



Code of Copyright and Related Rights*

(No. 45/85 of September 17, 1985, as last amended by Law No. 114/91 of September 3, 1991)

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* Portuguese title: Código do Direito de Autor e dos Direitos Conexos. - WIPO translation.

Entry into force: September 3, 1991.

Source: *Diário da República*, No. 202 of September 3, 1991.



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TITLE I Works Protected and Copyright

CHAPTER I Works Protected

Definitions

Article 1.

- (1) Works shall mean intellectual creations in the literary, scientific and artistic fields, in whatever form, and as such they shall be protected under the present Code, as shall the rights of their authors.
- (2) Ideas, processes, systems, operational methods, concepts, principles or discoveries alone and as such may not be protected under the present Code.
- (3) For the purposes of the present Code, a work shall be independent of its disclosure, publication, use or exploitation.

Original works

Article 2.

- (1) Intellectual works in the literary, scientific and artistic fields, whatever their type, form of expression, merits, mode of communication or objective, include, in particular:
 - (a) books, pamphlets, magazines, newspapers and other writings;
 - (b) lectures, lessons, addresses and sermons;
 - (c) dramatic and dramatico-musical works and their production;
 - (d) works of choreography or mime which are expressed in written or any other form;
 - (e) musical compositions, with or without words;
 - (f) cinematographic, television, phonographic, video and radiophonic works;
 - (g) works of drawing, tapestry, painting, sculpture, pottery, glazed tiles, engraving, lithography and architecture;
 - (h) photographic works and works produced by processes analogous to photography;
 - (i) works of applied art, industrial designs, and works of design that constitute artistic creations, whether or not protected as industrial property;
 - (j) illustrations and geographical maps;
 - (l) plans, sketches and three-dimensional works concerning architecture, town planning, geography or other sciences;
 - (m) emblems or slogans, even if used for advertising, provided that they show originality;
 - (n) parodies and other literary or musical compositions, even if inspired by the theme or subject of another work.
- (2) Subsequent editions of a work, even though they are corrected, enlarged, revised, or their titles or format are changed, shall not constitute works distinct from the original work, nor shall reproductions of works of art, even though their dimensions may have been changed.

Works deemed to be original

Article 3.

- (1) The following shall be deemed to be original works:

- (a) translations, arrangements, instrumentations, dramatizations, cinematographic and other transformations of a work, even if it has not been the subject of protection;
- (b) summaries and collections of works, whether protected or not, such as selections, encyclopaedias and anthologies which, by reason of the selection or arrangement of their contents, constitute intellectual creations;
- (c) systematic or annotated collections of texts of conventions, laws, regulations, decrees, administrative or legal decisions, or decisions by any body or authority of the State or administration.

(2) The protection granted to these works shall not prejudice the rights recognized to the authors of the corresponding original work.

Titles of works

Article 4.

(1) The protection granted to a work shall extend to its title, whether or not it is registered, provided that it is original and that it cannot be confused with the title of any other work of the same nature by another author which has previously been disclosed or published.

(2) Such protection shall not apply to the following:

- (a) titles consisting of the generic, necessary or habitual designation of the subject matter of works of a certain kind;
- (b) titles consisting solely of the names of historical, historico-dramatic or literary and mythological personages, or of the names of living persons.

(3) The title of a work not disclosed nor published shall be protected if it fulfills the conditions set out in this Article and if it has been registered jointly with the work.

Titles of newspapers and other periodicals

Article 5.

(1) Titles of newspapers or other periodicals shall be protected, provided that the latter are published regularly, subject to due registration in the relevant section of the register of the governmental department responsible for social communications.

(2) The title protected may be used for a similar publication one year after expiry of the right to publication, communicated in any manner whatsoever, or three years after cessation of publication.

Published works and disclosed works

Article 6.

(1) A published work shall mean a work reproduced with the consent of its author, however the copies are produced, provided that they are effectively made available to the public in such a way as to meet its requirements, taking into account the nature of the work.

(2) The use or disclosure of a work that does not constitute reproduction within the meaning of the preceding paragraph shall not constitute publication.

(3) A disclosed work shall mean a work that has been lawfully brought to the knowledge of the public by any means whatsoever, for example the performance of a dramatic or dramatico-musical work, the projection of a cinematographic work, the performance of a musical work, the recitation of a work of literature, the transmission or broadcasting of a work, the construction of a work of architecture or the making of a plastic work incorporated therein and the exhibition of a work of art of any kind.

Works not protected

Article 7.

(1) The following may not be protected:

- (a) news of the day and reports of events given simply for information, however disclosed;
- (b) petitions, allegations, complaints and other texts submitted in writing or orally to public authorities or services;
- (c) texts proposed and speeches made before assemblies or other collegiate, political and administrative bodies, at the national, regional or local levels, or in public debates, on topics of common interest;
- (d) political speeches.

(2) The integral reproduction, either separately, in a collection or for related use, of speeches, declarations and other texts referred to in subparagraph (1)(c) and (d) above may only be carried out by the author or with his consent.

(3) Where the works referred to in paragraph (1) above are used by a third party, use shall be limited to what is required by the objective to be achieved through disclosure.

(4) The texts referred to in subparagraph (1)(b) above shall not be communicated if they are of a confidential nature or if their disclosure might result in prejudice for the honor or reputation of the author or any other person, except if a judicial decision to the contrary is taken as a result of proof of the existence of legitimate reasons which supersede those justifying prohibition.

Collections and annotations of official texts

Article 8.

(1) The collected or annotated texts referred to in subparagraph (1)(c) of Article 3, as well as their official translations, shall not benefit from protection.

(2) Where the texts referred to in the preceding paragraph incorporate protected works, these may be used without the consent of the author and without giving him any right, in the field of activity of the public service concerned.

CHAPTER II Copyright

SECTION I Contents of Copyright

Contents of copyright

Article 9.

(1) Copyright shall include economic rights and personal rights, termed moral rights.

(2) In the exercise of economic rights, the author shall have the exclusive right to dispose of his work, to exploit it and to use it, or to authorize its total or partial exploitation or use by a third party.

(3) Independently of economic rights, and even after their transfer or lapse, the author shall enjoy moral rights in his work, in particular the right to claim authorship and to ensure its authenticity and integrity.

Carriers of works

Article 10.

(1) Since it is incorporeal, copyright in a work shall be independent of the right of ownership in the material objects used for its fixing or communication.

(2) The manufacturer or the person acquiring the carriers mentioned in the preceding paragraph shall not enjoy any of the powers derived from the copyright.

SECTION II Attribution of Copyright

Ownership

Article 11. Unless otherwise specified, copyright shall belong to the intellectual creator of the work.

Recognition of copyright

Article 12. Copyright shall be recognized independently of registration, filing, or any other formality.

Subsidized works

Article 13. Any person who has in any way either totally or partially subsidized or financed the preparation, conclusion, disclosure, or publication of a work shall not thereby obtain any of the powers derived from the copyright, unless there is written agreement to the contrary.

Determination of ownership in exceptional cases

Article 14.

(1) Without prejudice to the provisions of Article 174, ownership of copyright in a work carried out on commission or on behalf of another person, either in fulfillment of official duties or under an employment contract, shall be determined in accordance with the relevant agreement.

(2) In the absence of any agreement, it shall be deemed that ownership of copyright in a work carried out on behalf of another person belongs to the intellectual creator.

(3) Where the name of the creator is not mentioned in the work or is not shown in the customary place, it shall be deemed that the copyright remains the property of the person or entity on whose behalf the work is carried out.

(4) Where ownership of the economic rights belongs to the person on whose behalf the work was carried out, the intellectual creator shall be entitled to special remuneration, in addition to the agreed remuneration and whether or not the work is disclosed or published, in the following cases:

- (a) when the intellectual creation has been carried out with all due care but clearly goes beyond the responsibility or task entrusted;
- (b) when benefits or uses not foreseen in the agreement on remuneration arise.

Limitations on use

Article 15.

(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 stipulated in the relevant agreement.

(2) Changes may only be made to the work following the specific agreement of the creator and according to the terms agreed upon.

(3) The intellectual creator may not make use of the work in any way prejudicial to the purposes for which it was produced.

Concepts of work of joint authorship and collective work

Article 16.

(1) A work that has been created by a number of persons shall be designated as follows:

- (a) a work of joint authorship, when it has been disclosed or published in the names of all or some of the coauthors, whether or not it is possible to distinguish their individual contributions;

(b) a collective work, when it has been carried out by a single or collective entity and has been disclosed or published in its name.

(2) An aleatory work of art in which creative contributions by one or more performers were originally envisaged shall be considered a work of joint authorship.

Works of joint authorship

Article 17.

(1) Copyright in a work of joint authorship as a whole shall belong to all those who collaborated therein and the joint exercise of this right shall be subject to the regulations governing joint ownership.

(2) Unless otherwise stipulated, and always in writing, the indivisible parts belonging to the coauthors of the work shall be deemed to be of equal value.

(3) Where a work of joint authorship is disclosed or published solely in the name of one or several of the authors, in the absence of any 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 has been disclosed or published.

(4) Any person who has simply helped the author to produce, disclose or publish the work in any way shall not be deemed to be a coauthor and consequently shall not participate in the copyright.

Individual rights of authors of a work of joint authorship

Article 18.

(1) Any of the authors may request the, disclosure, publication, exploitation or modification of the work of joint authorship; any disagreements shall be settled according to the principles of good faith.

(2) Without prejudice to exploitation in common of the work of joint authorship, any of the authors may individually exercise his rights related to his individual contribution provided that the latter can be distinguished.

Collective works

Article 19.

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

(2) Where it is possible to distinguish the individual contributions of some or all of the authors in a collective work, the provisions on individual contributions to works of joint authorship cited above shall apply.

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

Composite works

Article 20.

(1) A work incorporating all or part of a preexisting work with the consent, but without the collaboration, of its author shall be deemed to be a composite work.

(2) The rights pertaining to a composite work shall belong exclusively to its author, without prejudice to the rights of the author of the preexisting work.

Broadcast works

Article 21.

