

Decree No. 93-027 of March 30, 1993 on Copyright, Related Rights and Expressions of Folklore.

Having regard to the Constitution;

Having regard to Founding Act No. I/CN of July 30, 1991, on the Statutes of the National Conference;

Having regard to Act No. III/CN of August 9, 1991, proclaiming the Attributes of Sovereignty of the National Conference;

Having regard to Act No. XXI/CN of October 29, 1991, on the Organization of the Authorities during the Transitional Period, in particular in Articles 15 and 18;

Having regard to Decree No. 93-003 of February 9, 1993 on the Implementation of Articles 126 and 127 of the Constitution;

Acting on a report from the Minister for Communication, Culture, Youth and Sports

The Council of Ministers having been heard:

The High Council of the Republic having discussed and adopted;

The Prime Minister signs the Decree which states as follows

PART ONE: COPYRIGHT

First chapter: Introductory Provisions

Article 1: Definitions

The following terms and their variants as used in the present part of the decree have the following meanings

- (i) "Audiovisual work" means a work consisting of a series of related images which give an impression of movement, with or without accompanying sound and, where accompanied by sound, susceptible of being audible.
- (ii) The author means the natural person who created the work. Any reference in the present decree to the economic rights of authors, when the original holder of those rights is a natural or legal person other than the author, must be understood as referring to that other original holder of the rights.
- (iii) "Broadcasting" means the communication of a work (including the presentation or performance of a work) to the public by wireless transmission; "rebroadcasting" means broadcasting of a broadcast work. "Broadcasting" shall include broadcasting by satellite which shall be "broadcasting" from the injection of a work towards the satellite, including both the up-leg and the down-leg stages of the transmission, until the work is communicated to (made available but not necessarily received by) the public.
- (iv) "Collective work" means a work created by several authors at the initiative and under the responsibility of a natural or legal person who publishes the work under his or its name, and in which the contributions of the authors who have participated in the creation of the work – because of the great number or the indirect nature of the contributions—are merged in the

- totality of the work so that it is impossible to identify the various contributions and the authors thereof.
- (v) “Communication” of a work (including the display, performance or broadcast thereof) “to the public” means the making of the work available to the public through means other than the distribution of copies. The whole process which is needed for, and leads to, the making available of the work to the public is “communication,” and the work shall be considered “communicated” even if no member of the public to which it was to be made available actually receives, watches or listens to the work.
 - (vi) “Communication to the public by cable” means the communication of a work to the public over wire or other paths provided by a material substance.
 - (vii) “Computer program” means a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a machine-readable medium, of causing a “computer”—an electronic or similar device having information-processing capabilities—to perform or achieve a particular task or result.
 - (viii) A “copy” means the result of any act of reproduction.
 - (ix) “Expressions of folklore” mean productions of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of a community, including folk tales, folk poetry, folk songs, instrumental folk music, folk dances and plays, artistic expressions of rituals and productions of folk art.
 - (x) To “perform” a work means to recite, play, dance or act it, either directly or by means of any device or process, or, in the case of an audiovisual work, to show its images in any order and/or to make the sounds accompanying it audible.
 - (xi) A “photographic work” means the recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or other) by which such a recording is made. A still picture extracted from an audiovisual work shall not be considered a “photographic” work but a part of the audiovisual work concerned.
 - (xii) The “producer” of an audiovisual work means the natural or legal person who takes the initiative and responsibility for making the work.
 - (xiii) “Communication to the public” means the transmission by wire or by radio waves of the image, sound, or the image and sound, of a work in such a way that it may be perceived by persons outside the normal circle of a family and its close acquaintances gathered in one or more places so distant from the place where the transmission originates that, without the transmission, the images or sounds would not be perceivable and, further, irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places and/or times.
 - (xiv) “Public performance” means the fact of reciting, playing, dancing or otherwise performing a work either directly or through any device or process or, in the case of an audiovisual work, of showing the images in sequence or of making the accompanying sounds audible in one or more places where persons outside the family circle or the immediate circle of friends are or may be present, irrespective of whether they are or may be present in the same place and at the same time or in different places and at different times, where the performance may be perceived without there necessarily being communication to the public within the meaning of the preceding paragraph.
 - (xv) “Published” means that copies of the work have been made accessible to the public with the consent of the author on condition that, taking into

