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**Council for Trade-Related Aspects of  
Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY  
LAWS AND REGULATIONS NOTIFIED UNDER  
ARTICLE 63.2 OF THE AGREEMENT**

**BRAZIL**

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**Conseil des aspects des droits de propriété  
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA  
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE  
DE L'ARTICLE 63:2 DE L'ACCORD**

**BRÉSIL**

Le présent document contient le texte<sup>1</sup> de la Loi 9.610, qui régit les droits et obligations relatifs au droit d'auteur et aux droits annexes, notifiée par le Brésil au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/BRA/2).

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**Consejo de los Aspectos de los Derechos de Propiedad  
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA  
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD  
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

**BRASIL**

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<sup>1</sup> In English only. The text in the original language is available for consultation by interested Delegations at the WTO Secretariat./En anglais seulement. Les délégations intéressées peuvent consulter le texte dans sa langue d'origine, au Secrétariat de l'OMC./En inglés solamente. Las delegaciones interesadas podrán consultar en la Secretaría de la OMC el texto en su idioma original.

## **LAW No. 9.610 OF FEBRUARY 19, 1998**

### **Title I Introductory Provisions**

Art. 1. This Law governs copyright, the term encompassing the rights of authors and neighboring rights.

Art. 2. Foreigners resident outside the country shall enjoy the protection provided for in the agreements, conventions and treaties in force in Brazil.

Sole Paragraph: The provisions of this Law shall be applicable to the nationals of and persons resident in countries that assure Brazilians or persons resident in Brazil reciprocity in the protection of copyright or equivalent rights.

Art. 3. Copyright shall be considered movable property for purposes of this Law.

Art. 4. Legal Acts relating to copyright shall be interpreted restrictively.

Art. 5. For the purposes of this Law,

I. "publication" means bringing a literary, artistic or scientific work to the notice of the public, with the consent of the author or other copyright owner, in whatever form or by whatever process;

II. "transmission" or "emission" means the dissemination of sounds or of sounds and images by means of radio waves or satellite signals, by wire, cable or other conductor, by optical means or by any other electromagnetic process;

III. "retransmission" means the simultaneous emission of one organization's transmission by another;

IV. "distribution" means making the original or copy of literary, artistic or scientific works, fixed performances and phonograms available to the public by sale, rental or any other transfer of ownership or possession;

V. "communication to the public" means the act by which a work is made accessible to the public by any means or process that does not consist in the distribution of copies;

VI. "reproduction" means making one or more copy of a literary, artistic or scientific work or phonogram in any tangible form, including any permanent or temporary storage by electronic means or any other means of fixation that may be devised in the future;

VII. "infringement" means unauthorized reproduction;

VIII. "work":

(a) "work of joint authorship" means any work created jointly by two or more authors;

(b) "anonymous work" means any work that does not name the author, either according to his wish or because he is unknown;

(c) “pseudonymous work” means any work whose author conceals his identity behind an assumed name;

(d) “unpublished work” means any work that has not been published;

(e) “posthumous work” means any work published after the author’s death;

(f) “original work” means the initial creation;

(g) “derived work” means that which, while constituting a new intellectual creation, is the result of the transformation of an original work;

(h) “collective work” means a work created on the initiative, instructions and responsibility of a natural person, whether natural person or legal entity, who publishes it under his name or mark, and consisting of contribution by two or more authors whose is merged into a self-contained creation;

(i) “audiovisual work” means any work resulting from the fixing of images, with or without sound, whose purpose is to give, through their reproduction, an impression of movement, regardless of the processes used for capturing them, the medium initially or subsequently used for fixing them or the means used for disseminating the work;

IX. “phonogram” means fixing sounds from a performance or other sounds, or a representation of sounds other than in the form of a fixation incorporated in an audiovisual work;

X. “publisher” means the person, whether natural person or legal entity, who granted the exclusive right to reproduce a work and is under the obligation to disclose it within the limits set by the publishing contract;