(1) Broadcast works shall mean those works created for the specific purposes of audio or visual broadcasting, as well as adaptations for audiovisual purposes of works originally created for other uses.

(2) The authors of the text, music and production of a broadcast work, considered to be a work of joint authorship, as well as the authors of the adaptation of a work not originally produced for audiovisual purposes, shall be deemed to be the joint authors.

(3) The provisions relating to cinematographic works contained in the following Articles, amended accordingly, shall apply to authorship of broadcast works.

Cinematographic works

Article 22.

(1) The following persons shall be deemed to be the joint authors of cinematographic works:

- (a) the director;
- (b) the author of the work's subject and, if it is a different person, the author of the screenplay, as well as the author of the music.

(2) In the case of adaptation of a work not specifically created for the cinema, the authors of the adaptation and the screenplay shall also be deemed to be joint authors.

Use of other works in cinematographic works

Article 23. The rights of creators not deemed to be joint authors according to the provisions of Article 22 shall be governed by the provisions of Article 20.

Phonographic and videographic works

Article 24. The authors of the text and music fixed and the producers of videographic works shall be deemed to be the authors of phonographic and videographic works.

Works of architecture, town planning and design

Article 25. The creator of the global concept and the relevant project shall be the author of a work of architecture, town planning or design.

Technical collaborators

Article 26. Without prejudice to related rights which they may own, single or collective entities acting as collaborators, technical agents, designers, constructors or in similar capacities in the production and disclosure of the works referred to in Articles 21 *et seq.* may not claim any of the rights related to copyright in respect of these works.

CHAPTER III Authors and Literary or Artistic Names

Authorship of works

Article 27.

(1) Unless otherwise provided, the intellectual creator of the works shall be the author.

(2) The author shall be deemed to be the person whose name is indicated in the work as being such, in conformity with customary usage, or who is in any way declared or communicated to the public as the author.

(3) Unless otherwise provided, reference to the author shall extend to his successor and to the transferee of the relevant rights.

Identification of the author

Article 28. The author may indicate his authorship either by using his own name in full or in part, his initials, a pseudonym, or any other conventional symbol.

Protection of names

Article 29.

(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 where it is of a different nature, or the use of the name of a person who is well-known in the history of literature, the arts or science, shall not be permitted.

(2) Where the author is a relative of another person previously known by the same name, he may make a distinction by adding another name showing the relationship.

(3) No person may use the name of another author on his own work, even with his consent.

(4) The injured party in cases of unlawful use of a name contrary to the provisions of the preceding paragraphs may request that satisfactory legal measures be taken so as to avoid confusion among the public as to the identity of the author, including cessation of use of the name.

Works by anonymous authors

Article 30.

(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 deemed to be the author's representative and shall be responsible for defending the relevant rights against third parties, unless the author has specified otherwise.

(2) The author may at any time reveal his identity and authorship of his work and thereafter the powers of representation referred to in the preceding paragraph shall cease.

CHAPTER IV **Duration**

General rules

Article 31. In the absence of any special provision, copyright shall lapse 50 years after the death of the creator of the work, even in the case of works disclosed or published posthumously.

Works of joint authorship and collective works

Article 32.

(1) Copyright in works of joint authorship as a whole shall lapse 50 years after the death of the last surviving author.

(2) Unless otherwise provided, copyright in collective works or in works originally attributed to a collective entity shall lapse 50 years after the first disclosure or publication.

(3) With regard to individual contribution that can be distinguished, the duration of copyright attributed to each author in works of joint authorship or in collective works shall be in conformity with the provisions of Article 31.

Anonymous works and works deemed to be anonymous

Article 33.

(1) The duration of protection of anonymous works or works lawfully disclosed or published without any author being indicated shall be 50 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.

*Photographic works, works deemed to be photographic work
and works of applied art*

Article 34.

(1) Copyright in photographic works or in obtained by a process analogous to photography, as well as works of applied art, shall lapse 25 years after the work has been carried out.

(2) Where the work has not been made available to the public with the author's consent, the copyright referred to in the preceding paragraph shall also lapse 25 years after the work has been carried out.

Cinematographic works

Article 35.

(1) Copyright in cinematographic works or in works obtained by a process analogous to cinematography shall lapse 50 years after the work has been disclosed.

(2) Where the work has not been disclosed, copyright shall also lapse 50 years after the work has been carried out.

Protection of parts or volumes of works

Article 36.

(1) Where the various parts or volumes of a work have not been published simultaneously, the legal period of protection referred to in Articles 31 and 32 shall apply to each part or volume.

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

Calculation of the date of lapsing

Article 37. The dates of lapsing referred to in the preceding Articles shall only be calculated from the first day of the year following that in which the period of protection ended.

Protection of foreign works

Article 38. The duration of protection granted to works originating in foreign countries shall be that laid down in the above provisions, provided that it does not exceed the duration granted by the legislation in the country of origin.

Falling into the public domain

Article 39. A work shall fall into the public domain upon expiry of the periods of protection of copyright referred to in Articles 31 *et seq.* of the present Code.

CHAPTER V

Transfer and Assignment of the Economic Content of Copyright

Availability of economic powers

Article 40. The original owner of the copyright, as well as his successors or transferees, may:

- (a) authorize use of the work by a third party;
- (b) transfer or assign all or part of the economic content of the work's copyright.

Authorization regime

Article 41.

(1) Simple authorization granted to a third party disclose, publish, use or exploit a work in any way shall not imply transfer of copyright in the work.

(2) The authorization referred to in the preceding paragraph shall only be granted in writing and shall be considered nonexclusive and subject to payment.

(3) The written authorization must show specifically the authorized form of disclosure, publication and use, as well as the relevant conditions governing duration, place and remuneration.

Limitations of transfer and assignment

Article 42. Powers granted for the guardianship of moral rights and other rights excluded by the law may not be the subject of either voluntary or compulsory transfer or assignment.

Partial transfer or assignment

Article 43.

(1) The sole object of partial transfer or assignment shall be the forms of use designated in the relevant agreement.

(2) Under penalty of nullity, contracts whose object is the partial transfer or assignment of copyright shall consist of a written document bearing signatures witnessed by a notary.

(3) The transfer deed shall show the rights that are the subject of the provisions and conditions for their exercise, namely, the duration and place of exercise and, where payment is involved, the amount of the remuneration.

(4) Where the transfer or assignment is temporary and no duration has been laid down, it shall be considered that the maximum duration shall be 25 years in general and 10 years in the case of works of photography or applied art.

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

Total transfer

Article 44. Under penalty of nullity, the total and permanent transfer of the economic content of copyright may only be effected by public deed identifying the work and indicating the relevant remuneration.

Article 45.

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

(2) Unless otherwise specified, the usufructuary may only use the work subject of usufruct for any purpose involving its transformation or modification with the authorization of the owner of the copyright.

Copyright as security

Article 46.

- (1) The economic content of copyright may be offered as security.
- (2) Any sale shall only apply to the right or rights which the debtor has pledged as security in respect of the work or works indicated.
- (3) The creditor shall not acquire any rights in the work's material carriers.

Seizure and attachment

Article 47. An author's economic rights in all or some of his works may be the subject of seizure or attachment; their action shall take place in accordance with the provisions of Article 46 regarding sale of security.

Advance payment of copyright

Article 48.

- (1) Transfer or assignment of copyright in future works may only apply to works to be produced by the author within a maximum period of 10 years.
- (2) Where a contract concerns works produced over a longer period, its effects shall be limited to the period mentioned in the preceding paragraph and the remuneration provided for shall be reduced accordingly.
- (3) Any contract providing for transfer or assignment of future works without any time limit shall be null and void.

Additional compensation

Article 49.

- (1) Where the intellectual creator or his successors in title, having transferred or assigned their right to exploit their work financially, suffer grave economic prejudice as a result of evident disproportion between their revenue and the profits earned by the beneficiary of the rights, they may claim additional compensation to be reflected in the results of the exploitation.
- (2) In the absence of agreement, the additional compensation referred to in the preceding paragraph shall be fixed taking into account the normal results of exploitation of all the author's similar works.
- (3) Where the payment for transfer or assignment of copyright is fixed in the form of participation in the income derived by the beneficiary from exploitation, the right to additional compensation shall only apply where the percentage established is evidently lower than that customarily paid in transactions of the same nature.
- (4) The right to compensation shall lapse if it is not exercised within a period of two years from the date of becoming aware of the grave economic prejudice suffered.

Seizure and attachment of unpublished and incomplete works

Article 50.

- (1) Unpublished manuscripts, sketches, drawings, paintings or sculptures, whether signed or not, shall be exempt from seizure and attachment when they are unfinished unless the author offers them or consents thereto.
- (2) Where the author, by his direct acts, shows his intention to disclose or publish the works referred to above, the creditor may obtain seizure and attachment of the corresponding copyright.

Copyright in an unclaimed estate

Article 51.

(1) Where copyright forms part of an estate declared by the State to be unclaimed, it shall be exempt from liquidation, although the regime established under paragraph 3 of Article 1133 of the Code of Civil Procedure shall remain applicable.

(2) Where the State has not used or authorized use of the work at the expiry of a period of 10 years following the date upon which the estate was declared unclaimed, the work shall fall into the public domain.

(3) Where the succession of one of the authors of a work of joint authorship has devolved upon the State, copyright in the work as a whole shall then belong to the remaining authors.

Reedition of works out of print

Article 52.

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

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

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

(4) The provisions of the present Article, amended accordingly, shall apply to all forms of reproduction if the transferee of rights in a work already disclosed or published does not satisfy the reasonable requirements of the public.

Procedure

Article 53.

(1) The legal authorization shall be in conformity with procedure for the withdrawal of consent and shall indicate the number of copies to be published.

(2) Appeals against the decision may be lodged with the Court of Appeal, which will give final judgment, and they shall have suspensive effect.

Surviving rights

Article 54.

(1) An author who has transferred an original work of art that is neither a work of architecture nor applied art, his own manuscript or copyright in his own work, shall have the right to participation of six percent in the remuneration for each subsequent transaction.

(2) Where two or more transactions take place within a period of less than two months or within a longer period in such a way that it is considered that the author is intentionally being deprived of his right to participation, the increase in the remuneration referred to in the preceding paragraph shall be calculated according to the last transaction only.