- account the nature of the work, the number of such published copies is sufficient to meet the normal needs of the public. A work shall also be considered “published” if it has been stored in the memory of a computer system and made accessible to the public by any means of retrieval.
- (xvi) “Reproduction” means the making of one or more copies of a work or of a part of it in any material form, including sound and visual recording. The making of one or more copies in three dimensions of a two-dimensional work and the making of one or more copies in two dimensions of a three-dimensional work as well as the inclusion of a work or of a part of it in a computer system (in either the internal storage unit or in the external storage unit of a computer) are also “reproduction.”
 - (xvii) The “reprographic reproduction” of a work is the making of facsimile copies of originals or copies of the work by means other than printing, for example, by photocopying. The making of facsimile copies which are reduced or enlarged in scale shall also be considered “reprographic reproduction”.
 - (xviii) “Public loan” means the transfer of the possession of the original or of a copy of the work for a limited period, for not-for-profit motives, by an institution providing services to the public, such as a public library or public archives.
 - (xix) “Rental” means the transfer of the possession of the original or of a copy of the work for a limited period, for not-for-profit motives.
 - (xx) A “work” means any literary or artistic work as provided for by Article 4.
 - (xxi) A “work of applied art” means a two-dimensional or three-dimensional artistic creation with utilitarian functions or incorporated in a useful article, whether handicraft or produced on an industrial scale. A “useful article” means an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.
 - (xxii) A “work of joint authorship” means a work to the creation of which two or more authors have contributed.

Article 2 – Scope of Application of the Decree

- (1) the provisions of the present Decree shall apply to:
 - (i) works the author or any other original holder of copyright in which is a national of Niger, or whose habitual place of residence or headquarters is located in Niger;
 - (ii) audiovisual works the producer of which is a national of Niger, or whose habitual place of residence or headquarters is located in Niger;
 - (iii) public works published for the first time in Niger or published for the first time in one country and also published in Niger within 30 days of prior publication;
 - (iv) works protected in light of an international agreement to which Niger is a party.
- (2) In cases in which the provisions of the present Decree are in conflict with those of an international agreement to which Niger is a party, the provisions of the international agreement shall take precedence.

Chapter II – Subject Matter of Protection

Article 3: Subject Matter of Protection: General

- (1) All authors shall benefit from the rights set out in this Decree in relation to their literary or artistic works;

- (2) The protection deriving from the rights laid down in paragraph (1), hereinafter referred to as “protection”, shall begin with the creation of the work even if the work is not fixed on a material carrier.

Article 4: Subject Matter of Protection: Works

- (1) The present Decree shall apply to literary and artistic works (hereinafter “works”) which are original intellectual creations in the literary and artistic domain, such as:
- (i) works expressed in writing, including computer programs;
 - (ii) conferences, speeches, sermons and other spoken works;
 - (iii) musical works, with or without a written form and with or without accompanying words;
 - (iv) dramatic and dramatico-musical works;
 - (v) choreographic works and pantomimes;
 - (vi) audiovisual works;
 - (vii) works of fine art, including drawing, painting, sculpture, engraving and lithography;
 - (viii) works of architecture;
 - (ix) photographic works,
 - (x) works of applied art;
 - (xi) illustrations, maps, plans, sketches and three - dimensional works relating to geography, topography, architecture and science

- (2) Protection shall be independent of the mode or form of expression, or of the quality and of the purpose of the work

Article 5: Subject Matter of Protection: Derived Works and Collections

- (1) The following shall also be protected as works
- (i) translations, adaptations, arrangements and other transformations of
 - (ii) works and expressions of folklore;
 - (iii) collections of works, expressions of folklore or of simple facts or data, such as encyclopedias, anthologies and databases which, owing to the selection and arrangement of their contents, are original.
- (2) Protection of the works referred to in paragraph (1) shall not affect the protection of pre-existing works used in the making of such works.

Article 6: Subject Matter not Protected

The protection afforded by this Decree shall not extend to:

- (i) official texts of a legislative, administrative or judicial nature, or to the official translations thereof;
- (ii) news of the day;
- (iii) simple facts and data

Chapter III – Rights Protected

Article 7: Moral Rights

Independently of his economic rights (see Article 8) and even after assignment of such rights, the author of a work shall have the right to:

(i) claim authorship of his work, in particular the right to have his name affixed to copies of his work and, wherever possible and in the usual manner, in relation for any public use of his work;

(ii) remain anonymous or to use a pseudonym;

(iii) oppose any distortion, mutilation or other modification of his work or any other action derogatory to it where such action might be prejudicial to his honor or reputation.

The rights referred to in this Article shall hereinafter be referred to as “moral rights”.

Article 8 – Economic Rights

Subject to the provisions of Articles 9 to 21, the author of a work shall enjoy the exclusive right to perform or authorize the following acts:

(i) reproduce his work;

(ii) translate his work;

(iii) adapt, arrange or otherwise transform his work;

(iv) distribute copies of his work to the public by means of sale or any other transfer of ownership or by rental or by public loan;

(v) import copies of his work, even if the imported copies were made with his authorization or that of another holder of copyright;

(vi) perform his work in public;

(vii) communicate his work (including performance or broadcast) to the public by broadcasting and/or retransmission);

(viii) communicate his work (including performance or broadcasting) to the public by cable or by any other means.