XI. “producer” means the person, whether natural person or the legal entity, who takes the initiative and financial responsibility for the first fixing of a phonogram or audiovisual work, regardless of the nature of the medium used;

XII. “broadcasting” means the wireless transmission, including transmission by satellite, of sounds or images and sounds, or representations thereof, for the purpose of reception by the public, and the transmission of encrypted signals where the means of decrypting the signals are supplied to the public by the broadcasting organization or with its consent;

XIII. “performers” means all actors, singers, musicians, dancers and other persons who enact, sing, recite, declaim, interpret or otherwise perform literary or artistic works or expressions of folklore;

Art. 6. Work that are merely subsidized by the Union, the State, the Federal District or the municipalities shall not be in their domain.

## **Title II**

### **The Intellectual Works**

#### **Chapter I**

#### **Works Protected**

Art. 7. The intellectual works that are protected are creations of the mind, whatever their mode of expression or the medium, tangible or intangible, known or susceptible of invention in the future, in which they are fixed, such as:

- I. the texts of literary, artistic or scientific works;
- II. lectures, addresses, sermons and other works of the same kind;
- III. dramatic and dramatico-musical works;
- IV. choreographic and mined works whose stage performance is set down in writing or otherwise;
- V. musical compositions with or without words;
- VI. audiovisual works, with or without accompanying sounds, including cinematographic works;
- VII. photographic works and other works produced by a process analogous to photography;
- VIII. drawings, paintings, engravings, sculptures, lithographs and works of kinetic art;
- IX. illustrations, maps and other works of the same kind;
- X. drafts, mock-ups and three-dimensional works relating to geography, engineering, topography, architecture, park and garden planning, stage scenery and science;
- XI. adaptations, translations and other transformations of original works, presented as a new intellectual creation;
- XII. computer programs;
- XIII. collections or compilations, anthologies, encyclopaedias, dictionaries, databases and other works which, by virtue of the selection, coordination or arrangement of the subject matter, constitute intellectual creations.

(1) Computer programs shall be the subject of specific provisions, due account being taken of the provisions of this that are applicable to them.

(2) The protection conferred under item XIII shall not extend to the information or materials itself, and shall be understood to be without prejudice to any copyright in the data or elements incorporated in the works.

(3) In the field of science, protection shall be conferred on the literary or artistic form of work, but shall not extend to its scientific or technical content, without prejudice however to the rights accorded to incorporeal property by virtue of the other provisions.

Art. 8. The following shall be excluded from copyright protection within the meaning of this Law:

- I. Ideas, normative procedures, systems, methods, projects or mathematical projects or concepts as such;
- II. diagrams, plans or rules for performing mental acts, playing games or conducting business;
- III. blank forms intended for completion with all kinds of scientific or other information, and the instruction appearing thereon;
- IV. the texts of treaties or conventions, laws, decrees, regulations, judicial decisions and other official enactments;
- V. information in common use such as that contained in calendars, diaries, registers or legends;
- VI. names and titles in isolation;

VII. the industrial or commercial exploitation of the ideas embodied in works.

Art. 9. A copy of a three-dimensional work made by the creator of the said work shall enjoy the same protection as the original.

Art.10. The protection of an intellectual work shall extend to its title, provided that it is original and not liable to be confused with that of a work of the same nature disclosed earlier by another author.

*Sole Paragraph.* The titles of periodical publications, including newspapers, shall be protected for a period of one year from the publication of the last issue, except in the case of annual publications, in which case the period shall be two years.

## **Chapter II**

### **Authorship of Intellectual Works**

Art. 11 The author of a literary, artistic or scientific work is the natural person who created it.

*Sole Paragraph.* The protection conferred on the author may be conferred on legal entities in the cases provided for in this Law.