(3) The right referred to in paragraph (1) above shall be perpetual, inalienable and imprescriptible.

(4) The cost of transactions for the purposes of attributing the right of participation and the fixing of its amount shall be limited to verified expenditure on advertising, representation and other similar actions involved in promoting and selling works and the corresponding inflation indexes.

Prescription

Article 55. Copyright may not be acquired by prescription.

CHAPTER VI Moral Rights

Definitions

Article 56.

(1) Independently of rights of an economic nature, and even if they have been assigned or transferred for payment, the author shall enjoy for his lifetime the right to claim authorship of his work and to ensure its authenticity and integrity by opposing the destruction, mutilation, distortion or other modification thereof and, in general, opposing any act which denatures the work and is liable to be prejudicial to his honor and reputation.

(2) This right shall be perpetual, inalienable and imprescriptible and shall continue after the death of the author in accordance with the provisions of the following Article.

Exercise

Article 57.

(1) Upon the death of the author, provided that the work does not fall within the public domain, the exercise of these rights shall belong to his successors.

(2) The State shall be responsible for the defense of the authenticity and integrity of works within the public domain and this right shall be exercised by the Ministry of Culture.

(3) Following the death of the author, the Ministry of Culture shall be responsible for taking adequate measures to ensure the defense of works not falling within the public domain but whose authenticity or cultural standing has been diminished, after the owners of the copyright have been notified thereof and have failed to exercise their rights without any reasonable motive.

Reproduction of ne varietur works

Article 58. Where the author has partially or wholly revised his work and has effected or authorized the disclosure ne varietur, his successors or third parties may not reproduce any of the previous versions.

Modification of works

Article 59.

(1) Modification of works without the author's consent shall not be permitted, even where use of the work without such consent is lawful.

(2) 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 the author shall have one month from the date of registration to make his position known.

Modification of architectural projects

Article 60.

(1) The author of an architectural project or of a plastic work carried out by someone else and incorporated in the work of architecture shall have the right to supervise the construction or the execution of such work in all its stages and details, so as to ensure the full conformity of the work with the project of which he is the author.

(2) Where a work is executed according to a project, the proprietor of the work may not, either during or after building, introduce any alterations without previously consulting the project's author, under penalty of compensation for damages.

(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 the name of the author of the original project for his personal profit.

Moral rights in cases of attachment

Article 61.

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

(2) In the case mentioned in the preceding paragraph, where the author retains the proofs without justification for a period exceeding 60 days, the printer may proceed without the revision.

Right of withdrawal

Article 62. The author of a disclosed or published work may at any time withdraw it from circulation and may terminate its use in any form, provided that he has justifiable moral reasons, but he shall compensate the interested parties for the prejudice caused.

CHAPTER VII
International Regime

Competence of Portuguese jurisdiction

Article 63. Portuguese jurisdiction shall have exclusive competence for determining the protection to be granted to works, without prejudice to ratified or approved international conventions.

Protection of foreign works

Article 64. Works by foreign authors or having a foreign country as their country of origin shall enjoy the protection granted by Portuguese law, subject to reciprocity, and with the exception of any international convention to the contrary to which the Portuguese State may be bound.

Country of origin of published works

Article 65.

(1) Published works shall have the original country of publication as their country of origin.

(2) Where 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 that granting the minimum duration of protection.

(3) A work published in two or more countries within a period of .30 days from the first date of publication inclusive shall be deemed to have been published simultaneously in several countries.

Country of origin of unpublished works

Article 66.

(1) The country of origin of unpublished works shall be deemed to be the country of origin of the author.

(2) Nevertheless, in the case of works of architecture, the country of origin shall be deemed to be that in which the said works are built or incorporated in the building.

TITLE II Use of Works

CHAPTER I General Provisions

SECTION I Procedure Regarding Use

Enjoyment and use

Article 67.

(1) An author shall have the exclusive right to enjoy and use his work, either 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 the economic point of view, the guarantee of the pecuniary benefits resulting from such exploitation shall constitute the basic objective of legal protection.

Forms of use

Article 68.

(1) Exploitation and, in general, use of the work, can be implemented, according to its type and nature, in any form whether currently known or not.

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

- (a) publication, either by printing or by any other method of graphic reproduction;
- (b) performance, recitation, execution, exhibition or display to the public;
- (c) cinematographic reproduction, adaptation, performance, execution, distribution and projection;
- (d) fixing or adapting any apparatus used for mechanical, electric, electronic or chemical reproduction and 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 analogous instruments, whether by wire or not, in particular, by hertzian waves, optical fiber, cable or satellite, when such communication is carried out by an organization other than the original one;
- (f) direct or indirect appropriation in any form such as the sale or rental of copies of the work reproduced;
- (g) translation, adaptation, arrangement, instrumentation or any other transformation of the work;
- (h) use in another work;
- (i) total or partial reproduction by any means;
- (j) construction of an architectural work according to a plan, whether or not it is a repetition.

(3) The owner of the copyright shall have the exclusive right to decide freely upon the procedures and conditions of the work's use and exploitation.

(4) The various forms of the work's use shall be independent one from another and adoption of one of them by the author or the person entitled shall not prejudice the adoption of the remaining forms by the author or by third parties.

Authors in a state of incapacity

Article 69. An intellectual creator in a state of incapacity may exercise his moral rights provided that he is naturally able to do so.

Posthumous works

Article 70.

(1) An author's successors shall have the right to decide upon the use of undisclosed and unpublished works.

(2) Successors who disclose or publish a posthumous work shall have the same rights in respect of the work as would have been enjoyed if the author had disclosed or published the work during his lifetime.

(3) Except in the case of impossibility or delay in disclosure or publication for serious moral considerations that shall be decided upon by the courts, where the successors do not use the work within a period of 25 years from the date of the author's death, they may not oppose the disclosure or publication of the work, without prejudice to the rights provided for in the preceding paragraph.

Legal right of translation

Article 71. The legal right to use a work without the author's prior consent also implies the right to translate or transform the work in any way necessary for its use.

SECTION II
Administration of Copyright

Administrative powers

Article 72. Powers related to the administration of copyright may be exercised by the owner of the copyright himself or through his duly authorized representative.

Authors' representatives

Article 73.

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

(2) The associations and bodies referred to in paragraph (1) shall be entitled to institute civil or criminal proceedings to defend the legitimate interests and rights, with regard to copyright, of those they represent, notwithstanding any action by an expressly appointed representative of the parties concerned.

Register of representatives

Article 74.

(1) Exercise of the representation referred to in the preceding Article, whether as the result of specific appointment or of one of the capacities referred to in that Article, shall be subject to registration with the Directorate General of Entertainments and Copyright.

(2) Entry in the Register shall be made at the request of the representative, accompanied by documentary proof of appointment; a translation may be required if the document is written in a foreign language.

(3) The fees payable for the registration referred to in this Article and for the corresponding certificates shall be those contained in the table annexed to this Code of which it is an integral part.

CHAPTER II Unrestricted Use

Scope

Article 75. The following uses of a work without the consent of the author shall be lawful:

- (a) reproduction by social communication channels for information purposes of speeches, statements and lectures given in public that do not come within the categories provided for in Article 7, either as excerpts or in the form of summaries;
- (b) regular selections of press articles in the form of press reviews;
- (c) fixing, reproduction and public communication by any means of short excerpts from literary or artistic works when their use in news stories is justified for information purposes;
- (d) partial or total reproduction by photography or by an analogous process of a work that has previously been made available to the public, provided that such reproduction is carried out by a public library, a noncommercial documentation center or a scientific institution, and that such reproduction and the corresponding number of copies are not for public use and are limited to the requirements of such institutions' activities;
- (e) partial reproduction by the processes referred to in the preceding subparagraph, by educational establishments, provided that such reproduction and the number of copies made are for use exclusively for educational purposes in such establishments and that their use is not profit-making;
- (f) inclusion of quotations or summaries from another author's work, whatever their type or nature, in support of one's own opinions or for purposes of criticism, discussion or teaching;
- (g) inclusion of short excerpts or parts of another author's work in works used for teaching;
- (h) performance of national anthems or officially adopted patriotic songs, as well as works of a religious character, during religious rites or services;
- (i) reproduction of news articles and economic, political or religious articles, provided that rights have not been specifically reserved.

Conditions

Article 76.

(1) The free use referred to in the preceding Article shall be subject to:

- (a) mention, wherever possible, of the name of the author and of the publisher, of the title of the work and other elements enabling it to be identified;
- (b) in the case referred to in subparagraph (d) of the preceding Article, equitable remuneration to be paid to the author and to the publisher by the body that has carried out the reproduction;
- (c) in the case referred to in subparagraph (g) of the preceding Article, remuneration to be paid to the author and to the publisher.

(2) In respect of subparagraphs (a), (e), (f) and (g) of the preceding Article, the works reproduced or quoted shall not be liable to confusion with the works in which they are being used and the reproduction or quotation shall not be so extensive that they prejudice interest in such works.

(3) The author alone has the right to assemble the works mentioned in subparagraph (a) of the preceding Article in a volume.

Comments, annotations and discussions

Article 77.

(1) Reproduction of another author's work without his permission under the pretext of commenting on or annotating it shall not be permitted. Comments or annotations may be published separately with references to chapters, paragraphs or pages in the other author's work.

(2) An author who reproduces his articles, letters or arguments published in newspapers or periodicals, may also reproduce the replies by the adverse party or parties; the latter may grant the same right, even after publication by the other party.

Publication of unprotected works

Article 78.

(1) Any person who publishes manuscripts existing 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 one.

(2) Any person who has carried out fixing, establishment or re-establishment of a text liable to alter considerably the given tradition may also oppose the reproduction of their disclosed interpretation of an unprotected work.

Lectures

Article 79.

(1) Lectures by professors may only to be reproduced by third parties with the consent of the authors, even if they are presented under the personal responsibility of the person publishing them.

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

Works in braille

Article 80. Reproduction or other forms of use employing braille or another system for blind persons of lawfully published works shall be permitted, provided that such reproduction or use is not for profit-making purposes.

