination of the Contract**

1 - Publishing contracts may be terminated in the following circumstances:

a) If a ban of the editor has been declared;

b) If the individual publisher has died and his business is not continued by one or more of his successors;

c) If the author does not deliver the original work within the time agreed or if the publisher does not conclude the publication within the time limit stipulated in paragraph 2 of Article 90, unless a case of force majeure is duly proved;

d) In all other specifically stipulated cases and, in general, whenever there is non-compliance with any of the contractual clauses or the direct or supplementary legal provisions.



2- The termination of the contract shall always be without prejudice to the right to claim damages from the person responsible for the termination.

## **SECTION II** **Performances**

### Article 107 **Definition**

Performance shall mean presentation before an audience of a dramatic, dramatico-musical, choreographic, mime or other similar work, by means of dramatic fiction, singing, dancing, music or other appropriate means, either separately or together.

### Article 108 **Authorization**

1 - Use of a work for performance shall be subject to the consent of the author, whether the performance takes place in public or private, whether or not an entrance fee is charged and whether or not the performance is for profit.

2 - If the work has already been disclosed in any form and provided it is performed for non-profit-making purposes, in private, in a family environment, the performance may take place without the author's consent. This principle also applies to all forms of communication.

3 - The right to perform shall be granted against payment, unless such right is given to amateurs.

### Article 109 **Form, Content and Effects**

1- In terms of a performance contract the author authorizes an impresario (*manager*) to promote the performances of the work which he shall do in accordance with the conditions agreed.

2- A performance contract shall be in writing and, unless otherwise agreed, it shall not give the impresario the exclusive right of directly communicating the work in this manner.

3-The contract must establish in a precise manner the conditions and the limits under which performance of the work is authorized, in particular, the period of time, the place, the author's remuneration and the payment terms.

### Article 110 **Remuneration**

1-The author's remuneration for granting the right to perform may consist of a fixed lump sum, a percentage of the proceeds from the performances, a specific amount for each performance or may be determined in any other form stipulated in the contract.

2- If the compensation is determined based on the receipts from performances, it shall be paid on the day following the relevant performance, unless otherwise agreed.

3-Where the remuneration is determined by the proceeds of each performance, the author or his representative shall have the right to verify the respective receipts.

4-If the impresario falsifies the statement of receipts or uses any other fraudulent methods to conceal the true results of his exploitation, he shall be liable to the sanctions applicable to such offences and the author shall have the right to cancel the contract.

#### Article 111

### **Proof of the Author's Authorization**

Whenever the performance of a work that does not fall within the public domain requires a licence or an administrative authorization, in order to obtain it the competent authority shall be given documentary proof that the author has agreed to its performance.

#### Article 112

### **Unauthorized Representation**

The performance of a work without authorization, or not in accordance with its content, shall give the author the right to have the performance stopped immediately, without prejudice to the criminal or civil liability of the impresario or the promoter of the show.

#### Article 113

### **Rights of the Author**

1- Unless otherwise stipulated, the performance contract shall give the author the following rights:

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

b) To be consulted on the casting roles;

c) To attend rehearsals and give the necessary guidance on the interpretation and direction;

d) To be consulted regarding the choice of collaborators for the artistic execution of the works;

e) To object to the performance taking place when he considers that there have been insufficient rehearsals, although he may not abuse this and unjustifiably delay the performance, in which case he shall be liable for damages;

f) To monitor the performance himself or through a representative, for which purpose they shall have free access to the place during the performance.

2- If it has been stipulated in the contract that the performance of the work shall be entrusted to specific actors or performers, their replacement may only take place with the consent of the contracting parties.

#### Article 114

### **Deletion of Steps in the Work**

If a court decision orders that a step in the work be deleted thereby compromising or distorting its general theme, the author shall have the right to withdraw the work and to cancel the contract without incurring any liability therefor.

#### Article 115

### **Obligations of the impresario**

1- In terms of the contract the impresario undertakes to have the work performed in public within the agreed period, and in the absence of an agreed period, within a period of one year from the date of signature of the contract, except in the case of dramatico-musical works where the period shall be two years.

2- The impresario shall hold the necessary rehearsals to ensure performance under satisfactory technical conditions and, in general, to make the customary efforts in such circumstances to ensure the success of the performance.

3 - The impresario 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 consent of the author.

4- The impresario shall indicate in a clearly visible manner on the programs, posters and other forms of publicity the name, pseudonym or other identifying sign adopted by the author.

#### Article 116

### **Confidentiality of Unpublished work**

In the case of a work which has never been performed nor reproduced, the impresario may not make it known before the first performance, except for publicity purposes according to current practice.

#### Article 117

### **Transmission, reproduction and filming of the performance**

Performance of the work, in whole or in part, through transmission by audio or visual broadcasting, reproduction on phonograms or videograms, filming or exhibition, shall require the written consent of the author in addition to the authorizations by the impresario and the performers.

Article 118  
**Transfer of Impresario's Rights**

An impresario may not transfer rights derived from the performance contract without the consent of the author.

Article 119  
**Performance of undisclosed works**

An author who has concluded a performance contract regarding an undisclosed work may publish it, by means of printing or by any other reproduction process, unless otherwise agreed with the impresario.

Article 120  
**Termination of the contract**

1 - Performance contracts may be terminated in the following circumstances:

- a) Legally or contractually determined circumstances;
- b) The circumstances referred to in article 106 a) and d);
- c) In the cases of evident and continuing lack of public attendance.

2- The termination of the contract shall always be understood to be without prejudice to the right to claim damages from the person responsible for such termination.

**SECTION III**  
**Recitation and Performance**

Article 121  
**Equivalent to Performance**

1- The recitation of a literary work and performance by instruments or by instruments and singers of a musical or literary-musical work shall be equivalent to performance as defined in Article 107.

2- If not specifically regulated, a contract for the recitation or performance of such works shall be subject to the provisions of the preceding section, provided that they are compatible with the nature of the work and its presentation.

Article 122  
**Obligations of the promoter**

1- Any person who promotes or organizes the performance or recitation of a literary, musical, or dramatico-musical work before a public audience shall, in advance, display the corresponding program on the premises showing as much as it may be possible the name of the work and the identification of the author.

2- One copy of the said program shall be provided to the author or his representative.

3 - In the event that the program is not displayed or the terms of the performance are not communicated, proof shall be given, on demand, that the authorization was obtained from the authors of the works performed or recited.