Art. 12 In order to be identified as its author, the creator of a literary, artistic or scientific work may make use of his civil identity, in complete or shortened form, even reduced to his initials, or of a pseudonym or any other conventional sign.

Art. 13 In the absence of proof to the contrary, a person who in connection with the use of an intellectual work has indicated or stated his authorship in the customary manner by one of the means of identification referred to in the foregoing Article shall be considered the author of that work.

Art. 14 A person who adapts, translates, arranges or orchestrates a work that has passed into the public domain shall be entitled to copyright; that person may not however object to any other adaptation, arrangement, orchestration or translation unless it involves a copy of his own work.

Art. 15 Joint authorship of a work shall belong to the persons under whose names, pseudonyms or conventional signs it has been used.

(1) A person shall not be considered a joint author if he has merely assisted the author in producing the literary, artistic or scientific work by reviewing it or bringing it up to date or by supervising or directing its publication or presentation in whatever form.

(2) Any joint author whose contribution can be used separately shall enjoy all the faculties inherent in its creation as an individual work, provided that any use liable to prejudice the exploitation of the whole work is prohibited.

Art. 16 The joint authors of an audiovisual work shall be the author of the scenario or literary, musical or dramatico-musical subject matter and the director.

*Sole Paragraph.* Those persons who create the drawings used in an animated cartoons shall also be considered joint authors of an audiovisual work.

Art. 17 Individual contributions to collective works shall benefit from protection.

(1) Any of the contributors may invoke his moral rights to prohibit the mention or announcement of his name in connection with the collective work without prejudice to this right to the remuneration specified by contract.

(2) The economic rights in the collective work as a whole shall belong to the organizer.

(3) The contract concluded with the organizer shall specify the contribution by each participant, the time allowed for the supply of making of the said contribution, the remuneration and any other condition of its implementation.

### **Chapter III**

#### **Registration of Intellectual Works**

Art. 18 The protection of the rights provided for in this Law shall be independent of registration.

Art. 19 Any author may register his work with the public body defined in the introduction and in paragraph (1) of Article 17 of Law No. 5988 of December 14, 1973.

Art. 20 The registration services provided for in this Law shall be subject to payment of a fee, the amount and charging procedures of which shall be specified by the director of the Federal body entrusted with the registration of intellectual works.

Art. 21 The registration services provided for in this Law shall be organized according to the provisions of paragraph (2) of Article 17 of Law No. 5988 of December 14, 1973.

### **Title III**

#### **Authors' Rights**

#### **Chapter I**

##### **Introductory Provisions**

Art. 22 The moral and economic rights in the work shall belong to the author who created it.

Art. 23 Unless otherwise agreed, the joint authors of an intellectual work shall exercise their rights by common consent.

## **Chapter II**

### **Moral Rights of the Author**

Art. . 24 The moral rights of the author are understood to be the right:

- I. to claim authorship of the work at any time;
- II. to cause his name, pseudonym or conventional sign to appear or be announced as that of the author when the work is used;
- III. to keep the work unpublished;
- IV. to ensure the integrity of the work, by objecting to whatsoever modifications or to any action that may, in any way, to have an adverse effect on the work or to be prejudicial to his reputation or honor as author;
- V. to amend the work either before or after it has been used;
- VI. to withdraw the work from circulation or to suspend any kind of use that has already been authorized where the circulation or the use of the work are liable to have an adverse effect on the reputation or image of the author;
- VII. to have access to the sole or a rare copy of the work that is lawfully in a third party's possession with a view to preserving the memory thereof by means of a photographic or similar or an audiovisual process, in such a way that the least possible inconvenience is caused to its possessor who shall in any event be indemnified for any damage or prejudice suffered.

(1) On the author's death, the rights referred to under I to IV shall be transferred to his successors.

(2) The State shall be under the obligation to defend the integrity and authorship of a work that has passed into the public domain.

(3) In the cases referred to in subparagraphs V and VI, third parties shall be granted prior indemnification where appropriate.