Other uses

Article 81. The following reproduction shall be permitted:

- (a) one copy, for purposes of exclusively scientific or humanitarian interest, of works not commercially available or impossible to obtain, for the period necessary for their use;
- (b) for exclusive private use, provided that it does not harm normal exploitation of the work nor cause unjustified prejudice to the author's legitimate interests, and that the reproduction is not used for any purposes of public communication or commercialization whatsoever.

Compensation for the reproduction or recording of works

Article 82.

(1) The public selling price of any mechanical, chemical, electric, electronic or other apparatus enabling works to be fixed and reproduced or of any physical medium for fixations and reproductions obtained by any such method, shall include a sum to be paid to the authors, performers, publishers and producers of phonograms and videograms.

(2) The amount of the sum referred to in the preceding paragraph, its collection and distribution shall be defined by legislative decree.

(3) The provisions of paragraph (1) above shall not apply to such apparatus and carriers when they have been 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 III Special Uses

SECTION I Publishing

Publishing contracts

Article 83. A publishing contract shall mean a contract by which an author grants a third party, subject to the conditions stipulated in the contract or provided for in the legislation, an authorization to produce on his own behalf a specified number of copies of a work or series of works, the third party being responsible for the distribution and sale of the work or works.

Other contracts

Article 84.

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

- (a) production by the third party of a specified number of copies of a work and its stocking, distribution and sale, the parties having agreed between them to divide the profits or losses of the corresponding exploitation;
- (b) production by the third party of a specified number of copies of a work and its stocking, distribution and sale, on behalf of the owner of the right and at his risk, against payment of a fixed or proportional sum;
- (c) the stocking, distribution and sale of copies of the work against payment of a commission or any other form of remuneration.

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

Object

Article 85. Publishing contracts may have as their object one or more existing or future, published or unpublished works.

Contents

Article 86.

(1) Publishing contracts shall mention the number of editions concerned, the number of copies for each edition and each copy's sale price to the public.

(2) Where the number of editions is not contractually stipulated, the publisher shall only be authorized to produce one edition.

(3) Where the publishing contract omits to specify the number of copies to be printed, the publisher shall be obliged to produce a minimum of 2,000 copies of the work.

(4) Where the publisher produces a smaller number of copies than that agreed upon, he may be required to make good the number; if he fails to do so, the owner of the copyright may agree with a third party to produce the number of copies missing, at the publisher's expense, without prejudice to his right to be compensated for damages.

(5) Where the publisher produces a larger number of copies than that agreed upon, the owner of the copyright may seek legal attachment of the additional copies and take possession of them, the publisher forfeiting the cost of such copies.

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

(7) The author shall have the right to verify himself or through his representative the number of copies published. For this purpose, under the legal provisions, he may require auditing of the accounts of the publisher or the enterprise producing the copies when the latter does not belong to the publisher; he may also use other means that do not interfere with production of the work, such as putting his signature or seal on each copy.

Form

Article 87.

(1) Publishing contracts shall only be valid if they are drawn up in writing.

(2) Nullity resulting from failure to draw up the contract in writing shall be attributable to the publisher and may only be invoked by the author.

Effects

Article 88.

(1) Publishing contracts shall not imply the permanent or temporary transfer to the publisher of the right to publish the work, but shall solely imply the granting of permission to reproduce and commercialize the work in accordance with the specific terms of the contract.

(2) 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 remaining the prerogative of the author.

(3) With the exception of the provisions contained in paragraph (1) of Article 103 and any provisions 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 Portugal or abroad, until the previous edition is exhausted or the period laid down has terminated, unless circumstances arise that prejudice the interest of the edition and make the work's revision or updating necessary.

Obligations of the author

Article 89.

(1) The author shall furnish the publisher with the means necessary to fulfill the contract, in particular, by handing over within the agreed period the original version of the work to be published in a way that enables the publisher to reproduce it.

(2) The original version referred to in the preceding paragraph shall be the property of the author and he shall have the right to require its return after publication.

(3) Where the author unjustifiably delays handing over the original version so that the expectations of the publisher are jeopardized, the latter may cancel the contract, without prejudice to any claim for compensation for damages.

(4) The author shall guarantee to the publisher the exercise of rights deriving from the publishing contract against opposition and disputes arising from the rights of third parties in the work to which the contract refers, but not against opposition and disputes simply engendered by third parties.

Obligations of the publisher

Article 90.

(1) The publisher shall publish the work with all due care so that reproduction can be carried out in accordance with the conditions agreed upon. He shall also assiduously and diligently further the promotion

and sale of the copies produced; in the event of non-fulfillment of these obligations, the author shall be compensated for damages.

(2) Unless otherwise agreed, the publisher shall begin reproduction of the work within a period of six months from receipt of the original and shall complete it within 12 months of that date, except in duly proven cases of *force majeure*, when it shall be completed within six months following expiry of the last-mentioned period.

(3) Lack of financial resources to pay publication costs and an increase in the latter shall not be deemed cases of *force majeure*.

(4) Where the work deals with a subject of important topical interest or is such that any delay in publication would detract from its interest or timeliness, the editor shall be obliged to commence reproduction immediately and to terminate it within a period liable to avoid prejudice caused by such a delay.

Payment

Article 91.

(1) Publishing contracts shall be subject to payment.

(2) The author's remuneration shall be that laid down in the publishing contract and it may consist either of a fixed lump sum to be paid for the edition as a whole, a percentage of the price of each copy, the attribution of a certain number of copies, or payment on some other basis, according to the nature of the work, and a combination of such forms may be used.

(3) In the absence of any stipulation regarding his remuneration, the author shall be entitled to 25% of the proceeds from each copy sold.

(4) Where remuneration consists of a percentage of the price of each copy, increases and reductions in this price shall affect its calculation.

(5) With the exception of the cases provided for in Article 99, the publisher shall only determine reductions in the price with the author's agreement, unless the latter's remuneration corresponds to the previous price.

Liability for payment

Article 92. The publishing price shall be liable for payment after termination of publication within the period and under the conditions laid down in Article 90, unless the form of remuneration adopted makes payment dependent upon subsequent circumstances, in particular, the total or partial disposal of the copies produced.

Modernization of spelling

Article 93. Except for the author's option regarding the aesthetic nature of the spelling, modernization of spelling in accordance with the official rules in force shall not be deemed to be modification of the work.

Proofs

Article 94.

(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. The author shall correct the composition of these pages and shall give his opinion regarding the cover; under normal conditions, he shall then return the proofs within a period of 20 days and the draft design within a period of five days.

(2) Where the publisher or author delays furnishing or returning the proofs, they may notify the other party by registered letter with acknowledgment of receipt, so that the publisher may furnish, or the author return, the proofs within a further, unextendable period.

(3) The notification referred to in the preceding paragraph shall be the condition for claiming damages for 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 any corrections, amendments or additions to the text that are not justified by new circumstances shall be borne entirely by the publisher provided that they do not exceed 5% of the cost of typesetting; costs in excess of this percentage shall be borne by the author.

Amendments

Article 95.

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

(2) The updating and alterations provided for in the preceding paragraph shall be duly indicated provided that the corresponding texts had been signed or contained teaching material.

Rendering of accounts

Article 96.

(1) Where the remuneration due to the author depends on the results of sales or payment is dependent on the development of sales, the publisher shall render his accounts to the author within an agreed period or, if no period has been agreed, every six months, with closure of the accounts on June 30 and December 31 of each year.

(2) For the purposes of the preceding paragraph, the publisher shall transmit to the author by registered letter within 30 days following expiry of the period a statement of sales and returns during that period, together with payment of the corresponding balance.

(3) The publisher shall provide the author or his representative with the parts of his accounts necessary for correct verification of the statement referred to in the preceding paragraph.

Indication of the author

Article 97. On each copy of the work, the publisher shall mention the name or pseudonym of the author or another designation identifying him.

Printing

Article 98.

(1) The work may not be printed without the author's consent.

(2) Return of the page proofs and the draft design for the cover, when they are not accompanied by any declaration to the contrary, imply authorization for printing.

Sale of copies at reduced prices or by weight

Article 99.

(1) Where a work has not been exhausted within the agreed period of time or, failing such agreement, within a period of five years as from the date of publication, the publisher shall have the possibility of selling the remaining copies at a reduced price or by weight, or of destroying them.

(2) The publisher shall notify the author so that he may exercise his right of priority to acquire the remaining copies at a price fixed on the basis of the profits from sale at a reduced price or by weight.

Transfer of publishing rights

Article 100.

(1) Without the author's consent, the publisher may not transfer his rights under the publishing contract to third parties, either gratuitously or against payment, unless the transfer is the result of the dissolution of his establishment.

(2) Where such dissolution causes or leads to moral prejudice for the other contracting party, the latter shall have the right to cancel the contract within a period of six months from the date of being informed of such dissolution, the publisher having the right to claim compensation for damages.

(3) The inclusion of rights deriving from the publishing contract in the publisher's participation in any commercial company shall be deemed to be transfer of such rights within the meaning of this Article and shall therefore be subject to the author's consent.

(4) Granting of the rights deriving from the publishing contract to any of the partners in the publishing company as a result of its judicial or extra-judicial liquidation shall not be deemed to be transfer of such rights.

Death or incapacity of the author

Article 101.

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

(2) Where the author has expressed the desire that the work should not be published incomplete, the contract shall be cancelled and no other party may under any circumstances publish the work, however, 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) Without prejudice to the consent referred to in the preceding paragraph, the completed work may only be published if a clear distinction is made between the original part and the addition, together with an indication of the latter's authorship.

Bankruptcy of the publisher

Article 102.

(1) Where realization of assets during the publisher's bankruptcy proceedings involves the sale at a low price of all or substantial amounts of copies of the published work stocked by the publisher, the bankruptcy administrator shall inform the author not less than 20 days previously so that he may take the steps he deems necessary to defend his material and moral interests.

(2) The author shall have priority to purchase the works auctioned at the highest price reached.

Complete works

Article 103.

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

(2) Unless otherwise agreed, a contract for the complete edition shall not authorize the publisher to publish works contained therein separately 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 in the preceding paragraphs 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.