The rights referred to in this Article shall hereinafter be referred to as “economic rights”.

Chapter IV: Restriction of Economic Rights

(A) FREE USES

Article 9 - Free Reproduction for Private Purposes

(1) Notwithstanding the provisions of Article 8, and subject to those of paragraph (2) and those of Article 21, it shall be permitted, without the consent of the author and without payment of remuneration, to reproduce a lawfully published work exclusively for the private use of the user.

(2) Paragraph (1) shall not apply to:

- (i) the reproduction of works of architecture in the form of buildings or other similar constructions;
- (ii) the reproduction of works of fine art in a limited quantity, the graphical presentation of musical works (scores) and exercise manuals and other publications used once only;
- (iii) the reproduction of the whole or of significant parts of databases;
- (iv) the reproduction of computer programs, except in the cases provided for in Article 16, and;
- (v) any other reproduction of a work that would prejudice the normal exploitation of the work or would cause unwarranted prejudice to the legitimate interests of the author.

Article 10: Free Reproduction in the Form of Quotation

Notwithstanding the provisions of Article 8, it shall be permitted, without the consent of the author and without payment of remuneration, to quote a lawfully published work in another work, on condition that the source and the name of the author be stated, if the name of the author is given in the source, and on condition that such quotation is compatible with fair practice and that its extent does not exceed that justified by the intended purpose.

Article 11: Free Use for Teaching

Notwithstanding the provisions of Article 8, it shall be permitted, without the consent of the author or any other holder of copyright and without payment of remuneration, but subject to the requirement of stating the source and the name of the author if such name is given in the source:

- (i) to use a lawfully published work as an illustration in publications, broadcasts or sound or visual recordings intended for teaching;
- (ii) to reproduce, by reprographic means for teaching, or for examinations within teaching establishments whose activities are not directly or indirectly profit-making, and to the extent justified by the intended purpose, lawfully published individual articles from a newspaper or periodical, and short extracts from a lawfully published work or such a work, on condition that such use is compatible with fair practice.

Article 12: Reprographic Reproduction by Libraries and Archive Services

Notwithstanding the provisions of Article 8, a library or archive service whose activities are not directly or indirectly profit-making may, without the consent of the author or any other holder of copyright, make individual copies of a work by means of reprographic reproduction:

- (i) where the work reproduced is an article or a short work or a short extract from a written work, other than a computer program, with or without illustration, published in a collection of works or in an issue of a newspaper or periodical, and where the purpose of reproduction is to meet the request of a natural person, on condition that:
 - (a) the library or archive service ensures that the copy will be used solely for purposes of university or private study or research;

(b) the act of reproduction is an isolated case or, if repeated, occurs on separate, unrelated occasions;

(c) no collective license may be obtained that would allow the making of such copies (that is to say, no collective license offered by a collective management organization in such a way that the library or archive service is or should be aware of the existence of that possibility); or

(ii) the making of such a copy is authorized when it is intended to preserve, or if necessary replace, a work in the permanent collection of another library or archive service, on account of the work having been lost, destroyed or rendered unusable, provided that:

(a) it is impossible to find such a copy on reasonable terms;

(b) the act of reprographic reproduction is an isolated case or, if repeated, occurs on separate, unrelated occasions.

Article 13: Free Reproduction for Judicial and Administrative Purposes

Notwithstanding the provisions of Article 8, it shall be permitted, without the consent of the author and without payment of remuneration, to reproduce a work intended for judicial or administrative proceedings to the extent justified by the intended purpose.

Article 14: Free Use for Informatory Purposes

Notwithstanding the provisions of Article 8, it shall be permitted, without the consent of the author and without payment of remuneration, but subject to the requirement of stating the source and the name of the author if such name is given in the source:

(i) to reproduce and distribute in the press, to broadcast or to communicate to the public by cable, an economic, political or religious article published in newspapers or periodicals, or a broadcast work of like nature, in those cases where the right of reproduction, broadcasting or such communication to the public has not been expressly reserved;

(ii) to reproduce or make available to the public, for the purposes of reporting on current events by means of photography, cinematography, or through broadcasting or such communication to the public by cable, a work seen or heard during such an event, to the extent justified by the intended informatory purpose;

(iii) to reproduce in the press, to broadcast or communicate to the public political speeches, lectures, addresses, sermons or other works of like nature given in public, as well as pleadings made in legal proceedings, for the purposes of news information and to the extent justified by the intended purpose, whereby the authors shall maintain their right to publish collections of such works.

Article 15: Free Use of Images of Works Permanently Located in Public Places

Notwithstanding the provisions of Article 8, it shall be permitted, without the consent of the author and without payment of remuneration, to reproduce, broadcast or communicate to the public by cable an image of a work of architecture, a work of fine art, a photographic work or a work of applied art that is permanently located in a place open to the public, except if the image of the work is the main subject of such reproduction, broadcast or communication and if it is used for profit-making purposes.