Art. 25 The director shall exercise the moral rights in an audiovisual work.

Art. 26 The author may repudiate the authorship of an architectural work that has been altered in the course of its execution or after construction has been completed.

*Sole Paragraph.* The owner of the building shall be liable for any damage done to the author where, after the above repudiation, the said owner attributes the project in question to the author.

Art. 27. Moral rights of the author are inalienable and irrevocable.

### **Chapter III** **The Economic Rights of the Authors and Term Thereof**

Art. 28. The author has the exclusive right to use his literary, artistic or scientific work, to derive benefit from it and to dispose of it.

Art. 29. The express prior authorization of the author of a literary, artistic or scientific work shall be required for any kind of use, such as:

- I. complete or partial reproduction;
- II. publication;
- III. adaptation, setting to music or any other transformation;
- IV. translation into any language;
- V. incorporation in a phonogram or in an audiovisual production;
- VI. distribution where it is not provided for in a contract signed by the author with third parties for the use or exploitation of the work;
- VII. distribution for the purpose of offering works or productions by cable, optic fiber, satellite, electromagnetic waves or any other system enabling the user to select a work or production and receive it at the time and place of his choice, provided that the access to the works or production is made through any system requiring payment on the part of the user;
- VIII. the direct or indirect use of the literary, artistic or scientific work in one of the following forms:
  - (a) performance, recitation or declamation;
  - (b) musical performance;
  - (c) use of loudspeakers or comparable systems;
  - (d) radio or television broadcasting;
  - (e) reception of a radio broadcast in places frequented by the public;
  - (f) provision of background music;
  - (g) audiovisual, cinematographic or equivalent presentation;
  - (h) use of man-made satellites;
  - (i) use of optical systems, telephone or other lines, cables of all kinds and such comparable means of communication as may be devised in the future;
  - (j) exhibition of works of three-dimensional and figurative art;
- IX. incorporation in databases, storage in a computer, microfilming and any other means of archiving of that kind;
- X. any other form of use that exists at present or might be devised in the future.

Art. 30. In the exercise of right of reproduction, the owner of copyright may make the work available to the public in whatever form and place and for whatever time that he considers appropriate, either for a consideration or free of charge.

(1) The exclusive right of reproduction shall not be applicable where the reproduction is temporary and done for the sole purposes of making the work, phonogram or performance perceptible by means of an electronic medium, or where it is transitory or incidental, provided that it is done in the course of the use of the work that has been duly authorized by the owner.



(2) Regardless of the manner of reproduction, the number of copies made shall be notified and checked, the person who reproduces the work being responsible for keeping of such registers as will permit the author to verify the economic profits derived from exploitation.

Art. 31. The various forms of use of literary, artistic or scientific works or phonograms shall be mutually independent, and any authorization granted by the author or the producer, as the case may be, for one such use shall not constitute authorization of any other of the uses.

Art. 32. Where a work of joint authorship is not divisible, none of the joint authors may publish it or authorize its publication without the consent of the others, except in a collection of his complete works, on pain of liability for loss and damages.

(1) In the event of disagreement, the joint authors shall decide by majority vote.

(2) Any dissenting joint author shall retain the right not to contribute to the cost of publication, on the understanding that he then renounces his share in the proceeds, and also the right to refuse to be named on the work.

(3) Each joint author may, independently and without the consent of the others, have the work registered and assert his own rights against third parties.

Art. 33. No one may reproduce a work that is not in the public domain, on the pretext of annotating it, commenting on it or improving it, without the consent of the author.

*Sole Paragraph.* The comments or annotations may be published separately.

Art. 34. Correspondence whose publication is subject to the consent of the author may be submitted as documentary proof in connection with administrative or judicial proceedings.

Art. 35. Where the author has given the work its final form in a process of revision, his successors may not reproduce the earlier versions.