Future works

Article 104.

- (1) The provisions laid down in Article 48 shall apply to publishing contracts in respect of future works.
- (2) Where 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 the judicial authorities to fix the time limit for this purpose.
- (3) Subject to valid reasons, the time limit fixed in the contract may be legally extended at the author's request.
- (4) Where the work specified in the contract is to be written as it is published in volumes or instalments, the contract shall specify approximately the number and length of the volumes or instalments; with regard to the length, a margin of 10% shall be allowed, unless otherwise agreed.
- (5) Where the author exceeds the limits mentioned without the prior consent of the publisher, he shall not have any right to additional payment and the publisher may refuse to publish the additional volumes, instalments or pages. The author shall however retain the right to cancel the contract, compensating the publisher for the expenditure incurred and the anticipated profits. Where the work has already been sold in part, the results obtained shall form the basis for calculating compensation.

Reeditions and successive editions

Article 105.

- (1) Where the publisher has been authorized to publish several editions, in case of doubt, the conditions laid down for the original edition shall apply to subsequent editions.
- (2) Before publishing a new edition, the publisher shall give the author the possibility of amending the text by making small corrections or changes that do not imply substantial amendment of the work.
- (3) Even where the price has been fixed globally, the author shall nevertheless have the right to additional remuneration where, with the publisher's agreement, he has substantially modified the work by revising or enlarging it.
- (4) Under penalty of being liable for damages, a publisher who undertakes to publish successive editions of a work shall publish them uninterruptedly so that copies are always available on the market.
- (5) Cases of *force majeure* may constitute an exception to the provisions laid down in the preceding paragraph. However, lack of financial resources to cover the cost of the new publication or increases in such costs shall not constitute cases of *force majeure*.

Cancellation of contracts

Article 106.

- (1) Publishing contracts may be cancelled:
 - (a) where a prohibition has been imposed on the publisher;
 - (b) where, at the death of the individual publisher, his establishment does not continue with one or several of his successors;
 - (c) where the author does not hand over the original version of his work within the time limit agreed or where the publisher does not terminate publication within the time limit laid down in paragraph (2) of Article 90, unless there is a duly proven case of *force majeure*;
 - (d) in all other cases specifically provided for and, in general, where it is proven that any of the contractual clauses or the direct or supplementary legal provisions applicable have not been fulfilled.
- (2) Cancellation of contract shall be without prejudice to liability for damages on the part of the person responsible.

(To be continued)

SECTION II Performances

Definition

Article 107. 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.

Authorization

Article 108.

(1) Use of a work for performance shall be subject to the author's consent, whether the performance is public or private, whether or not an entrance fee is charged and whether or not the performance is for profit.

(2) Where the work has already been disclosed in any form and issued for non-profit-making purposes in private within a family circle, the performance may take place without the author's consent. This principle also applies to all forms of communication.

(3) Granting of the right to perform shall be deemed to be subject to payment, unless it is given to amateurs.

Form, content and effects

Article 109.

(1) Under a performance contract, the author authorizes an impresario to promote performance of the work and the latter shall do so in accordance with the conditions agreed.

(2) A performance contract shall be drawn up in writing and, unless otherwise agreed, it shall not give the impresario the exclusive right of direct communication of the work by this means.

(3) A performance contract shall define the conditions and limitations under which performance of the work is authorized, in particular, the period of time, the place, the author's remuneration and the form in which it is to be paid.

Remuneration

Article 110.

(1) The author's remuneration for granting the right to perform may consist of a fixed lump sum, a percentage of the receipts from performances, a certain sum for each performance, or may be determined in any other form laid down in the contract.

(2) Unless otherwise agreed, where the author's remuneration is determined by the receipts from performances, it shall be paid on the day following that of the respective performances.

(3) Where remuneration is determined by the receipts for each performance, the author or his representative shall have the right to verify the corresponding receipts.

(4) Where the impresario falsifies the statement of receipts or uses other fraudulent methods to hide the true results of his exploitation, he shall be liable to the punishment applicable to such offenses and the author shall have the right to cancel the contract.

Proof of the author's authorization

Article 111. Where performance of a work that does not fall within the public domain requires a license 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.

Unauthorized performance

Article 112. 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 promoter of the entertainment.

Rights of the author

Article 113.

- (1) Unless otherwise stipulated, the performance contract shall give the author the right to:
 - (a) introduce into the work, independently of the other party's consent, the changes he deems necessary, provided that they do not alter its general structure nor detract from its dramatic or theatrical interest, nor prejudice the programming of rehearsals and performances;
 - (b) be consulted regarding casting;
 - (c) attend rehearsals and give the necessary indications regarding interpretation and direction;
 - (d) be consulted regarding the choice of artistic collaborators;
 - (e) object to performance where he considers that there have not been sufficient rehearsals; however, he may not make undue use of this possibility and unjustifiably delay performance, in which case he shall be liable for damages;
 - (f) verify the performance himself or through his representative, for which purpose they shall have free access to the premises during the performance.
- (2) Where it has been agreed in the contract that 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.

Suppression of passages in the work

Article 114. Where a judicial decision compels the suppression of a passage in the work thereby compromising or altering its general theme, the author shall have the right to withdraw the work and to cancel the contract without incurring any liability.

Obligations of the impresario

Article 115.

- (1) Under the contract, the impresario shall undertake to have the work performed in public within the agreed period, and in the absence of any agreed period, within 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 rehearsals necessary to ensure performance under satisfactory technical conditions and, in general, make every effort customary in such circumstances to ensure the performance's success.
- (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 author's consent.
- (4) The impresario shall indicate clearly on the programs, posters and other forms of publicity the name, pseudonym or other identifying sign adopted by the author.

Secrecy of unpublished works

Article 116. Where a work has never been performed nor reproduced, the impresario may not make it known before the first performance, except for publicity purposes according to customary usage.

Transmission, reproduction and filming of the performance

Article 117. Performance of the work, in whole or in part, through transmission by audio or visual broadcasting, reproduction on phonograms or videograms, filming or presentation, shall require the author's written consent, in addition to authorization by the show's impresario and its performers.

Transfer of the impresario's rights

Article 118. The impresario may not transfer rights deriving from the performance contract without the author's consent.

Performance of undisclosed works

Article 119. 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.

Cancellation of contracts

Article 120.

- (1) Performance contracts may be cancelled in the following cases:
 - (a) cases legally or contractually established;
 - (b) cases under subparagraphs (1)(a) and (d) of Article 106;
 - (c) cases where the public obviously and continuously does not attend performances.
- (2) Cancellation of the contract shall be without prejudice to liability for damages on the part of the party responsible.

SECTION III
Recitation and Performance

Assimilation to performance

Article 121.

- (1) Recitation of a literary work and performance by instruments or by instruments together with singers of a musical or dramatico-musical work shall be deemed a performance within the meaning of Article 107.
- (2) Where not specified otherwise, 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.

Obligations of the promoter

Article 122.

- (1) Any person who promotes or organizes the performance or recitation of a literary, musical, or dramatico-musical work, before a public audience, must display the corresponding program on the premises in advance, showing as far as possible the designation of the work and identification of the author.
- (2) One copy of this program must be furnished to the author or to his representative.
- (3) Where the program is not displayed or communicated pursuant to the preceding paragraphs, the person promoting or organizing the performance or recitation shall be required to prove, when so requested, that he has obtained authorization from the authors of the works that are performed or recited.

Fraudulent organization or execution of the program

Article 123.

(1) Where the person promoting the performance or recitation fraudulently constitutes a program, in particular, by including works that he does not intend to have performed or recited, and by promoting in their place the performance or recitation of unannounced works, or where, during the performance, for reasons that are not fortuitous or due to *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 might be involved.

(2) Where performers respond to the audience's insistent request by performing or reciting other works in addition to those mentioned in the program, the responsibility of the organizers shall not be involved.

SECTION IV
Cinematographic Works

Production of cinematographic works

Article 124. Cinematographic production shall be dependent upon the authorization of the authors of preexisting works, even though they may not be considered authors of cinematographic works within the meaning of Article 22.

Authorization by authors of cinematographic works

Article 125.

(1) Authorizations granted by authors of cinematographic works within the meaning of Article 22, shall specifically mention the conditions governing the film's production, distribution and projection.

(2) Where the author has specifically or implicitly authorized the film's projection, the exercise of the rights of economic exploitation of the cinematographic work shall belong to the producer.

Producer

Article 126.

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

(2) 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 for the defense of 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 carries out his mandate.

Effects of authorization

Article 127.

(1) Authorization shall give 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 provided, authorization for cinematographic production shall imply authorization for the distribution and presentation of the film in cinemas open to the public, as well as for its economic exploitation by this means, without prejudice to payment of the agreed remuneration.

(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 reproducing excerpts from the film, its communication

to the public, whether by wire or not, in particular, by hertzian waves, optical fiber, 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 shall not include broadcast transmission of the sound track or of phonograms reproducing excerpts from the cinematographic work.

(5) The author's authorization shall not be required for the diffusion of works produced by sound or audiovisual broadcasting organizations, which retain the right to transmit and communicate to the public, in whole or in part, through their own transmission channels.

Exclusivity

Article 128.

(1) Unless otherwise agreed, the authorization given by authors for cinematographic production of a work, whether it has been specially created for this form of expression or has been adapted, shall imply the granting of exclusive rights.

(2) Where no agreement has been reached, the exclusive rights granted for cinematographic production shall lapse 25 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 project, reproduce and distribute it.

Transformations

Article 129.

(1) Translations, dubbing, or any other transformations of the cinematographic work shall be subject to the written authorization of the authors.

(2) Authorization to present or distribute a foreign film in Portugal shall implicitly give authorization for its translation or dubbing.

(3) Contrary clauses may be agreed upon, unless the law alone allows the presentation of the translated or dubbed work.

Termination of the work

Article 130. A cinematographic work shall be deemed to be terminated when the director and the producer agree upon its final version.

Remuneration

Article 131. Remuneration due to authors of cinematographic works may consist of a fixed lump sum, a percentage of the receipts derived from the film's projection, a specified sum for each projection, or any other form agreed upon with the producer.