Article 16: Free Reproduction and Adaptation of Computer Programs

(1) Notwithstanding the provisions of Article 8, the legitimate owner of a copy of a computer program may, without the author's authorization or payment of separate remuneration, make a copy or adapt this program, provided that the copy or adaptation is:

- (i) required for use of the computer program for purposes for which the program has been obtained, and
- (ii) for archiving purposes and in order to replace the copy lawfully held where that copy may be lost, destroyed or made unusable.

(2) No copy or adaptation may be made for purposes other than those provided for in paragraph (1), and any copy or adaptation shall be destroyed, where extended possession of the copy of the computer program ceases to be lawful.

Article 17: Free Ephemeral Recording by Broadcasting Organizations

Notwithstanding the provisions of Article 8, a broadcasting organization may, without the consent of the author and without payment of separate remuneration, make an ephemeral recording by means of its own facilities and for the purposes of its own broadcasts of a work it is authorized to broadcast. The broadcasting organization shall be required to destroy such a recording within six months of it having been made, unless a longer period has been agreed with the author of the work thus recorded. However, without such agreement, a single copy of such a recording may be kept for the exclusive purpose of the conservation of archives.

Article 18: Free Resale and Public Loan

Notwithstanding the provisions of Article 8, it shall be permitted, without the consent of the author and except in the case provided for under Article 9 without payment of remuneration:

- (i) to resell, or to transfer in any other way, the ownership of a copy of a work after the first sale or another transfer of ownership of the copy;
- (ii) for a library or archive service whose activities are not directly or indirectly profit-making, to lend a copy of a written work other than a computer program to the public.

Article 19: Free Public Performance

Notwithstanding the provisions of Article 8, it shall be permitted, without the consent of the author and without payment of remuneration, publicly to perform a work:

- (i) at official or religious ceremonies to the extent justified by the nature of the ceremonies;
- (ii) as part of the activities of a teaching establishment for the staff and students of such an establishment, if the audience consists exclusively of the staff and students of the establishment or of the parents and supervisors of the students or other persons directly related to the activities of the establishment.

Article 20: Importing for Personal Purposes

Notwithstanding the provisions of Article 8 (v), the importing of a copy of a work by a natural person, for personal purposes, shall be permitted without the consent of the author or of any other holder of the copyright in the work.

(B) EQUITABLE REMUNERATION

Article 21: Equitable Remuneration for Reproduction for Private Purposes

(1) Notwithstanding the provisions of Article 8, it is permitted, without authorization by the author but subject to payment of equitable remuneration, to reproduce a legitimately published audiovisual work or the soundtrack of a work exclusively for the private purposes of the user.

(2) Equitable remuneration for reproduction for private purposes, in the cases provided for in paragraph (1), means payment made by the producers and importers of the equipment and physical material used for the reproduction, and received and distributed by the Copyright Office of Niger. In the absence of agreement between the representatives of the producers and importers on the one hand and the Copyright Office of Niger on the other, the amount of equitable remuneration and the conditions of the payment thereof shall be fixed by the ordinary courts.

(3) The equitable remuneration to be paid to authors under this article, as well as to performers and producers of phonograms, must, in accordance with Article 46, be distributed between these three groups of right holders in accordance with the regulations in force.

(4) The equipment and the physical material mentioned in paragraph (2) shall be exempt from payment of equitable remuneration:

(a) if they are for export;

(b) if they cannot be normally used for reproduction of works intended for private purposes (such as professional equipment and material supports, or dictaphones and cassettes for use therewith).

Chapter V: Term of Protection

Article 22: Term of Protection: General

(1) Except as otherwise provided in this Chapter, the economic rights in a work shall be protected during the lifetime of the author and for fifty (50) years after his death.

(2) The moral rights shall be without limit in time. After the expiry of protection of the economic rights, the Copyright Office of Niger shall be entitled to ensure compliance with the moral rights for the benefit of the authors.

Article 23: Term of Protection for Works of Joint Authorship

The economic rights in a work of joint authorship shall be protected during the lifetime of the last surviving author and for fifty (50) years after his death.

Article 24: Term of Protection for Anonymous and Pseudonymous Works

The economic rights in a work published anonymously or under a pseudonym shall be protected until the expiry of a period of fifty (50) years as from the date on which such work has been lawfully published for the first time, except where, prior to the expiry of such a

period, the identity of the author is disclosed or leaves no doubt, in which case the provisions of Article 22 or Article 23 shall apply.

Article 25: Term of Protection for Collective and Audiovisual Works

The economic rights in a collective work or in an audiovisual work shall be protected until the expiry of a period of fifty (50) years after such a work has been lawfully made accessible to the public or, failing such an event occurring during the period of fifty (50) years as from the making of the work, fifty (50) years as from its making.