#### Article 123

### **Fraudulent organization or execution of the Program**

1- If the entity promoting the performance or recitation fraudulently constitutes a program, in particular, by including works that it does not intend to have performed or recited, and by promoting in their place the performance or recitation of unannounced works, or if, during the performance, for reasons that do not constitute unforeseeable circumstances or force majeure, the works announced in the program are not performed or recited, the authors whose moral and material interests have been harmed may claim compensation for damages, without prejudice to any criminal liability that the matter may entail.

2- The organizers shall not attract any liability if the performers respond to the audience's insistent requests by performing or reciting other works in addition to those mentioned in the program.

## **SECTION IV Cinematographic Works**

#### Article 124

### **Production of cinematographic works**

Cinematographic production is subject to the authorization of the authors of pre-existing works, even though they may not be considered authors of cinematographic works within the meaning of Article 22.

#### Article 125

### **Authorization of the Authors of Cinematographic Works**

1- Authorizations granted by authors of cinematographic works in terms of Article 22 shall specifically mention the conditions governing the production, distribution and projection of the film.

2- If the author has expressly or impliedly authorized the showing of the film, the right to economically exploit the cinematographic work shall be attributed to the producer.

Article 126  
**The Producer**

- 1- The producer is the manager 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 thereof.
- 2- The producer shall be identified as such in the film.
- 3 - During the period of exploitation, unless the owner or owners of the copyright have otherwise provided to defend their rights in the cinematographic work, the producer shall be deemed to be their representative for this purpose and he shall account for the way in which he carried out his mandate.

Article 127  
**Effects of authorization**

- 1- The authorization gives the cinematographic producer the right to produce the negative, the positives, the copies and the tape recordings necessary for presentation of the work.
- 2- Unless otherwise specifically provided, authorization for cinematographic production shall include the distribution and presentation of the film in public cinema halls, as well as its economic exploitation by this means, without prejudice to payment of the stipulated amount.
- 3- Authorization by the authors of cinematographic works shall be required for the audio or visual broadcasting of the film, the trailer, tapes or records which reproduce excerpts from the film, its communication to the public, whether wireless or not, in particular, by radio waves, optical fibre, cable or satellite, as well as its reproduction, exploitation or presentation in the form of a videogram.
- 4- The authorization referred to in this article does not cover the broadcast transmission of the sound track or of the phonogram which reproduces excerpts from the cinematographic work.
- 5- The author's consent shall not be required for the broadcast of works produced by sound or audiovisual broadcasting organizations, which retain the right to transmit and communicate the works to the public, in whole or in part, through their own transmission channels.

Article 128  
**Exclusivity**

- 1- The authorization given by the authors for the cinematographic production of a work, whether it has been specially created for this form of expression or has been adapted thereto, shall imply the granting of exclusive rights, unless otherwise agreed.
- 2- In the absence of an agreement, the exclusivity granted for the cinematographic production shall lapse twenty five years after conclusion of the corresponding contract,

without prejudice to the right of the party to whom the economic exploitation of the film has been granted to continue to show it, reproduce and distribute it.

#### Article 129

### **Transformations**

- 1- Translations, dubbing, or any other transformation of the cinematographic work shall be subject to the written consent of the authors.
- 2- Any authorization to present or distribute a foreign film in S.Tomé and Príncipe shall impliedly include consent for its translation or dubbing.
- 3- The parties may agree on a clause to the contrary shall be admissible, unless the law only allows the translated or dubbed work to be presented.

#### Article 130

### **Completion of the Works**

A cinematographic work shall be considered completed when the director and the producer agree on its final version.

#### Article 131

### **Remuneration**

The remuneration of the authors of cinematographic work may consist of a fixed lump sum, a percentage of the proceeds from the presentation of the film, a specific amount for each presentation or any other form agreed upon with the producer.

#### Article 132

### **Co-production**

Unless otherwise agreed, the producer who has concluded an agreement with the authors may partner with another producer in order to ensure the execution and exploitation of the cinematographic work.

#### Article 133

### **Transfer of the Producer's Rights**

At any time the producer may totally or partially transfer the rights arising from the contract to a third party although he shall remain responsible towards the authors for the strict compliance of the contract.

#### Article 134

### **Identification of the Work and the Author**

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

2- If the cinematographic work is an adaptation of a pre-existing work, the title of the latter work shall be mentioned and the name, pseudonym or any other identifying particulars of the author.

#### Article 135

### **Separate use and reproduction**

The authors of the literary and the musical parts of a cinematographic work may reproduce and use them separately in any manner, provided that it does not prejudice the exploitation of the work as a whole.

#### Article 136

### **Time period for fulfilment of the contract**

If the producer does not terminate the cinematographic production within three years from the date of delivery of the literary and musical parts or does not project the completed film within three years from the date of its termination, the author or co-authors shall have the right to cancel the contract.

#### Article 137

### **Prints, matrices and copies**

1- The producer only has to make copies or prints of the cinematographic work as and when they are requested and he shall preserve the corresponding matrix which he may not under any circumstances destroy.

2- The producer of a cinematographic work is not entitled to sell the copies produced at reduced prices, even on the grounds that there is a lack of demand for them.

#### Article 138

### **Insolvency of the producer**

In the event of the insolvency of the producer, if all or some of the copies of the cinematographic work are sold at reduced prices, the trustee of the insolvent estate shall give prior notice to the author or co-authors of not less than twenty days so that they may take the steps they deem necessary to defend their material and moral interests and also to enable them to exercise their right of pre-emption to the copies to be auctioned.

#### Article 139

### **Applicable regime**

1- The provisions relating to the publishing contract, representation, and implementation shall apply, mutatis mutandis, to film production contracts.



2- The provisions of Articles 122 and 123 in respect of recitation and execution, with the necessary amendments, are applicable to the public showing of a film.

#### Article 140

### **Works produced by methods analogous to cinematography**

The provisions of this section shall apply to works produced by any process analogous to cinematography.

## **SECTION V**

### **Phonographic and Videographic Fixation**

#### Article 141

### **Phonographic and videographic fixation contract**

1- The author's consent shall be required for fixing a work. Fixation of a work is understood to be the separate or combined incorporation of sounds or images in a sufficiently stable and durable tangible carrier in which it can be perceived, reproduced or otherwise communicated for a lasting period.

2- The consent shall be given in writing and allow its recipient to fix the work and to reproduce and sell the copies produced.

3- Consent 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 other than the one authorized to fix the work.

4- The purchase of a phonogram or videogram shall not give the purchaser the right to use it for any public execution or transmission, reproduction, resale or rental for commercial purposes.

#### Article 142

### **Identification of the work and the author**

Whenever the nature of the work so permits, phonograms and videograms shall bear the title of the work or some means of identifying it, as well as the name or other identifying particulars of the author, either directly printed on the phonograms and videograms or on labels.