Coproduction

Article 132. Unless otherwise agreed, the producer who has concluded the contract with the authors may enter into partnership with another producer in order to ensure the execution and exploitation of the cinematographic work.

Transfer of the producer's rights

Article 133. The producer may also at any time transfer rights deriving from the contract, in whole or in part, to a third party; however, he shall remain responsible towards the author for the strict fulfillment of the contract.

Identification of the work and the author

Article 134.

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

(2) Where the cinematographic work is an adaptation of a preexisting work, it shall mention the latter's title, as well as the author's name, pseudonym, or other identifying sign.

Separate use and reproduction

Article 135. Authors of the literary and musical parts of a cinematographic work may reproduce and use these parts separately in any way, provided that this does not prejudice the exploitation of the work as a whole.

Time limit for fulfillment of the contract

Article 136. Where the producer fails to terminate production of the cinematographic work within a period of three years from the date of handing over the literary and musical parts, or fails to have the finished film projected within a period of three years from the date of its termination, the author or coauthors shall have the right to cancel the contract.

Prints, matrices and copies

Article 137.

(1) Only the producer shall 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 shall not have the right to sell the copies produced at reduced prices, even on the grounds that there is no demand for them.

Bankruptcy of the producer

Article 138. Where, following bankruptcy of the producer, all or some of the copies of the cinematographic work are sold at reduced prices, the bankruptcy administrator shall inform the author or coauthors of the fact at least 20 days in advance so that they may take the steps they deem necessary for the defense of their material and moral interests and also so that they may exercise their right of priority to buy the copies auctioned.

Applicable provisions

Article 139.

(1) The provisions concerning publishing, performance and presentation contracts, amended accordingly, shall apply to cinematographic production contracts.

(2) The provisions of Articles 122 and 123 with regard to recitation and performance shall apply *mutatis mutandis* to the public projection of a cinematographic work.

Works produced by processes analogous to cinematography

Article 140. The provisions of this Section shall also apply to works produced by any process analogous to cinematography.

SECTION V Phonographic and Videographic Fixing

Phonographic and videographic fixing contracts

Article 141.

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

(2) The authorization shall be given in writing and it shall allow the recipient to fix the work and to reproduce and sell the copies produced.

(3) Authorization to perform the fixed work in public, or to broadcast or transmit it in any way, shall also be given in writing, and it may be given to a different entity than that authorized to fix the work.

(4) 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.

Identification of the work and the author

Article 142. Phonograms and videograms shall show the title of the work or some means of identifying it, as well as the name or other identifying sign of the author, either directly printed on them or on labels, and provided that the nature of the work so permits.

Verification

Article 143.

(1) The author shall have the right to verify establishments printing and duplicating phonograms and videograms and stocking material carriers, the provisions of paragraph (7) of Article 86 and any necessary amendments being applicable.

(2) Persons importing, manufacturing and selling material carriers for phonographic and video-graphic works shall inform the General Directorate of Entertainment and Copyright of the quantities imported, manufactured and sold. The authors may also verify material carrier stocks and factories.

(3) Persons manufacturing or duplicating phonograms and videograms shall inform the General Directorate of Entertainment and Copyright of the quantities of phonograms and videograms printed or duplicated and they shall produce documentary proof of the author's authorization.

(4) The General Directorate of Entertainment and Copyright shall define the periodicity and form of the communications referred to in paragraphs (2) and (3) above.

Works that have already been fixed

Article 144.

(1) Musical works and corresponding texts that have been the subject of commercial phonographic fixing without opposition by the author may be fixed anew.

(2) The author retains the right to equitable remuneration and in the absence of agreement between the parties the Ministry of Culture shall determine the fair amount.

(3) The author may put an end to exploitation if the technical quality of fixing jeopardizes satisfactory communication of the work.

Transfer of the producer's rights

Article 145. Any person with whom a contract for fixing 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 author's consent, except in the case of dissolution of the establishment.

Transformation

Article 146. Adaptation, arrangement or any other transformation of a work for the purposes of fixing, transmission, performance or presentation by mechanical, phonographic or videographic means, shall also be subject to the author's written authorization which shall mention the purpose or purposes of the transformation.

Reference

Article 147.

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

(2) The provisions of Articles 122 and 123 with regard to recitation and performance shall apply *mutatis mutandis* to entertainment consisting in the public communication of a phonographic or videographic work.

Scope

Article 148. The provisions contained in this section shall apply to the reproduction of intellectual works by any process analogous to phonography or videography, whether it already exists or not.

SECTION VI Broadcasting and Other Processes for the Reproduction of Signals, Sounds and Images

Authorization

Article 149.

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

(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 authorization.

(3) A public place shall mean any place to which the public has access, either implicitly or explicitly, whether against payment or not, even where the right of admission is reserved.

Broadcasting of fixed works

Article 150. 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.

Technical requirements

Article 151. Owners of theaters or buildings to be used for broadcasting or communication according to the provisions of Article 149, impresarios and any persons involved in presenting the performance to be transmitted, shall allow the installation of the instruments necessary for the transmission, as well as the tests or technical rehearsals necessary for its successful execution.

Limitations

Article 152.

(1) Unless otherwise agreed, the authorization provided for in Article 149 shall not imply authorization to fix the works broadcast.

(2) Broadcasting organizations shall nevertheless be permitted to fix the works to be broadcast, but solely for use by their transmitting stations in the case of retransmission.

(3) Such recordings shall be destroyed within a maximum period of three months during which they may not be broadcast more than three times, without prejudice to the author's remuneration.

(4) The limitations mentioned 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 Portuguese Radio and Television (RTP, E.P.) and the Portuguese Broadcasting (RDP, E.P.), without prejudice to copyright.

Scope

Article 153.

(1) Authorization to broadcast a work shall apply to all live or retransmitted broadcasts carried out by the stations belonging to the entity granted the authorization, without prejudice to the author's remuneration for each transmission.

(2) A broadcast made at some other time, because of programming or technical conditions, by national stations belonging to the same broadcasting channel or the same entity shall not be deemed to be a new transmission.

(3) Broadcasting by cable or satellite by another entity than that granted the authorization referred to in paragraph (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.

Identification of the author

Article 154. Broadcasting stations shall indicate the name or pseudonym of the author together with the title of the broadcast work, with the exception of those cases recognized by customary usage in which the circumstances and requirements of the broadcast enable such indications to be omitted.

Public communication of broadcast works

Article 155. The author shall receive remuneration for public communication of a broadcast work by means of loudspeakers or by any other analogous instrument transmitting signals, sounds or images.

Applicable provisions

Article 156.

(1) The provisions concerning publishing, performance and presentation contracts, amended accordingly, shall apply to broadcasting and to diffusion by any process used to communicate signals, sounds or images.

(2) The provisions of Articles 122 and 123 with regard to recitation and performance shall apply *mutatis mutandis* to entertainment consisting in the public communication of a broadcast work.

SECTION VII Creation of Three-Dimensional, Graphic and Applied Art

Exhibitions

Article 157.

(1) The author alone may exhibit or authorize a third party to exhibit publicly his works of art.

(2) Unless otherwise agreed, transfer of ownership of a work of art shall imply transfer of the right to exhibit it.

Liability for exhibited works

Article 158. The entity promoting exhibitions of works of art shall be liable for the safekeeping of the works exhibited and shall be required to insure them against fire, transport, theft and any other risk of destruction or deterioration and shall keep them on the exhibition site up to the end of the period of time laid down for their return.

Form and content of reproduction contracts

Article 159.

(1) Reproduction of creations of three-dimensional, graphic and applied art, design, architectural and town planning projects may only be made by the author or by a third party authorized by him.

(2) The authorization referred to in the preceding paragraph shall be given in writing, shall be deemed to be subject to payment, and may be subject to conditions.

(3) The provisions contained in Article 86 shall apply to reproduction contracts and the minimum number of copies to be sold annually shall be specified, failing which the entity exploiting the reproduction may have recourse to the procedures outlined in the said Article.

Identification of works

Article 160.

(1) The contract shall contain indications allowing the work to be identified, as well as a brief description of it, a sketch, drawing or photograph, together with the author's signature.

(2) Reproductions may not be offered for sale until the author has approved the copy submitted to him.

(3) All the copies reproduced shall show the name, pseudonym, or other sign allowing the author to be identified.

Architectural and town planning studies and projects

Article 161.

(1) Each copy of architectural and town planning studies and projects shall indicate legibly the corresponding author, together with the site of construction of architectural works.

(2) Repetition of an architectural work according to the same plans shall be subject to the author's agreement.

Return of the models or elements used

Article 162.

(1) Upon expiry of the contract, the original models and any other elements used as a basis for reproduction shall be returned to the author.

(2) Unless otherwise agreed, the instruments created specially for the work's reproduction shall be destroyed or shall remain unused unless the author wishes to acquire them.

Scope of protection

Article 163. The provisions in this section shall also apply to models of scenery, fashion plates, cartoons for tapestries, models for ceramic panels, enameled porcelain tiles, stained glass, mosaics, mural reliefs, advertising posters and designs, book covers and, where applicable, to the graphic creations included therein, where they constitute artistic creations.

SECTION VIII Photographic Works

Conditions for protection

Article 164.

- (1) The choice of a photograph's subject and the conditions of its creation must be deemed to be a personal artistic creation by the author before a photograph may qualify for protection.
- (2) The provisions contained in 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.

Rights of authors of photographic works

Article 165.

- (1) The author of a photographic work shall have the exclusive right to reproduce, disseminate and sell the work, subject to the restrictions concerning exhibition, reproduction and sale of portraits and without prejudice to copyright in the reproduced work in the case of photographs of works of plastic art.
- (2) Where a photograph has been made under an employment contract or on commission, the right referred to in this Article shall be deemed to belong to the employer or the commissioner.
- (3) Any person who uses a photographic reproduction for commercial purposes shall pay the author equitable remuneration.

Transfer of negatives

Article 166. Unless otherwise agreed, transfer of the negative of a photographic work shall imply transfer of the rights referred to in the preceding Articles.

Compulsory information

Article 167.