Art. 36. Unless otherwise agreed, the right to exploit writings published in the daily or periodical press, with the exception of signed articles and those containing a reserved rights notice, shall belong to the publisher.

*Sole Paragraph.* The authorization to exploit signed articles for the purposes of publication in the daily and periodical press shall lapse on the expiry of a period representing the publication interval increased by 20 days and calculated as from the publication date, at the end of which period the author shall recover his right.

Art. 37. Acquisition of the original or a copy of a work shall not confer any of the author's economic rights on the acquirer, unless otherwise agreed between the parties and subject the cases provided for in this Law.

Art. 38. The author has the irrevocable and inalienable right to collect a minimum of five per cent of any gain in value that may be achieved in each resale of an original work of art of manuscript that he has disposed of.

*Sole Paragraph.* Where the author does collect his resale royalty at the time of the resale, the vendor shall be considered the depositary of the sum payable to him, except where the operation has been conducted by an auctioneer, in which case the latter is considered the depositary.

Art. 39. Unless otherwise provided in the marriage contract, the author's economic rights, with the exception of the revenue derived from their exploitation, shall remain his property.

Art. 40. In the case of an anonymous or pseudonymous work, the exercise of the author's economic rights shall belong to the person who publishes it.

*Sole Paragraph.* Where the author makes his identity known, he shall assume the exercise of the economic rights, subject to any rights acquired by third parties.

Art. 41. The author's economic rights shall be protected for a period of 70 years as from the first of January of the year following his death, subject to observance of the order of succession under civil law.

*Sole Paragraph.* The term of protection referred to in the introduction to this Article shall be applicable to posthumous works.

Art. 42. Where a literary, artistic or scientific work of joint authorship is indivisible, the term of protection provided for in the foregoing Article shall be calculated from the death of the last surviving joint author.

*Sole Paragraph.* The rights of the joint author who dies without heir shall be added to the rights of the survivors.

Art. 43. The term of protection of economic rights in anonymous or pseudonymous works shall be 70 years counted from the first of January of the year following that of the first publication.

*Sole Paragraph.* The provisions of Articles 41 and its sole paragraph shall be applicable where the author makes his identity known before the expiry of the period referred to in the introduction to this Article.

Art. 44. The economic rights in audiovisual and photographic works shall be protected for a period of 70 years from the first of January of the year following that of their disclosure.

Art. 45. In addition to the works in respect of which the protection of the economic rights has expired, the following shall pass into the public domain:

- I. the works of authors deceased without heir;
- II. the works of unknown authors, subject to the legal protection of ethnic and traditional lore.

## **Chapter V**

### **Limitations on Copyright**

Art. 46. The following shall not constitute violation of copyright:

- I. the reproduction:
  - (a) in the daily or periodical press of news or informative articles, from newspapers or magazines, with a mention of the name of the author, if they are signed, and of the publications from which they have been taken;
  - (b) in newspapers or magazines of speeches given at public meetings of any kind;
  - (c) of portraits or other forms of representation of a likeness, produced on commission, where the reproduction is done by the owner of the commissioned subject matter and the person represented or his heirs have no objection to it;
  - (d) of literary, artistic or scientific works for the exclusive use of the visually handicapped, provided that the reproduction is done without gainful intent, either in Braille or by means of another process using a medium designed for such users.
- II. the reproduction in one copy of short extracts from a work for the private use of the copier, provided that it is done by him without gainful intent;
- III. the quotation in books, newspapers, magazines or any other medium of communication of passages from a work for the purposes of study, criticism or debate, to the extent justified by the purpose, provided that the author is named and the source of the quotation is given;
- IV. notes taken in the course of lessons given in teaching establishments by the persons for whom they are intended, provided that their complete or partial publication is prohibited without the express prior authorization of the person who gave the lessons;
- V. the use of literary, artistic or scientific works, phonograms and radio and television broadcasts in commercial establishments for the sole purpose of demonstration to customers, provided that the said establishments market the materials or equipment that make such use possible;
- VI. stage and musical performance, where carried out in the family circle or for exclusively teaching purposes in educational establishments and where devoid of any profit-making purpose.
- VII. the use of literary, artistic or scientific works to proof in judicial or administrative proceedings;
- VIII. the reproduction in any work of short extracts from existing works, regardless of their nature, or of the whole work in the case of a work of three-dimensional art, on condition that the reproduction is not itself the main subject matter of the new work and does not jeopardize the normal exploitation of the work reproduced or unjustifiably prejudice the author's legitimate interests.