#### Article 143

### **Inspection**

1 - The author shall have the right to inspect the establishments that print and duplicate the phonograms and videograms and store the physical carriers; and the provisions of para.7 of Article 86, duly adapted, shall be applicable.

2 - Any person who imports, manufactures and sells physical carriers for phonographic and videographic works shall inform the Directorate-General of Culture of the quantities

imported, manufactured and sold; and the authors may also inspect the warehouses and factories of the physical carriers.

3 - Any person who manufactures or duplicates phonograms and videograms shall regularly and directly inform the Directorate-General of Culture of the quantities of phonograms and videograms which they manufacture or duplicate and shall produce documentary proof of the authorization of the respective author.

4 - The Directorate-General of Culture shall define the frequency and the method of the communications referred to in paras.2 and 3 above.

#### Article 144

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

1- Musical works and the corresponding text that have been the subject of commercial phonographic fixing without opposition by the author, may be fixed anew.

2- The author shall always be entitled to equitable remuneration, and failing agreement between the parties, the responsible Ministry shall determine an equitable amount.

3- The author may terminate the exploitation whenever the technical quality of the fixation compromises the proper communication of the work.

#### Article 145

#### **Transfer of the producer's rights**

Any person with whom a fixation contract has been concluded may not transfer the rights deriving from the contract of authorization to third parties, in particular, by means of division, without the consent of the authors, except in the case of the sale of the business.

#### Article 146

#### **Transformations**

The adaptation, arrangement or other transformation of any work for the purposes of fixation, transmission and execution or presentation by mechanical, phonographic or videographic means, shall also be subject to the author's written consent which shall indicate the purpose or purposes of the transformation.

#### Article 147

#### **Applicable Regime**

1- The provisions relating to publishing contracts shall apply, mutatis mutandis, to phonographic or videographic fixation contracts.

2- The provisions of Articles 122 and 123 in respect of recitation and execution, with the necessary adaptations, are applicable to the public showing of a phonographic or videographic work.

## Article 148

### **Scope**

The provisions of this section shall apply to the reproduction of intellectual work produced by any process analogous to that of phonography or videography, whether it already exists or not.

## **SECTION VI**

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

## Article 149

### **Authorization**

1- The audio or visual broadcasting of a work by any means, whether live or retransmitted, shall be subject to the author's consent.

2- Communication of the work in a public place by any means used to diffuse signals, sounds or images, shall also be subject to the author's consent.

3- A public place shall mean any place to which the public is offered access, impliedly or expressly, against payment or otherwise and even where the right of admission is reserved.

## Article 150

### **Broadcasting of fixed works**

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.

## Article 151

### **Technical Requirements**

Owners of theatres or buildings to be used for the broadcasting or communication envisaged in the provisions of Article 149, impresarios and any persons involved in presenting the performance to be transmitted, shall consent to the installation of the instruments necessary for the transmission and the tests or technical rehearsals necessary for its successful execution.

## Article 152

### **Limitations**

1- Unless otherwise agreed, the consent provided for in Article 149 shall not include authorization to fix the broadcast works.

2- Broadcasting organisations shall nevertheless be allowed to fix the works to be broadcast, but only for use by their broadcasting stations in the cases of retransmission.

3- The fixations referred to above shall be destroyed within a maximum period of three months during which they may not be transmitted more than three times, without prejudice to the author's entitlement to remuneration.

4- The limitations referred to in the two preceding paragraphs shall be without prejudice to cases in which such recordings are of such exceptional documentary interest that they should be kept in the official archives or, if these do not exist, in the archives of the Broadcaster, without prejudice to the copyright.

#### Article 153

##### **Scope**

1- An authorization to broadcast a work shall apply to all live or retransmitted broadcasts carried out by the stations of the entity that was granted the authorization, without prejudice to the author's remuneration for each transmission.

2 - A broadcast transmitted at different times due to schedules or technical constraints, by national stations with the same broadcasting network or belonging to the same entity, shall not be considered to be a new transmission.

3 - A broadcast by cable or satellite by another entity other than the one granted the authorization referred to in para.1 above and not specifically provided for in the authorization shall be subject to the author's consent and shall give him the right to remuneration.

#### Article 154

##### **Identification of the author**

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

#### Article 155

##### **Public communication of the broadcast works**

The author shall receive remuneration for public communication of a work transmitted by means of loudspeakers or by any other similar instrument that transmits signals, sounds or images.

#### Article 156

##### **Applicable regime**

1- The provisions relating to publishing, performance and presentation contracts shall apply, mutatis mutandis, to the broadcasting and transmission by any other process to communicate signals, sounds or images.

2- The provisions of articles 122 and 123 in respect of recitation and execution, with the necessary adaptations, are applicable to the public communication of a broadcast work.

**SECTION VII**  
**Creation of Plastic Works, Graphic and Applied Art**

Article 157  
**Exhibitions**

- 1 - Only the author may exhibit or authorize others to publicly exhibit his works of art.
- 2 - The sale of a work of art shall include the transfer of the right to exhibit, unless otherwise agreed.

Article 158  
**Responsibility for the exhibited works**

Organizers of exhibitions of works of art shall be responsible for the integrity of the works and shall insure them against fire, theft, and any other risks of destruction or deterioration, and shall keep them in the exhibition site for the duration of the stipulated period.

Article 159  
**Form and content of reproduction contracts**

- 1- The reproduction of creations of three-dimensional (plastic arts), graphic and applied arts, design, architectural and town planning projects may only be made by the author or by another with his consent.
- 2 - The authorization referred to above shall be in writing, is subject to remuneration and may be conditional.
- 3- The provisions in article 86 shall apply to the contract which shall specify the minimum number of copies to be sold annually, and should the sales not reach the agreed number the entity exploiting the reproduction may have recourse to the procedures set out in the said article.

Article 160  
**Identification of the works**

- 1 - The contract shall contain particulars identifying the work, such as, a brief description of the work, sketch, drawing or photograph, and the author's signature.
- 2 - Reproductions may not be offered for sale until the author has approved the copy submitted to him.
- 3 - Every reproduced copy shall contain the name, pseudonym or any other particular identifying the author.

Article 161  
**Architectural and town planning studies and projects**

- 1- Each copy of architectural and town planning studies and projects shall legibly indicate, on the construction site of the architectural works and once built, the respective author.

2- Repetition of an architectural work according to the same plans is subject to the consent of the author.

#### Article 162

### **Return of models or components used**

1- On expiry of the contract, the original models and any other components used by the person who made the reproduction shall be returned to the author.

2- Unless otherwise agreed, the instruments created especially for reproduction of the work shall be destroyed or shall remain unused unless the author chooses to acquire them.