- (1) Copies of a photographic work shall bear the following information:
 - (a) the name of the photographer;
 - (b) in the case of photographs of works of plastic art, the name of the author of the work photographed.
- (2) Only the unlawful reproduction of photographs bearing the above-mentioned information may be punished. In the absence of such information, the author may not claim the compensation provided for in the present Code, unless the photographer can show evidence of bad faith on the part of the person making the reproduction.

Reproduction of commissioned photographs

Article 168.

- (1) Unless otherwise agreed, when the photograph of a person has been made on commission, it may be published, reproduced or given for reproduction by the person photographed or by his heirs or transferees, without the photographer's consent.
- (2) Where the name of the photographer appeared on the original photograph, it shall also appear on the copies.

SECTION IX Translations and Other Transformations

Authorization by the author

Article 169.

(1) Translation, arrangement, instrumentation, dramatization, filming and, in general, any transformation of a work, may only be carried out or authorized by the author of the original work since the latter is protected under the provisions of paragraph (2) of Article 3.

(2) The authorization shall be given in writing and, unless otherwise provided, shall imply granting of exclusive rights.

(3) The person authorized shall respect the theme of the original work.

(4) To the extent necessary for the purposes of the use envisaged, changes that do not distort the work may be made.

Additional compensation

Article 170. Where the publisher, impresario, producer, or other entity uses the translation for purposes additional to the conditions agreed upon or established in the present Code, the translator shall have the right to additional compensation.

Indication of the translator

Article 171. The name of the translator shall appear on copies of the work translated, on theater posters, in communications accompanying radio and television broadcasts, in film credits, and in all other promotion material.

Provisions applicable to translations

Article 172.

(1) The regulations concerning publishing of original works contained in section I of this chapter shall apply to publication of the corresponding translations, whether the authorization for translation has been granted to the publisher or to the author of the translation.

(2) Unless otherwise agreed, the contract concluded between the publisher and the translator shall not imply temporary or permanent transfer of the translator's rights in his translation.

(3) The publisher may require the translator to make the necessary changes to ensure that the original work is respected and, when that implies a given graphic layout, that the text conforms thereto; if the translator does not do so within 30 days at the most, the publisher may himself have such changes made.

(4) Wherever the nature and characteristics of the work require special knowledge, the publisher may have the translation revised by a technically qualified person of his own choosing.

SECTION X Newspapers and Other Periodical Publications

Protection

Article 173.

(1) Copyright in published works, even where they are not signed, in newspapers or periodicals shall belong to the respective owners and they alone may undertake or authorize reproduction separately or in the said publication, unless there is written agreement to the contrary.

(2) Without prejudice to the provisions contained in the previous paragraph, the owner or publisher may reproduce the copies in which the contributions referred to were published.

Journalistic work on behalf of third parties

Article 174.

(1) Copyright in journalistic works produced in fulfillment of an employment contract that bear an indication of authorship, whether a signature or some other means, shall belong to the author.

(2) Unless authorized by the company owning the newspaper or publication concerned, the author may not publish the work referred to in the preceding paragraph separately until three months after the date of circulation of the publication in which it appeared.

(3) In the case of works constituting a series, the time limit referred to in the preceding paragraph shall commence on the date of distribution of the issue in which the last work of the series appeared.

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

Staggered and periodic publication

Article 175.

(1) Authors or publishers of works appearing in volumes or instalments and authors or publishers of periodic publications may agree with a third party on sale by subscription as and when the work is printed, for a specified time or indefinitely.

(2) The fact that the first volume or instalment sent by the author or publisher is not returned shall not imply tacit conclusion of a contract, nor is the recipient obliged to keep or return it.

(3) Unless otherwise agreed, the dispatch of volumes or papers by post shall be at the risk of the sender and he shall replace the copies lost without right to any additional payment.

TITLE III **Related Rights**

Definition

Article 176.

(1) The services of performers, producers of phonograms and videograms and broadcasting organizations shall be protected under this Title.

(2) Performers shall mean the actors, singers, musicians, dancers, and others who perform, sing, recite, declaim, interpret or execute literary or artistic works in any manner.

(3) Producers of phonograms or videograms shall mean the individual or collective persons who, for the first time, fix the sounds coming from a performance or other sounds, or images of any origin, whether or not accompanied by sound.

(4) Phonograms shall mean the recording resulting from fixing, on a material carrier, the sounds coming from a performance or other sounds.

(5) Videograms shall mean the recording resulting from fixing, on a material carrier, images, whether or not accompanied by sound, as well as copies of cinematographic or audiovisual works.

(6) Copies shall mean the material carriers on which sounds and/or images are separately or jointly reproduced, whether directly or indirectly intercepted from a phonogram or videogram, where the sounds or images fixed therein are totally or partially incorporated.

(7) Reproduction shall mean the making of copies of fixing or of a significant qualitative or quantitative part of the fixing.

(8) Distribution shall mean the activity devoted to offering a significant quantity of phonograms or videograms to the public, whether directly or indirectly, for sale or rental.

(9) Broadcasting organizations shall mean the bodies which effect audio or visual broadcast programs, broadcast programs meaning the diffusion of sounds and/or images, separately or jointly, whether by wire or not, in particular, by hertzian waves, optical fiber, cable or satellite, and destined for public reception.

(10) Retransmission shall mean the simultaneous broadcast by one broadcasting organization of a program by another broadcasting organization.

Reservations on copyright

Article 177. The grant of related rights shall in no way affect the protection of authors over the work used.

Right to refusal

Article 178. Performers may refuse:

- (a) broadcasting or communication by any means to the public of the performances they have given, without their consent, except when these performances have already been broadcast or fixed;
- (b) fixing, without their consent, of performances that have not already been fixed;
- (c) reproduction, without their consent, of fixing of their performances when this has not been authorized, when the reproduction is made for purposes different from those for which they had given their consent, or when the first fixing was made under the terms of Article 189 and the corresponding reproduction has objectives different from those provided for in this Article.

Authorization to broadcast

Article 179.

(1) In the absence of any agreement to the contrary, authorization to broadcast a performance shall imply authorization to fix it and to broadcast and reproduce subsequently the performance fixed, as well as authorization to broadcast performances lawfully authorized by other broadcasting organizations.

(2) The performer shall, however, have the right to additional remuneration where, although not laid down in the original contract, the following operations are carried out:

- (a) a new broadcast;
- (b) retransmission by another broadcasting organization;
- (c) commercialization of the performance fixed for broadcasting purposes.

(3) Unauthorized retransmissions and new broadcasts of a performance shall entitle the participating performers to a joint payment of 20% of the remuneration originally decided.

(4) Commercialization shall entitle the performers to a joint payment of 20% of the sums which the broadcasting organization that has fixed the performance receives from the purchaser.

(5) The performer may agree to conditions other than those laid down in the preceding paragraphs with the broadcasting organization, but may not renounce the rights referred to therein.

Identification

Article 180.

(1) Unless otherwise agreed or unless the nature of the contract makes it unnecessary, any disclosure of the performance shall indicate, even briefly, the name or pseudonym of the performer.

(2) Exclusively musical audio programs without any form of speech and those referred to in Article 154 shall constitute exceptions.

Representation of performers

Article 181.

- (1) In the absence of any agreement, when several performers participate in the performance, their rights shall be exercised by the director of the company.
- (2) Where there is no director of the company, actors shall be represented by the director, the members of the orchestra and chorus by their respective conductors or directors.

Unlawful use

Article 182. Uses which distort a performance, misrepresent its text or prejudice the performer's honor or reputation, shall be unlawful.

Duration

Article 183. Protection of performers shall last for 50 years as from the first day of the year following that in which the event that has generated protection occurs.

Producer's authorization

Article 184.

- (1) The authorization of the producer of the phonogram or videogram shall be required for the making of copies and their distribution to the public, as also for their import or export.
- (2) The authorization of the producer of the phonogram or videogram shall also be required for dissemination by any means and for the public performance thereof.
- (3) Where a commercially published phonogram or videogram, or a copy thereof, is used for any form of public communication, the user shall pay equitable remuneration to the producer and the performers, to be divided equally amongst them, unless otherwise agreed.
- (4) Producers of phonograms or videograms shall have a right to verification similar to that afforded by paragraphs (1) and (2) of Article 143.

Identification of phonograms and videograms

Article 185.

- (1) Protection granted 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, accompanied by an indication of the date of the original publication.
- (2) Where the copy or its packaging do not permit the producer or his representative to be identified, the mention referred to in the preceding paragraph shall also include this indication.

Duration

Article 186. The protection of producers shall last for a period of 50 years as from the first day of the year following that in which the fixation has been made.

Rights of the broadcasting organization

Article 187. Broadcasting organizations shall have the right to authorize or refuse:

- (a) retransmission of their programs;
- (b) fixing on a material carrier of their programs;
- (c) reproduction of the fixing of their programs, where this has not been authorized or in the case of ephemeral fixing, and reproduction for purposes different from those originally envisaged.

Duration

Article 188. Protection for broadcasts shall last for a period of 50 years as from the first day of the year following that in which the event that has generated protection occurs.

Unrestricted use

Article 189.

- (1) Protection granted under this Title shall not include:
 - (a) private use;
 - (b) excerpts from a performance, a phonogram, a videogram, or a broadcast program, provided that the use of such excerpts is justified for reasons of information or criticism, or other reasons authorized for quotations or summaries referred to in subparagraph (f) of Article 75;
 - (c) use for exclusively scientific or educational purposes;
 - (d) ephemeral fixing by the broadcasting organization;
 - (e) fixing or reproduction by public bodies or agents of public services for reasons of exceptional documentary interest or for archives;
 - (f) other cases in which 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 functions or under employment contracts.

Requirements for protection

Article 190.