Article 26: Term of Protection for Works of Applied Art

The economic rights in a work of applied art shall be protected until the expiry of a period of twenty-five (25) years as from the making of such work.

Article 27: Calculation of Terms

In this Chapter, each time limit shall expire at the end of the calendar year during which it would normally lapse.

Chapter VI: Ownership of Rights

Article 28: General

The author of a work shall be the first owner of the moral and economic rights in his work.

Article 29: Ownership of Rights in Works of Joint Authorship

The joint authors of a work of joint authorship shall be the first joint owners of the moral and economic rights in that work. However, if a work of joint authorship may be divided into independent parts (that is to say if the parts of such work may be reproduced, performed or otherwise used separately), the joint authors shall enjoy independent rights in those parts, whilst remaining joint owners of the rights in the work of joint authorship considered as a whole.

Article 30: Ownership of Rights in Collective Works

The first owner of the moral and economic rights in a collective work shall be the natural or legal person on whose initiative and under whose responsibility the work has been created and who publishes it in his name.

Article 31: Ownership of Rights in Works Created Under a Work Contract

Where a work is created by an author on behalf of a natural or legal person (hereinafter the employer) within the framework of a work contract and his employment, unless otherwise agreed in the contract, the first owner of the economic and moral rights shall be the author, but the economic rights in the work shall be deemed to have been transferred to the employer to the extent justified by the habitual activities of the employer at the time of the creation of the work.

Article 32: Ownership of Rights in Audiovisual Works

(1) In the case of an audiovisual work, the first owners of the moral and economic rights shall be the joint authors of the work (such as the director, the scriptwriter and the composer of the music). The authors of preexisting works adapted or used for audiovisual works shall be deemed to have been assimilated to such joint authors.

(2) Except as otherwise provided, the contract concluded between the producer of an audiovisual work and the joint authors of such work, other than the authors of musical works included therein, shall, as regards the contributions of the joint authors to the making of this work, imply assignment to the producer of the economic rights of the joint authors in their contributions. However, the joint authors shall maintain, unless otherwise agreed in the contract, their economic rights in other uses of their contributions to the extent that such contributions may be used separately from the audiovisual work.

Article 33: Presumption of Ownership: Authors

(1) In order for the author of a work to be deemed such, in the absence of proof to the contrary, and consequently be entitled to institute proceedings, it shall suffice for his name to appear on the work in the usual manner.

(2) In the case of an anonymous work or of a pseudonymous work, except where the pseudonym leaves no doubt as to the identity of the author, the publisher whose name appears on the work shall be deemed, in the absence of proof to the contrary, to represent the author in that capacity and to be entitled to protect and ensure compliance with the rights of the author. This paragraph shall cease to apply when the author reveals his identity and affirms his authorship of the work.

Article 34: Presumption of Ownership: Producers of Audiovisual Works

The natural or legal person whose name is appropriately indicated on an audiovisual work as being the producer shall be deemed, in the absence of proof to the contrary, to be the producer of that work.

Chapter VII: Assignment of Rights and Licensing

Article 35: Assignment of Rights

(1) Economic rights shall be assignable by transfer *intra vivos* and by testament or by the effect of law by reason of death.

(2) Moral rights shall not be assignable by transfer *intra vivos* but may be assigned by testament or by the effect of law by reason of death.

Article 36: Licenses

(1) The author of a work may grant licenses to other persons to carry out acts covered by his economic rights. Such licenses may be non-exclusive or exclusive.

(2) A non-exclusive license shall entitle its holder to perform, in the manner authorized to him, the acts that it concerns at the same time as the author and other holders of non-exclusive licenses.

(3) An exclusive license shall entitle its holder, to the exclusion of any other person, including the author, to carry out, in the manner authorized to him, the acts that it concerns.

(4) No license may be deemed an exclusive license unless expressly stipulated in the contract between the author and the holder of the license.

Article 37: Form of Assignment and Licensing Contracts

Unless the regulations in force provide otherwise, Contracts for the assignment of economic rights or the grant of licenses to carry out the acts concerned by the economic rights shall be concluded in writing.

Article 38: Scope of Assignments and Licensing

(1) The assignment of economic rights and licenses to carry out acts concerned by economic rights may be limited to certain specific rights as also with respect to the aims, duration, territorial applicability and scope or to the means of exploitation.

(2) Failure to mention the territorial applicability for which the economic rights are assigned or the licenses are granted to carry out acts concerned by economic rights shall be deemed to limit the assignment or the license to the country in which the assignment has been made or the license has been granted.