#### Article 163

### **Scope of protection**

The provisions of this section shall also apply to models of sets, costumes, tapestry panels, models for ceramic panels, tiles, stained glass, mosaics, rural reliefs, advertising posters and designs, book covers and where applicable, to the graphic creations included therein, if they constitute artistic creations.

## **SECTION VIII**

### **Photographic Works**

#### Article 164

### **Conditions for protection**

1- For a photograph to qualify for protection, it is necessary that the choice of subject or the conditions of its execution be considered as a personal artistic creation of its author.

2- The provisions of this section shall not apply to photographs of writings, documents, business papers, technical drawings and similar objects.

3 - Photograms of cinematographic films shall be deemed to be photographs.

#### Article 165

### **Copyright of photographic work**

1- The author of a photographic work shall have the exclusive right to reproduce, disseminate and offer it for sale, subject to the restrictions concerning exhibition, reproduction and sale of portraits and without prejudice to the copyright in the work reproduced in the case of photographs of plastic arts works.

2- If the photograph is made under an employment contract or on commission, the right referred to in this article shall belong to the employer or to the person commissioning it.

3- Any person who uses a photographic reproduction for commercial purposes shall pay the author an equitable remuneration.

#### Article 166

## **Alienation of negatives**

The alienation of the negative of a photographic work, unless otherwise agreed, shall entail the transfer of the rights referred to in the previous articles.

### Article 167

#### **Compulsory particulars**

1- Copies of photographic work shall contain the following particulars:

a) The photographer's name;

b) In photographs of works of plastic art, the name of the author of the photographed work.

2- Only the irregular reproduction of the photographs without the particulars referred to may be condemned for being unlawful; in the absence of such particulars, the author may not claim the compensations provided for in this Code, unless the photographer can prove bad faith on the part of the person who made the reproduction.

### Article 168

#### **Reproduction of commissioned photographs**

1 - Unless otherwise agreed, the photograph of a person made on commission may be published, reproduced or sent for reproduction by the person photographed or by his heirs or transferees without the consent of the photographer.

2- If the name of the photographer appears on the original photograph, it shall also appear on the reproductions.

## SECTION IX

### **Translations and other Transformations**

#### Article 169

##### **Authorization of the author**

1- Any translation, arrangement, instrumentation, dramatization, filming and, in general, any transformation of a work may only be made or authorized by the author of the original work, since the latter is protected in terms of paragraph 2 of article 3.

2- The authorisation shall be given in writing and does not entail the granting of exclusivity, unless otherwise stipulated.

3- The authorized person shall respect the spirit of the original work.

4- To the extent required by the purpose for which the work is intended, it is lawful to make changes that do not distort the work.

#### Article 170

##### **Additional compensation**

The translator is entitled to additional compensation whenever the editor, the impresario, the manufacturer or any other entity uses the translation beyond the limits agreed upon or established in the present Code.

#### Article 171

### **Particulars of the translator**

The name of the translator shall always appear on the copies of the work translated, on theatre posters, in communication accompanying radio and television broadcasts, film credits, and in all other promotional material.

#### Article 172

### **Regime applicable to translations**

1. The rules in Section I of this chapter relating to the publication of original works shall apply to the publication of the corresponding translations, irrespective of whether the authorization to translate was granted to the publisher or to the author of the translation.

2-Unless otherwise agreed, the contract concluded between the publisher and the translator does not imply a temporary or permanent transfer of the translator's rights in the translation.

3- The publisher may require the translator to make the necessary changes in order to ensure that the original work is respected and, when it entails a particular graphic layout, that the text conforms thereto; should the translator not effect the changes within 30 days, the publisher may effect them himself.

4- Whenever the nature and characteristics of the work require specific knowledge, the publisher may submit the translation for revision by an expert of his choice.

## **SECTION X**

### **Newspapers and other Periodical Publications**

#### Article 173

### **Protection**

1- Copyright in published works, even if they are not signed, in newspapers or periodicals shall belong to the respective owner and only he may undertake or authorize their reproduction, separately or in the said publication, unless otherwise stipulated by written agreement.

2- Without prejudice to the provisions contained in the previous paragraph, the owner or publisher of the publication may reproduce the issues in which the contributions referred to were published

#### Article 174

### **Journalistic works on behalf of third parties**



1- Copyright in journalistic works produced in fulfilment of an employment contract which bears an indication of authorship, by signature or any other means, shall belong to the author.

2- Unless so authorized by the newspaper or publishing company, the author may not publish the work referred to in the preceding paragraph separately before three months have lapsed from the date of circulation of the publication in which the work appeared.

3- If the work is published in series, the time limit referred to in the above paragraph shall commence on the date of distribution of the issue in which the last work of the series appeared.

4- If the said works are not signed or do not contain any identification of the author, the copyright therein shall be attributed to the newspaper or publishing enterprise in which they appeared and their authors may only publish them separately with the authorization of the said enterprise.

#### Article 175 \*1

### **Staggered and periodic publication**

1- Unless otherwise agreed, the consent provided for in Article 149 shall not include the consent to fix the broadcast works.

2- However, it is lawful for broadcasting organisations to fix the works to be broadcast, but only for the use of their broadcasting stations, in cases of delayed broadcasting.

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\*1 Translator's Note: Clauses 1 to 3 are a repetition of clauses 1 to 3 of Article 152.

3- The fixations referred to above shall be destroyed within three months during which they may not be transmitted more than three times, without prejudice to the author's entitlement to remuneration.

## **TITLE III Related Rights**

### Article 176

#### **Definition**

1- Services supplied by performing artists or performers, producers of phonograms and videograms and broadcasting organizations are protected in terms of these provisions.

2- A performing artist or performer is an actor, singer, musician, dancer or any other person who performs, sings, recites, declaims, interprets or, in any other way performs literary or artistic works.

3- Producer of phonogram or videogram is a natural or legal person who does the first phonogram fixation of a performance or other sounds, or images of any origin, whether or not accompanied by sound.

4- Phonogram is the recording resulting from the fixation on a tangible carrier (support), of sounds from a performance or other sounds, or an interpretation thereof.

5- Videogram is the recording resulting from the fixation on a tangible carrier of images, whether or not accompanied by sound, as well as the copies of cinematographic or audiovisual works.

6- Copy is the physical support on which sounds and or images, directly or indirectly obtained from a phonogram or videogram are separately or jointly reproduced, and incorporating the whole or a substantial part of the sounds fixed therein.

7- Reproduction is the direct or indirect acquisition, temporary or permanent, of copies from a fixation, by any means and in any form, in whole or in part.