- (1) A performer shall enjoy protection if one of the following requirements is met:
 - (a) the performer has Portuguese nationality or that of a member State of the European Communities;
 - (b) the performance is on Portuguese territory;
 - (c) the original performance was fixed or broadcast for the first time on Portuguese territory.
- (2) Phonograms and videograms shall be protected if one of the following requirements is met:
 - (a) the producer has Portuguese nationality or that of a member State of the European Communities or if his headquarters are effectively located on Portuguese territory or anywhere else on Community territory;
 - (b) the separate or combined fixing of sounds and/or images has been lawfully carried out in Portugal;
 - (c) the phonogram or videogram has been published for the first time or simultaneously in Portugal, simultaneously meaning publication according to the provisions of paragraph (3) of Article 65.
- (3) Broadcasts shall be protected if one of the following requirements is met:
 - (a) the organization has its effective headquarters in Portugal or in a member State of the European Communities;
 - (b) the broadcast has been transmitted from a station located on Portuguese territory or from a member State of the European Communities.

Presumption of agreement

Article 191. Where the interested party has submitted a request approved by the Ministry of Culture and it has not proven possible to contact the owner of the right or he has not replied within the reasonable period provided, his consent is presumed, but the interested party may only effect the use requested if he guarantees payment of the remuneration.

Forms of exercise

Article 192. The provisions on forms of exercise of copyright shall, where appropriate, apply to the forms of exercise of related rights.

Scope of protection

Article 193. Performers, producers of phonograms or videograms, and broadcasting organizations protected by ratified and approved international conventions shall also benefit from protection.

Retroactivity

Article 194.

(1) The duration of protection and the calculation of the respective period shall be determined according to the provisions of Articles 183, 186 and 188, even where the events giving rise to protection occurred before this Code's entry into force.

(2) Where the owners of related rights, through legal provisions, benefit from a longer period of protection than that provided for in the present Code, the latter shall prevail.

TITLE IV Infringement and Protection of Copyright and Related Rights

Infringement

Article 195.

(1) Any person who, without the authorization of the author or performer, the producer of the phonogram or videogram or the broadcasting organization, uses a work or performance for any of the uses provided for in this Code, shall be guilty of the offense of illegal exercise of rights.

(2) The following persons shall also be guilty of the offense of illegal exercise of rights:

- (a) any person who unlawfully discloses or publishes a work not disclosed nor published by its author or not destined to be disclosed or published, even where he presents it as the respective author's work and whether or not he seeks to obtain economic benefits;
- (b) any person who makes a collection or compilation of published or unpublished works without the author's consent;
- (c) any person granted an authorization to exploit a work, performance, phonogram, videogram or broadcast program who exceeds the limitations of the said authorization, except for the cases specifically provided for in this Code.

(3) Any author who has transferred his respective rights in whole or in part, or who has authorized 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 liable to the penalty provided for in Article 197.

Infringement

Article 196.

(1) Any person who unlawfully represents as being his own creation or performance, a performance, phonogram, videogram or broadcast which reproduces in whole or in part another person's work or performance, whether disclosed or not, or in such a way that it does not have its own specificity, shall be guilty of the offense of infringement.

(2) Where the reproduction referred to in the preceding paragraph represents a part or fragment of the work or performance, only the said part or fragment shall be deemed to be infringement.

(3) Infringement shall not necessarily imply that the reproduction must be made by the same process as the original, nor need it be of the same size or format.

(4) The following shall not constitute infringement:

- (a) any resemblance between duly authorized translations of the same work, or between photographs, drawings, engravings or other forms of representation of the same object, where, despite the similarities due to the identity of the object itself, each one of the works has its own specificity;
- (b) any reproduction by photography or engraving made solely for the purposes of illustrating criticism of art.

Penalties

Article 197.

(1) The offenses referred to in the preceding Articles shall be subject to a term of imprisonment of up to three years and a fine of between 150 and 250 days, depending on the gravity of the offense, both being doubled in the event of a repeated offense, provided that the offense in question does not constitute an offense punishable by a more severe penalty.

(2) Negligence shall be punishable by a fine of between 15 and 150 days for the offenses referred to in this Title.

(3) There shall be no stay of sentence in the event of repeated offenses.

Infringement of moral rights

Article 198. Any person shall be liable to the penalties laid down in the preceding Article:

- (a) if he unlawfully claims authorship of a work or a performance that he knows not to be his own;
- (b) if he prejudices the authenticity or integrity of a work by an act that changes its nature and which is liable to cause prejudice to the honor or reputation of the author or performer.

Use of infringed or unlawfully appropriated works

Article 199.

(1) Any person who sells, offers for sale, imports, exports, or in any way distributes to the public an infringed or illegally used work or an unauthorized copy of a phonogram or videogram, whether the copies in question were produced in Portugal or abroad, shall be liable to the penalties provided for in Article 197.

(2) Negligence shall be liable to a fine not exceeding 50 days.

Criminal proceedings

Article 200.

(1) Criminal proceedings concerning the offenses provided for in this Code shall not be subject to a complaint by the injured party, unless the offense solely concerns infringement of moral rights.

(2) In the case of works falling within the public domain, the complaint shall be submitted by the Ministry of Culture.

Attachment and loss of objects related to the committing of an offense

Article 201.

(1) Copies of works illegally used or infringed shall be seized, whatever the nature of the work and the form of infringement, together with the corresponding material packaging, the machines, instruments or documents suspected of being used or being destined for use in committing the offense.

(2) The finality of all the objects seized shall be fixed in the final judgment, whether or not an application has been made, and when it has been proven that they were destined for use or were used in the offense, they shall be considered to have been handed over to the State and the copies shall automatically be destroyed without any right to compensation.

(3) In cases of *flagrante delicto*, the competence for seizing the copies shall belong to the police and administrative authorities, namely, the Police Force, the Public Security Police, the Republican National Guard, the Revenue Police and the Directorate General of the Economy.

Special regime in cases of infringement of moral rights

Article 202.

(1) Where only authorship of the work has been claimed, instead of ordering its destruction, the Court may, at the author's request, require the copies seized to be handed over when it is possible to guarantee or authenticate such authorship by adding to or replacing the relevant indications.

(2) Where an author defends the integrity of his work, the Court may, instead of ordering the destruction of the copies distorted, mutilated or amended in any way, hand them over to the author at the latter's request where it is possible to return them to their original form.

Civil liability

Article 203. Civil liability derived from infringement of the rights provided for in this Code shall not be dependent upon the criminal procedure to which it gives rise, it may however be exercised in conjunction with criminal action.

Regime of minor offenses

Article 204. Where no specific regulations already exist, the provisions of Legislative Decree No. 433/82 of October 27, shall apply to minor offenses.

Minor offenses

Article 205.

(1) The following shall constitute minor offenses liable to a fine of 50,000 to 500,000 escudos:

(a) failure by importers, manufacturers and sellers of material carriers for phonographic and videographic works to communicate the amounts imported, manufactured and sold, in accordance with the provisions of paragraph (2) of Article 143;

(b) failure by manufacturers and reproducers of phonograms and videograms to communicate the quantities they have manufactured or reproduced, in accordance with the provisions of paragraph (3) of Article 143.

(2) Failure to respect the provisions of Articles 97, 115, paragraph (4), 126, paragraph (2), 134, 142, 154, 160, paragraph (3), 171 and 185, shall also constitute minor offenses liable to a fine of 200,000 to 200,000 escudos, and do not exempt from the need to indicate the name or pseudonym of the performer, including in the case of paragraph (1) of Article 180.

(3) Negligence shall be liable to punishment.

Competence for procedure regarding minor offenses and for enforcing fines

Article 206. Competence for procedure regarding minor offenses and for enforcing fines shall belong to the Director General of Entertainment and Copyright.

Effects of appeal

Article 207. Appeals against decisions in cases involving fines not exceeding 80,000 escudos shall not have a suspensive effect.

Use of fines collected

Article 208. The amounts of the fines collected for minor offenses shall belong to the Fund for Cultural Promotion.

Preventive measures

Article 209. Without prejudice to the preventive measures provided for under the law, the author may request the police and administrative authorities of the place in which infringement of his right has been ascertained 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 authorization and he may also request the attachment of all the receipts.

Unlawful identification

Article 210. 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 compensation for damages, in addition to cessation of its use.

Compensation

Article 211. In calculating the compensation due to the injured party, the amount of the receipts derived from the unlawful performance or performances shall be taken into account.

Unfair competition

Article 212. The protection granted under the present Code shall not prejudice the protection afforded under the provisions of the legislation on unfair competition.

TITLE V Registration

General regulations

Article 213. Copyright and the right derived therefrom shall be acquired independently of registration, without prejudice to the provisions contained in the following Article.

Registration of titles

Article 214. Registration of the following shall condition legal protection:

- (a) the title of the unpublished work according to the provisions of paragraph (3) of Article 4:
- (b) the titles of newspapers and other periodical publications.

Subject of registration

Article 215.

- (1) The following shall be subject to registration:

- (a) facts concerning the constitution, transfer, payment, assignment, modification or lapsing of copyright;
 - (b) the literary or artistic name;
 - (c) the title of the work even when not published;
 - (d) seizure and attachment of copyright;
 - (e) authorization in accordance with Article 74.
- (2) The following shall also be subject to registration:
- (a) acts whose principal or secondary objective is the constitution, recognition, modification or lapsing of copyright;
 - (b) acts whose principal or secondary objective is the rejection, declaration of nullity or annulment of a registration or its cancellation;
 - (c) the relevant final decisions immediately after a judgment is communicated.

Literary or artistic names

Article 216.

(1) A literary or artistic name may only be registered on behalf of the creator of a previously registered work.

(2) Registration of a literary or artistic name shall have no other effect than mere publication of its use.

Final Provisions

Disputes

Article 217. The settlement of any dispute arising from application of the provisions of the present Code, provided that it does not concern inalienable rights, shall be subject to arbitration according to the provisions of the general legislation.

*Provisions applicable to bodies for the collective administration
of copyright and neighboring rights*

Article 218. The provisions applicable to collective administration bodies for copyright and neighboring rights shall be laid down by statute.

Table referred to in paragraph (3) of Article 74

Each registration	5,000 escudos
Filing of lists of societies of authors or similar bodies — each list	2,000 escudos
Replacement of lists	Free
Filing of additions to lists of societies of authors or similar bodies — each addition	1,000 escudos
Withdrawal of registration after it has appeared in the <i>Diario</i>	1,000 escudos
Each certificate	1,000 escudos