(3) Failure to mention the scope or the means of exploitation for which the economic rights have been assigned or the license has been granted to carry out acts concerned by economic rights shall be deemed to limit the assignment or license to the scope and means of exploitation necessary for the aims referred to when making the assignment or granting the license.

Article 39: Sale of Originals or Copies of Works and Assignment and Licensing of Copyright in Such Works

(1) An author who transfers the original or a copy of his work by sale shall be deemed, unless stipulated to the contrary in the contract, to have assigned none of his economic rights nor to have granted a license for carrying out the acts concerned by the economic rights.

(2) Notwithstanding paragraph (1), the legitimate acquirer of an original or of a copy of a work, unless otherwise stipulated in the contract, shall enjoy the right of presentation of such original or copy directly to the public.

(3) The right under paragraph (2) shall not extend to persons who have obtained possession of originals or copies of a work by means of rental, public loan or any other means, without having acquired ownership of them.

PART TWO: RIGHTS OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS (RELATED RIGHTS)

Chapter I - Introductory Provisions

Article 40: Definitions

(1) The following terms and their alternatives as used in this part of the Decree shall have the following meanings:

(i) "Performers" means the actors, singers, musicians, dancers and other persons who perform, sing, recite, deliver, play in or otherwise perform literary or artistic works.

(ii) "Copy of a phonogram" means any material medium containing sounds reproduced directly or indirectly from a phonogram and which incorporate all or a substantial part of the sounds fixed on such phonogram.

(iii) "Fixation" means the incorporation of sounds, images or of sounds and images in a material medium that is sufficiently permanent or stable to permit their perception, reproduction or communication in any manner whatsoever during a period of time that is more than provisional.

(iv) "Phonogram" means any exclusively sound fixation of sounds from a performance or of other sounds.

(v) “Phonogram producer” means the natural or legal person who is first to take the initiative and responsibility for fixing sounds from a performance or other sounds.

(2) The definitions contained in Article 1 of Part One shall apply *mutatis mutandis* to this part of the Decree.

Article 41: Scope of Application of the Decree

(1) The provisions of this Part of the Decree shall apply

(i) to performances where:

— the performer is a national of Niger;

— the performance takes place on the territory of Niger;

— the performance is fixed on a phonogram protected under this Part of the Decree;

— a performance which has not been fixed on a phonogram is incorporated in a broadcast program protected under this Part of the Decree.

(ii) to phonograms where the producer is a national of Niger or the first fixation of the sounds has been made in Niger;

(iii) to broadcast programs where the headquarters of the organization is located on the territory of Niger or the broadcast program has been transmitted from a station located on the territory of Niger.

(2) The provisions of this Part of the Decree shall also apply to performances, phonograms and broadcast programs protected in light of the international agreements to which Niger is a party, as long as the relevant provisions of the agreement so require.

Chapter II: Authorization Rights

Article 42: Authorization Rights of Performers

(i) the retransmission of his broadcast programs

(1) Subject to the provisions of Articles 46 to 49, a performer shall have the exclusive right to carry out or authorize the following acts:

(i) the broadcasting of his performance, except where the broadcast:

— is made by means of a fixation of the performance other than a fixation made under Article 49; or

— is a retransmission authorized by the broadcasting organization that was the first to transmit the performance;

(ii) the fixation of his non-fixed performance;

(iii) the reproduction of a fixation of his performance if:

- the performance was originally fixed without his authorization; or
- the reproduction is made for purposes different from those for which the performers gave their consent;

- the performance was originally fixed in accordance with the provisions of Articles 46 to 49, but the reproduction is made for purposes different from those referred to in those Articles.

(2) Unless otherwise agreed,

(i) the broadcasting authorization shall not imply authorization to permit other broadcasting organizations to transmit the performance;

(ii) the broadcasting authorization shall not imply authorization to fix the performance;

(iii) the authorization to broadcast and fix the performance shall not imply authorization to reproduce the fixation;

(iv) the authorization to fix the performance and to reproduce the fixation shall not imply authorization to broadcast the performance by means of the fixation or of its reproductions.

Article 43: Authorization Rights of Phonogram Producers

Subject to the provisions of Articles 46, 47 and 49, a phonogram producer shall have the exclusive right to carry out or authorize the following acts:

- (i) the direct or indirect reproduction of copies of his phonogram;
- (ii) the importation of such copies with a view to their distribution to the public;
- (iii) distribution to the public of such copies

Article 44: Authorization Rights of Broadcasting Organizations

Subject to the provisions of Articles 47 and 49, a broadcasting organization shall have the exclusive right to carry out or authorize the following acts:

- (i) the retransmission of its broadcast programs;
- (ii) the fixation of its broadcast programs;
- (iii) the reproduction of a fixation of its broadcast programs when:
 - the reproduction is made using an unauthorized fixation
 - the broadcast program was originally fixed in accordance with the provisions of Articles 47 and 49 but the reproduction is made for purposes different from those referred to in those Articles.