8- Distribution is the activity that aims to offer to the public, directly or indirectly, significant quantities of phonograms or videograms, whether for sale or for rental.

9- Broadcasting organization is the entity that effects audio or visual broadcast programs, and broadcast programs are understood to mean the diffusion of sounds or images, separately or jointly, wireless or otherwise, in particular by radio waves, optical fibre, cable or satellite, and intended for reception by the public.

10- Retransmission is the simultaneous broadcast by a broadcasting organization of a broadcast from another broadcasting organization.

#### Article 177

### **Safeguard of authors' rights**

The grant of related rights shall in no way affect the protection of the authors on the work used.

#### Article 178

### **Right to impede**

1 - The performing artist or performer shall have the exclusive right, personally or through a representative, to carry out or authorize the following acts:

a) The broadcasting and communication to the public by any means of the performance given, except where the performance itself has already been broadcast or fixed;

b) The fixations, without his consent, of performances that have not been fixed;

c) The direct or indirect reproduction, temporarily or permanently, by any means and in any form, in whole or in part, without his consent, of the fixation of his performances when same has not been authorized, when the reproduction is made for purposes different to those for which the consent was given or when the first fixation was made under the

provisions of article 189 and its reproduction is intended for purposes other than those provided for in this article;

d) Making available to the public, by wire or wireless means, of the performance in order to make it accessible to any person from an individually chosen place and time.

2- Whenever a performing artist or performer authorizes the fixation of his performance for the purposes of broadcasting to a film, audiovisual or videographic producer, or to a broadcasting organization, he shall be deemed to have transferred his rights of public broadcasting and communication; however he shall retain his right to receive a single, inalienable and equitable remuneration for all the authorisations referred to in paragraph 1, save for the right in para. d) of the preceding paragraph. The payment of the single equitable remuneration shall be managed in terms of a collective agreement entered into between the users and the collective management organisation representing the respective category and mandated to manage the rights of all rights-holders under the said category, including those who are not enrolled in the said category.

3- The inalienable and equitable remuneration to be fixed pursuant to the preceding number shall also cover the consent for new transmissions, re- transmissions and the marketing of fixations obtained exclusively for broadcasting purposes.

4- The right referred to in para.1d) may only be exercised by a collective management body representing the rights of artists, which is considered to be mandated to manage the rights of all rights-holders, including those artists who are not registered therein, and whenever these rights are managed by more than one collective management body, the rights-holder may decide from which of these entities it should claim his rights.

#### Article 179

#### **Authorization to broadcast**

1- In the absence of an agreement to the contrary, the authorization to broadcast a performance implies an authorization to fix it and to subsequently broadcast and reproduce the performance fixed, as well as to broadcast performances lawfully authorized by another broadcasting organization.

2-The artist however, has the right to additional remuneration whenever the following is carried out, even if not provided for in the agreement:

a) A new broadcast;

b) The retransmission by another broadcaster;

c) The marketing of the fixed performances obtained for broadcasting purposes.

3- Unauthorized retransmission and new broadcasts shall give the performers the right to payment, in total, of 20% of the remuneration originally established.

4- Marketing shall give the performers the right to payment, in total, of 20% of the sum received from the purchaser by the broadcasting organization that fixed the performance.

5- The artist shall have the right to agree with the broadcasting organization on conditions other than those referred to in the previous paragraphs, but does not have the right to renounce the rights enshrined therein.

Article 180  
**Identification**

1- Unless otherwise agreed or unless the nature of the contract dictates its omission, any disclosure of a performance shall indicate, even if briefly, the name or pseudonym of the performer.

2- Audio programs without any form of speech and those referred to in article 154 shall constitute exceptions.

Article 181  
**Representation of performers**

1- In the absence of an agreement, when a performance involves several performers, their rights shall be exercised by the director of the ensemble.

2- Where there is no director of the ensemble, the actors shall be represented by the director and the members of the orchestra or the choir by their conductor or director.

Article 182  
**Unlawful use**

Any use that distorts or misrepresents a performance, dishonours its objective or prejudices the performer's honour or reputation, shall be unlawful.

Article 183  
**Duration**

1- Related rights shall expire after a period of 50 years, as follows:

- a) After the performance or execution by the performer;
- b) After the first fixation by the producer of the phonogram, videogram or film;
- c) After the first broadcast by the broadcaster, wireless or otherwise, including cable or satellite.

2- If, during the period referred to in the preceding paragraph, the protected phonogram, videogram or film was subject to the lawful publication or communication to the public of a fixation of the performance or the execution of the performing artist, the duration for the expiry of the right is calculated from these facts and not from the facts referred to, respectively, in paragraphs 1 a) and b) above.

3- The term 'film' shall designate a cinematographic or audiovisual work and any sequence of moving images, whether or not accompanied by sound.

4 - The provisions of article 37 are applicable to the entities referred to in a), b) and c) of para.1.

#### Article 184

### **Authorization by the producer**

1- The authorization of the producer of the phonogram or videogram shall be required for its reproduction, direct or indirect, temporary or permanent, by any means and in any format and for the distribution of the copies to the public, as well as for its import or export.

2- The authorization of the producer of the phonogram or videogram shall also be required for its dissemination by any means, for the public performance thereof and to make it available to the public by wire or wireless means so that it is accessible to any person from a place or time individually selected.

3- When a phonogram or videogram is published commercially, or a reproduction thereof is used for any form of public communication, the user shall pay to the producer and performers an equitable remuneration, which shall be divided equally between them, unless otherwise specifically agreed.

4- Producers of phonograms and videograms shall have a right of inspection similar to that granted to authors in terms of the provisions of paras. 1. and 2. of article 143.

#### Article 185

### **Identification of phonograms or videograms**

1- The protection afforded to producers of phonograms and videograms shall be subject to the inclusion of the letter P (the letter P surrounded by a circle) on all authorized copies and their packaging, together with an indication of the year of the first publication.

2- If the copy or its packaging does not permit the identification of the producer or his representative, the indication of the preceding paragraph shall also include this identification.

#### Article 186

### **Rights of broadcasting organizations**

1- Broadcasting organizations have the right to authorize or refuse:

a) The retransmission of their broadcasts by wireless means;

b) The fixation on a physical carrier of their broadcasts, by wireless means or otherwise;

c) The reproduction of the fixations of their broadcasts, when this has not been authorised or in the case of ephemeral fixation, and the reproduction for purposes different to those originally intended.

d) the making available to the public, by wire or wireless means, by cable or satellite, of the work in order to make it accessible to any person at a place and time individually chosen;

e) Communicating their broadcasts to the public, where such communication is made in a public place and an admission fee is payable.