Art.47. Paraphrases and parodies shall be free where they are not actual reproductions of the original work and are not in any way derogatory to it.

Art. 48. Works permanently located in public places may be freely represented by painting, drawing, photography and audiovisual processes.

## **Chapter V**

### **Transfer of Authors' Rights**

Art. 49. Authors' rights may be wholly or partly transferred to third parties or by his successors, in a universal or individual transfer effected in person or through representatives with special powers, by licensing, concession, assignment or any other means recognized by law, subject to the limitations set forth below:

I. total transfer shall comprise all the authors' rights with the exception of his moral rights and rights expressly excluded by the law;

II. the total and final assignment of rights may be effected only by contractual provision;

III. in the absence of written contractual provision, the maximum period of transfer shall be five years;

IV. unless otherwise specified assignment shall be valid only in the country in which the contract has been signed;

V. the assignment shall be valid only for the modes of exploitation existing on the date of the contract;

VI. in the absence of any mention of the mode of exploitation, the contract shall be interpreted restrictively, and understood to be limited to the mode of exploitation that is indispensable for the fulfillment of the purpose of the contract.

Art. 50. The total or partial assignment of the authors' rights, which shall always be effected in writing, shall be presumed to be for a consideration.

(1) The assignment may be entered as a marginal note to the registration referred to in Article 19 of this Law; or, if the work has not been registered, the instrument of assignment may be entered in the Register of Instruments and Documents.

(2) The subject matter of the rights and the manner of their exercise in terms of duration, place and price shall constitute essential elements of the instrument of assignment.

Art. 51. The term of the assignment of the authors' rights in future works may not exceed five years.

*Sole Paragraph.* Where the above term is unspecified or in excess of five years it shall be reduced to that duration, and the remuneration provided for shall where appropriate be reduced accordingly.

Art. 52. The omission of the name of the author or of a joint author on the disclosure of the work shall not constitute a presumption of anonymity or of assignment of the rights of the person concerned.

## **Title IV** **Use of Intellectual Works and Phonograms**

### **Chapter I** **Publication**

Art. 53. Under a publishing contract the publisher, by undertaking to reproduce and disseminate a literary, artistic or scientific work, acquires the exclusive right to publish and exploit it for a period and on conditions agreed with the author.

*Sole Paragraph.* The publisher shall mention on each copy of the work:

- I. the title of the work and its author's name;
- II. in the case of a translation, the original title of the work and the name of the translator;
- III. the year of the publication;
- IV. the name or identifying the publisher.

Art. 54. Under the same contract, the author may undertake to create the literary, artistic or scientific work whose publication and dissemination is incumbent on the publisher.

Art. 55. If the author dies before the work is completed or becomes incapable of completing it, the publisher may:

- I. consider the contract terminated, even if he has received a substantial part of the work;
- II. publish the work, if it is self-contained, against proportional payment of the remuneration;
- III. have the work completed by another person with the consent of the author's successors and subject to the mention of that fact in the publication.

*Sole Paragraph.* Partial publication shall be prohibited if the author has stated his desire that the work be published only complete or if his successors so decide.

Art. 56. the contract shall be presumed to relate to one edition only, unless expressly stated otherwise.