Chapter III: Equitable Remuneration for the Use of Phonograms

Article 45: Equitable Remuneration for Broadcasting

(1) Where a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or communication to the public, an equitable single remuneration, intended both for the performers and the producer, shall be paid by the user to that producer.

(2) The amount collected for the use of a phonogram shall be shared between the producer (50 per cent) and the performers (50 per cent). The performers shall share the amount received from the producer or shall use it in accordance with the agreements that exist between them.

Article 46: Equitable Remuneration for Private Reproduction

(1) Notwithstanding the provisions of Articles 42 and 43, it shall be permitted to reproduce a phonogram for the exclusive private use of the user without the authorization of the performer whose performance is fixed in the phonogram and without the authorization of the phonogram producer, but against payment of an equitable remuneration to the performer and producer.

(2) Paragraphs 2 to 4 of Article 21 shall also apply with regard to the equitable remuneration referred to in paragraph 1 of this Article.

Chapter IV: Free Use

Article 47: Free Use: General

Notwithstanding the provisions of Articles 42 and 44, and subject to those of Article 46, the following acts shall be permitted without the consent of the entitled persons referred to in those Articles and without payment of remuneration:

- (i) private use;
- (ii) reporting on current events, on condition that use is made only of short fragments of a performance, a phonogram or a broadcast program;
- (iii) use solely for the purposes of teaching or scientific research;
- (iv) quotations, in the form of short fragments, from a performance, a phonogram or a broadcast program, on condition that such quotations comply with fair use and are justified by their informatory aim;
- (v) all other uses that constitute exceptions with respect to works protected by copyright under this Decree.

Article 48: Free Use of Performances

Once performers have authorized the incorporation of their performances in fixations of images or images and sounds, the provisions of Article 42 shall cease to apply.

Article 49: Free Use by Broadcasting Organizations

Notwithstanding the provisions of Articles 42 to 44, the following acts shall be permitted without the authorization of the right holders mentioned in those articles and without the payment of remuneration, when the fixation or reproduction is done by a broadcasting organization using its own facilities and for its own programs, on the condition that

- (i) for each broadcast of a fixation of a performance or of its reproductions, made under this Article, the broadcasting organization shall be entitled to broadcast the performance concerned;
- (ii) for each broadcast of a fixation of a program, or of a reproduction of such fixation, made under this Article, the broadcasting organization shall be entitled to broadcast the program;
- (iii) for any fixation made under this paragraph or reproductions thereof, the fixation and its reproductions shall be destroyed within a period having the same duration as that applying to fixations and reproductions of works protected by copyright under Article 17 of this

Decree, with the exception of a single copy which may be kept for the exclusive purpose of archive conservation.

Chapter V - Term of Protection

Article 50: Term of Protection for Performances

The term of protection afforded to performances under this Decree shall be 50 years as from:

- (i) the end of the year of fixation for performances fixed on a phonogram;
- (ii) the end of the year in which the performance took place for performances not fixed on phonograms.

Article 51: Term of Protection for Phonograms

The term of protection afforded to phonograms under this part of the Decree shall be 50 years as from the end of the year of fixation.

Article 52: Term of Protection for Broadcasts

The term of protection afforded to broadcasts under this part of the Decree shall be 25 years as from the **end** of the year in which the broadcast took place.

Chapter VI: Notice of protection of phonograms

Article 53: Notice of protection of phonograms

- (1) All copies of phonograms subject to sale or the cases containing them shall bear the symbol “p”, alongside the year of the first publication, affixed in a clear manner to show that the protection is reserved.
- (2) If copies or their cases do not allow identification of the producer by means of the name of the mark or any other suitable designation, the notice should also include the name of the holder of the producer’s rights.
- (3) If the copies or their cases do not allow identification of the main performers, the notice should also include the name of the person who holds the rights of such artists in the country where the fixation took place.

PART THREE: EXPRESSIONS OF FOLKLORE

Chapter 1 – Introductory Provisions

Article 54: Definitions

- (1) “Folklore” means any productions created within the national territory by national ethnic communities, handed down from generation to generation, and constituting one of the fundamental elements of the traditional cultural heritage of a nation.

(2) "Expressions of folklore" means any productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of such a community, in particular:

- verbal expressions, such as folk tales, folk poetry and riddles;

- musical expressions, such as folk songs and instrumental music;

- expressions by actions, such as folk dances, plays and artistic forms of rituals;

- tangible expressions, such as:

(a) productions of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket weaving, needlework, textiles, carpets, costumes;

(b) musical instruments;

(c) architectural forms.

Article 55: Principle of Protection

Under the present Part of this Decree, the expressions of folklore developed and maintained in Niger shall be protected against unlawful exploitation and other prejudicial actions.