2- A cable distributor shall not have the rights provided for in this paragraph where it merely retransmits by cable the broadcasts of broadcasting organizations.

#### Article 187 **Unrestricted use**

1- The protection afforded herein does not cover:

a) Private use;

b) Excerpts of a performance, a phonogram, a videogram or a broadcast program, provided that the use of these excerpts is justified for purposes of information or critique or any other reasons authorized for citations or summaries as referred to in article 75, para. 2g);

c) Use for exclusively scientific or educational purposes;

d) Ephemeral fixation by the broadcasting organization;

e) Fixations or reproductions made by public entities or agents of public services for reasons of exceptional documentary interest or for the purposes of archives;

f) Any other cases in which the use of the work without the author's consent is lawful.

2- The protection granted to the performer in this chapter shall not include performances arising from official duties or under employment contracts.

3- The limitations and exceptions pertaining to copyright shall be applicable to related rights, to the extent that it is compatible with the nature of these rights.

#### Article 188 **Conditions for protection**

1 – The artist, performer or performing artist shall be protected provided one of the following conditions is fulfilled:

a) He is of Santomean nationality;

b) The performance takes place on national territory;

c) The original broadcast was fixed or broadcast for the first time in Santomean territory.

2 – Phonograms and videograms shall be protected provided one of the following conditions is fulfilled:

- a) The producer is of Santomean nationality or has his actual headquarters in Santomean territory;
- b) The fixation of sounds and images, separately or cumulatively, has been lawfully made in São Tomé and Príncipe;
- c) The phonogram or videogram has been published for the first time or simultaneously in São Tomé and Príncipe, where simultaneous publication is understood to be as defined in paragraph 3 of article 65.

3– Broadcast programs shall be protected provided one of the following conditions is fulfilled:

- a) The actual headquarters of the organization is located in São Tomé and Príncipe;
- b) The broadcast program has been transmitted from a station situated on Santomean territory.

Article 189  
**Presumed consent**

Where, notwithstanding the confirmed endeavours by the interested party it has not been possible to contact the owner of the right or the latter has not replied within the reasonable period provided, his consent shall be presumed, but the interested party may only carry out the use requested if he guarantees payment of the remuneration.

Article 190  
**Forms of exercise of rights**

The provisions on the forms of exercise of copyright shall, where appropriate, apply to the forms of exercise of related rights.

Article 191  
**Scope of protection**

Performers, producers of phonograms or videograms, and broadcasting organizations protected by international conventions, duly ratified and approved, shall also benefit from protection.

Article 192  
**Retroactivity**

1- The duration of protection and the calculation of the respective period shall be determined according to the provisions of article 183, even where the events giving rise to the protection occurred before the entry into force of this Code.

2- Where the owners of related rights, by reason of a legal provision, benefit from a longer period of protection than that provided for in the present Code, the latter period shall prevail.

## **TITLE IV**

### **Infringement and Protection of Copyright and Related Rights**

#### Article 193

#### **Illegal Exercise of Rights**

1- Any person who, without the consent of the author or the performer, the producer of the phonogram and videogram or the broadcasting organization, uses a work or performance of a work in any of the ways provided for in this Code commits the offence of usurpation.

2 – The following persons shall also be guilty of the offence of usurpation:

a) Any person who wrongfully discloses or publishes a work not yet disclosed or published by its author, or not intended for dissemination or publication, even if he presents it as the respective author's and whether or not he seeks to obtain economic benefits therefrom;

b) Any person who makes a collection or compilation of published or unpublished works without the consent of the author;

c) Any person authorized to use a work, performance, phonogram or broadcast program who exceeds the limits of the consent given, save for the cases expressly provided for in this Code.

3- An author who has transferred his rights in whole or in part, or who has consented to the use of his work in any of the forms provided for in the present Code, and who uses it directly or indirectly in a manner prejudicial to the rights granted to a third party, shall be subjected to the penalty provided for in Article 197.

#### Article 194

#### **Counterfeit**

1- Any person who unlawfully represents as being his own creation or performance, a performance, phonogram, videogram or broadcast program which reproduces in whole or in part the work or performance of another, whether disclosed or not, or in such a similar way that it does not have its own individuality, shall be guilty of committing the offence of counterfeiting.



2- If the reproduction referred to in the preceding paragraph represents only a part or a fragment of the work or performance, only the said part or fragment shall be considered to be the counterfeit.

3 – For it to be considered counterfeit it is not essential that the reproduction is made by the same process, in the same size or format as the original.

4- The following shall not constitute counterfeiting:

a) The similarity between duly authorised translations of the same work or between photographs, drawings, engravings or other forms of representation of the same object if, despite the similarities arising from the identity of the object, each of the works has its own individuality;

b) Any reproduction by photography or engraving made solely for the effect of presenting artistic critique.

#### Article 197

##### **Penalties**

1- The offences mentioned in the preceding Articles shall be subject to a term of imprisonment of a maximum of three years and a fine of 150 to 250 days, depending on the gravity of the offence, and they may be doubled in the case of a repeated offence, provided that the offence in question does not constitute an offence punishable by a more severe penalty.

2- If negligence is present in any of the offences referred to herein, it is punishable with a fine of 50 to 150 days.

3- There will be no suspension of sentence in the event of a repeated offence.

#### Article 198

##### **Infringement of moral rights**

The penalties referred to in the previous article shall apply to any person who:

a) Claims the paternity of a work or performance with the knowledge that it does not belong to him; \*2

b) Threatens the genuineness or integrity of the work or performance, by carrying out acts that may tarnish it and affect the honour or reputation of the author or artist.

#### Article 199

##### **Use of counterfeit or usurped work**

1- Any person who sells, offers for sale, imports, exports, or in any way distributes to the public a counterfeit or usurped work or an unauthorized copy of a phonogram or videogram, whether the copies were produced in the country or abroad, shall be liable to the penalties provided for in article 197.

2- Negligence is punishable with a fine not exceeding fifty days.

Article 200  
**Criminal Proceedings**

1 – The criminal proceedings relating to the offences provided for in this Code are not dependent on a complaint from the injured party, except when the offence relates exclusively to a violation of moral rights.

2 - In the case of works in the public domain, the complaint shall be submitted to the Ministry of Culture.

Article 201  
**Attachment and forfeiture of objects related to the offence**

1- Notwithstanding the nature of the work and the form of infringement, copies of usurped or counterfeited works shall always be seized together with the corresponding packaging material, machines, or any other instruments or documents suspected of being used or intended to be used in committing the offence.

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\*2 Translator's Note: The Translator is of the opinion that in the source text the sentence "...a paternidade de uma obra de (ou) prestação...", the word "de" should be replaced with "ou". It was translated as such.