Chapter II – Utilizations Subject to Authorization

Article 56

Subject to the provisions of Article 58, the following utilizations of the expressions of folklore shall be subject to authorization by the Copyright Office of Niger when they are made both with gainful intent and outside their traditional or customary context:

(1) any publication, reproduction and any distribution of copies of expressions of folklore;

(2) any public recitation or performance, any transmission by wireless means or by wire, and any other form of communication to the public, of expressions of folklore.

Article 57

(1) Applications for individual or blanket authorization of any utilization of expressions of folklore subject to authorization under this part of the present Decree shall be made in writing to the Copyright Office of Niger.

(2) Where the Copyright Office of Niger grants authorization, it shall fix the amount of and collect fees. The fees collected shall be used for the purpose of promoting or safeguarding Nigerien culture.

Article 58: Exceptions

(1) The provisions of Article 56 shall not apply in the following cases:

- (i) utilization for purposes of education;
- (ii) utilization by way of illustration in the original work of an author or authors, provided that the extent of such utilization is compatible with fair practice;
- (iii) borrowing of expressions of folklore for creating an original work of an author or authors;

(2) The provisions of Article 56 shall not apply also where the utilization of the expressions of folklore is incidental. Incidental utilization shall include, in particular:

(i) utilization of any expression of folklore that can be seen or heard in the course of a current event for the purposes of reporting on that event by means of photography, broadcasting, or sound or visual recording, provided that the extent of such utilization is justified by the informatory purpose;

(ii) utilization of objects containing the expressions of folklore which are permanently located in a place where they can be viewed by the public, if the utilization consists in including their image in a photograph, a film or television broadcast.

Article 59: Acknowledgement of Source

(1) In all printed publications, and in connection with any communications to the public, of any identifiable expression of folklore, its source shall be indicated in an appropriate manner, by mentioning the community and/or geographic place from where the expression utilized has been derived.

(2) The requirements of paragraph 1 above shall not apply to utilizations referred to in paragraphs (1) (iii) and (2) of Article 58.

Article 60: Protection of Expressions of Folklore of Foreign Countries

Expressions of folklore developed and maintained in a foreign country shall be protected under the present part of this Decree:

- (i) subject to reciprocity, or

(ii) on the basis of international treaties or other agreements

PART FOUR: COLLECTIVE MANAGEMENT OF RIGHTS

Article 61: Collective Management of Economic Rights: General

(1) The authors of works and beneficiaries of related rights in accordance with Articles 21(2) and 46(2) may authorize the Copyright Office of Niger to manage their economic rights.

(2) The rules relating to the establishment and running of the Copyright Office of Niger shall be the subject of an implementing decree decided on in the Council of Ministers.

PART FIVE: MEASURES, REMEDIES AND SANCTIONS AGAINST PIRACY AND OTHER VIOLATIONS

Article 62

Any malicious or fraudulent infringement of the protection of copyright, related rights and expressions of folklore shall be sanctioned in accordance with Articles 372, 373, 374, 375, 376 and 377 of the Penal Code.

Article 63

At the request of an author or performer or of the Copyright Office of Niger or their beneficiaries, the courts shall by injunction have the authority to order:

- the seizure of copies constituting unlawful reproductions of their works;
- the suspension of any ongoing manufacturing process, the purpose of which is the unlawful production of such works;
- the seizure, including outside authorized hours, of receipts linked to any unlawful reproductions, representations or broadcasts of these works.

Article 64

In a civil action brought by any natural or legal person whose rights under this Decree are threatened with violation or have been violated, the following remedies shall be available:

- an injunction, upon such terms as the court may deem reasonable, to restrain violations;
- payment to the complaining party of any damages suffered by him as a result of a violation, including any profits enjoyed by the violator that are attributable to the violation. If the violation is found to have been malicious, the court may, at its discretion, award exemplary damages.

Article 65

Without prejudice to the remedies available under the preceding article, any person who violates, or causes to be violated, the rights protected under this Decree shall be liable to imprisonment of one (1) year to five (5) years and a fine of twenty thousand (20,000) to two hundred thousand (200,000) francs or to only one of these two sanctions.

PART SIX: FINAL PROVISIONS

Article 66: Implementing Regulations

Legislative texts shall set out certain procedures for the implementation of the present Decree, which shall apply both to works already published in any way and to future works.

Article 67

All previous provisions contrary to this Decree, in particular Law No. 57-298, of March 11, 1957, on Literary and Artistic Property, as well as Decree No. 58-447, establishing a Public Administration Regulation for the Implementation in the Overseas Territories of said Law, shall be repealed.

Article 68

The present Decree shall be enforced as a law of the State and shall be published in the *Official Journal* of the Republic of Niger.

Done at Niamey, March 30, 1993

Signed: Prime Minister *AMADOU CHEIFFOU*