2- The fate of all the objects seized shall be determined by a final order, whether or not an application was made and, if it is proved that they were destined for use or were used in the offence, they shall be considered forfeited to the State and the copies shall automatically be destroyed without any right to compensation.

3- In cases of *flagrante delicto*, the police and administrative authorities, namely the National Police Services, the Criminal Investigation Police, the Public Prosecutor's Office, the Revenue and Border Authorities (*Guarda Fiscal*) and the Directorate General of Economic Activities, shall have the competence to seize the copies.

Article 202  
**Special Regime in Cases of Infringement of Moral Rights**

1- If only the paternity of the work is claimed, the Court may instead of ordering its destruction, at the request of the author, order that the seized copies be handed to him, whenever it appears possible to guarantee or authenticate such authorship by adding to or replacing the relevant indications.

2- If the author defends the integrity of the work, the Court may, instead of ordering the destruction of the copies distorted, mutilated or in any way amended, order the copies to be handed over to the author at the latter's request where it is possible to restore them to their original form.

Article 203  
**Civil liability**

Civil liability arising from the infringement of the rights in this Code is independent of any criminal proceedings resultant from the said infringement, however, it may be exercised in conjunction with the criminal action.

Article 204  
**Regime of Minor Offences**

Where no specific regulations exist in respect of minor offences, the prevailing legal provisions shall apply.

Article 205  
**Minor Offences**

1 – The following shall constitute minor offences subject to fines of 5 000 000.00 Dbs to 50 000 000.00 Dbs:

- a) Failure by importers, manufacturers and sellers of material carriers for phonographic and videographic works to disclose the amounts imported, manufactured and sold, in accordance with the provisions of para.2 of Article 143;
- b) Failure by manufacturers and reproducers of phonograms and videograms to disclose the quantities they have manufactured or reproduced, in accordance with the provisions of para. 3 of article 143.

2 – Failure to respect the provisions of Articles 97, 115, para.4), 126, para.2), 134, 142, 154, 160, para.3), 171 and 185, shall also constitute minor offences liable to a fine of two million Dobra (2 000 000.00 Dbs) to twenty million Dobra (20 000 000.00 Dbs), and do not exclude the need to indicate the name or pseudonym of the performer, also in para.1 of Article 180.

3- Negligence is subject to punishment.

4- In case of negligence, the minimum and maximum amounts of the fine are reduced to half the value fixed for each fine.

Article 206  
**Jurisdiction for processing of minor offences and imposing fines**

The Directorate-General of Culture is responsible for processing minor offences and imposing fines.

Article 207  
**Effects of appeal**

Appeals against decisions involving payment of fines not exceeding 10 000 000.00 Dbs, shall not have a suspensive effect.

Article 208  
**Allocation of the proceeds of fines**

The proceeds of fines imposed for minor offences shall belong to the Cultural Development Fund.

Article 209  
**Interim Measures**

Without prejudice to the precautionary measures provided for in procedural law, the author may request the police and administrative authorities of the place where his right was infringed for the immediate suspension of any performance, recitation, presentation or any other form of exhibition of the protected work that is being carried out without his due consent and he may also apply for the attachment of the proceeds derived therefrom.

Article 210  
**Unlawful identification**

Unlawful use of a literary or artistic name or of any other form of identification of the author shall give the interested party the right to be compensated for damages and to the cessation of its use.

Article 211  
**Compensation**

In the calculation of the compensation due to the injured party, the amount of the income derived from the unlawful performance or performances shall be taken into account.

Article 212  
**Unfair competition**

The protection provided for in this Code shall not affect the protection afforded under the legislation on unfair competition.

**TITLE V**  
**Registration**

Article 213  
**General Rule**

Copyright and the rights derived therefrom shall be acquired independently of registration, without prejudice to the provisions contained in the following Article.

Article 214  
**Constitutive Registration**

Legal protection is subject to the registration of the following:

- a) The title of the unpublished work according to the provisions of para.3 of Article 4;
- b) The titles of newspapers and other periodical publications.

Article 215  
**Subject to Registration**

1- The following shall be subject to registration:

- a) The facts that concern the constitution, transfer, encumbrance, alienation modification or lapsing of authors' rights;
- b) The literary or artistic name;
- c) The title of the work not yet published;
- d) The seizure and attachment of the copyright;
- e) The mandate pursuant to article 74.

2 - The following shall also be subject to registration:

- a) Acts that have as their principal or secondary objective the constitution, recognition, modification or lapsing of the copyright;
- b) Acts that have as their principal or secondary objective the refusal, declaration of nullity or the annulment of a registration or its cancellation;
- c) The relevant final decisions as soon as they are proffered.

Article 216  
**Literary or artistic name**

1 - A literary or artistic name (*stage name*) may only be registered in favour of the creator of a previously registered work.

2- The registration of a literary or artistic name has no effect other than the mere publication of its use.

**Final Provisions**

Article 217  
**Technological protection measures**

1- Legal protection, as provided for in this Code is granted to owners of copyright and related rights, including the owner of a *sui generis* right provided for in law, against the circumvention of any effective measure of a technological nature, with the exception of computer programs.

2- For the purposes of the preceding paragraph, the term 'technological measures' shall refer to any technology, device or component that, in the context of its normal functions is used to impede or limit actions in respect of protected work that are not authorized by the owner of the intellectual property rights; and the following shall not be considered as such:

- a) A protocol;
- b) A format;
- c) An algorithm;
- d) A method of cryptography, coding or processing.

3- A technical measure of protection shall be called 'effective' when it allows the rights-holder to control the use of a protected work, performance or production, by means of an access code or a procedure of protection such as, inter alia, encryption, interference or any other transformation of the work, performance or production or other subject or by a mechanism of copy control that ensures this objective of protection.

4- The use of technological measures of access control is set on a voluntary and optional basis by the holder of the rights of reproduction of the works, when same is expressly authorized by the intellectual creator.

#### Article 218 **Criminal sanctions**

1- Any unauthorized person who intentionally or with reasonable grounds to have knowledge, neutralizes any effective measure of a technological nature, shall be subject to imprisonment not exceeding 1 year or with a fine not exceeding 100 days.

2- An attempt of infringement is punishable with a fine not exceeding 25 days.

#### Article 219 **Preparatory acts**

Any person who without authorization, manufactures, imports, distributes, sells, rents, advertises for sale or rent or possesses devices, products or components, for commercial purposes or even provides services that:

- a) Are the object of promotions, advertising or marketing with the objective of circumventing the effective technical measures, or

b) Only have a limited commercial objective or a limited use other than that of circumventing effective technical measures, or

c) That are mainly created, produced, adapted or made with the objective of allowing or facilitating the circumvention of any effective technical measure,

Shall be subject to a prison sentence of up to 6 months or a fine of up to 20 days.

#### Article 220

### **Extension to agreements**

Effective technical measures resulting from agreements, decisions of authorities or the voluntary implementation by the rights-holders of Copyright and Related Rights with the objective of allowing the free use to beneficiaries in terms of the provisions of the Code, shall enjoy the legal protection provided in the previous articles.

#### Article 221

### **Limitations to technical measures of protection**

1 - Effective technical measures should not hinder the normal exercise by the beneficiaries, for their direct benefit, of the free use referred to in paragraphs 2. a), e), f), i), n), p), q), r), s) and t) of article 75 , in para. b) of Article 81, para. 4 of article 152, in para. 1 a), c), d) and e) of article 189 of the Code; and the rights-holders shall file with the Office responsible for the registration of Intellectual Property, the means required to benefit from the forms of use permitted by law.

2 - In order to comply with the provisions of the preceding paragraph, the rights-holders shall adopt appropriate voluntary measures such as the establishment and implementation of agreements between rights-holders or their representatives and the interested users.

3- Whenever, due to an omission, it is found that a technical measure of protection prevents or restricts a beneficiary who has legal access to the use or enjoyment of the free use of the protected thing, the injured party may request the Office responsible for the registration of Intellectual Property for access to the means filed in accordance with paragraph 1.

4- The Commission of Mediation and Arbitration has jurisdiction to settle the disputes on the matter in issue, and their decisions are subject to appeal, with devolutive effect, before a Court.

5- Failure to comply with the decisions of the Commission of Mediation and Arbitration may lead to the provisions of the Civil Code being applied.

6- The proceedings referred to above shall be considered to be urgent in nature, so that they may be concluded within three months.

7- The procedural regime of the Commission of Mediation and Arbitration abides by the principles of procedural equality between the parties, ensures that all parties are heard and sets the rules for the determination and for the payment of the costs of preparation and of suit.

8- The provisions of the preceding paragraphs shall not prevent rights-holders of using effective technical measures of protection to limit the number of authorized reproductions relating to private use.

#### Article 222

#### **Exceptions**

The provisions of the previous article shall not apply to protected works, performances or productions available to the public in terms of an agreement between rights-holders and users, which provides that the person may have access to them from a place and at a time individually chosen.

#### Article 223

#### **Information for management**

1- Legal protection in accordance with this Code is granted to the holders of copyright and related rights, including the holder of the sui generis right in terms of the law, with the exception of computer programs, against the violation of intellectual property rights of information for the electronic management of rights.

2- For the purposes of the preceding paragraph, "information for the electronic management of rights" shall mean any information provided by rights-holders which identifies the protected work, the performance and the production, the information on its conditions of use, and any numbers or codes for such information.

3 -The legal protection relates to all the information for the electronic management of the rights in the original or copies of the protected works, performances and productions or even in any public communication.

#### Article 224

#### **Criminal sanctions**

1 - Any unauthorized person who intentionally or with reasonable grounds to know, practices any of the following acts:

a) Deletes or alters any information for the electronic management of rights;

b) Distributes, imports for distribution, broadcasts, communicates or places at the disposal of the public, without authorization, any protected works, performances or



productions wherein the information for the electronic management of the rights has been deleted or altered, knowing that in any of the aforesaid situations it is causing, enabling, facilitating or concealing an infringement of intellectual property rights,

Shall be subject to a prison sentence of a maximum of 1 year or to a fine of up to 100 days.

2- An attempt of infringement is punishable with a fine not exceeding 25 days.

#### Article 225

### **Seizure and confiscation**

1- With regard to the crimes referred to in the previous articles, the following ancillary penalties may be applied:

a) Forfeiture of the instruments used in the commission of the offences, including the illegal proceeds obtained therefrom;

b) The condemnation, and, if necessary, the destruction of instruments, devices, products and services whose sole use is to facilitate the removal or neutralization of the effective technical protection measures or to enable the unauthorized deletion or modification of the information for the electronic management of rights.

2- The fate of the goods seized shall be determined in the final order.

#### Article 226

### **Civil Liability**

Civil liability arising from the infringement of the rights in this Code is independent of any criminal proceedings resultant from the said infringement, however, it may be exercised in conjunction with the criminal action.

#### Article 227

### **Interim Measures**

1 - When rights are infringed or when there are reasonable grounds to believe that an infringement is imminent, the rights-holder may apply to Court for a provisional remedy provided for in general law, and which according to the circumstances is urgently required to ensure the protection of the right.

2 - The preceding paragraph shall apply in the event that the intermediaries, used by a third party to infringe copyright or related rights, may be the recipients of the precautionary measure under the general law, without prejudice to the right of the rights-holders to directly give the intermediaries prior notice to cease their unlawful acts.

#### Article 228

## Protection through other Legal provisions

The protection provided for in this Code shall be without prejudice to the protection granted by various other rules, namely those relating to, in particular patents, trademarks, utility models, topographies of semi-conductor products, typefaces, conditional access, cable access of broadcasting services, protection of national treasures, legal deposit, laws on restrictive practices and collusion between companies and unfair competition, trade secrets, security, confidentiality, personal data protection and privacy, access to public documents and the sanctity of contracts.

### Article 229 Entry into force

This Act enters into effect on the date of its publication.

Seen and approved by the Council of Ministers in S. Tomé, on the ... .. of.....of ... ..- *The Prime Minister, Patrice Emery Trovoada*;- the Minister of the Presidency of the Council of Ministers and Parliamentary Affairs, *Afonso da Graça Varela da Silva*;-The Minister for Foreign Affairs and Communities, *Urbino José Gonçalves Botelho*; Minister of Defence and internal affairs, *Arlindo Ramos*;- Minister of Justice, Public Administration and Human Rights, *Ilza dos Santos Amado Vaz*; Minister of Finance, Commerce and Blue Economy, *Américo de Oliveira dos Ramos* ; Minister for Infrastructure, Natural Resources and Environment, *Carlos Manuel Vila Nova*;- Minister of Agriculture and Rural Development, *Teodorico Campos*; Minister of Education, Culture, Science and Communication, *Olinto da Silva e Sousa Dáio*; Minister of Employment and Social Affairs, *Emílio Fernandes Lima*; -Minister of Health, *Maria de Jesus Trovoada dos Santos*; -Minister of Youth and Sports, *Marcelino Leal Sanches*.

Promulgated on ... of ... 2016.

To be published.

The President of the Republic,