*Sole Paragraph.* If the contract is silent on the subject, every edition shall be deemed to consist of 3.000 copies

Art. 57. The amount of remuneration shall be set according to custom and practice if the author has not had it expressly stated in the contract.

Art. 58. Where the originals delivered do not conform to the arrangements made and the publisher does not refuse them within a period of 30 days from the date of receipt, the changes made by the author shall be presumed to have been accepted.

Art. 59. Whatever the contractual conditions may be, the publisher is obliged to allow the author to inspect those parts of the account books that concern him, and also to inform him of the state of progress of the edition.

Art. 60. The publisher shall be responsible for setting the selling price, but may not so raise it as to impede the dissemination of the work.

Art. 61. Where the author's remuneration is determined by sales of the work, the publisher shall submit statements to him every month, except where a different frequency has been agreed upon.

Art. 62. The work shall be published within two years of the conclusion of the contract except where a different period has been specified.

*Sole Paragraph.* Where the work is not published within the legal or agreed period, the contract may be rescinded and the publisher shall be liable for any prejudice caused.

Art. 63. For as long as the editions with which the publisher has been entrusted are not out of print, the author may not dispose of his work, the burden of proof in that case being on the publisher.

(1) Throughout the term of the publishing contract, the publisher is entitled to demand the withdrawal from circulation of any edition of the same work produced by another.

(2) An edition shall be deemed out of print where the number of copies that the publisher has in stock falls below 10 per cent of the total number of copies of the edition.

Art. 64. Only after a year has elapsed since the edition was placed on the market may the publisher remainder the balance of the copies, after having informed the author that, during a period of 30 days, he has priority for the acquisition of the said copies at the remainder price.

Art. 65. Where an edition is out of print and the publisher, having the right to publish it does not, the author may serve formal notice on him to do so within a certain time, on pain of being deprived of his rights and without prejudice to damages.

Art. 66. The author has the right to make such corrections and amendments to his works in successive editions as may seem appropriate to him.

*Sole Paragraph.* The publisher may oppose to those modifications which may prejudice his interests, offend his reputation or increase his liability.

Art. 67. Where, given the nature of the work, it is necessary to bring it up to date in new editions, the publisher may, if the author refuses to do so, entrust another person with doing so, on condition that the fact is mentioned in the edition.

## **Chapter II**

### **Communication to the Public**

Art. 68. Stage works, musical compositions with or without word and phonograms may not be used in public presentations or performances without the express prior authorization of the author or owner of rights.

(1) “Public presentation” means the use of stage works in the categories of drama, tragedy, comedy, opera, operetta, ballet, mime or any other comparable genre, with or without musical accompaniment, with the participation of paid or unpaid performers in places frequented by the public or by means of broadcasting or another form of transmission, or cinematographic presentation.

(2) “Public performance” means the use of musical or dramatic-musical compositions, with the participation of paid or unpaid performers or the use of phonograms and audiovisual works in places frequented by the public, by means of any process including broadcasting or transmission of another kind, or cinematographic presentation.

(3). The expression “places frequented by the public” means theaters, cinemas, dance or concert halls, discotheques, bars, clubs or societies of any kind, stores, commercial and industrial establishments, sports grounds, circuses, fairs, restaurants, hotels, motels, nursing homes, hospitals, public entities under direct or indirect management and foundation and State control, means of passengers-carrying land, sea, river or air transport, or any place in which literary, artistic or scientific works are presented, performed or transmitted.

(4) Before any public performance, the show organizer shall submit proof of payment of the copyright royalties to the central office referred to in Article 99.

(5) Where remuneration is determined by public attendance, the show organizer may agree with the central office to make the payment after the public performance has taken place.

(6) Immediately after the public performance or transmission, the show organizer shall submit to the central office a full list of the works and phonograms used, including the names of the authors, performers and producers in each case.

(7) Film production companies and broadcasting organizations shall keep at the disposal of interested parties authentic copies of contracts, arrangements or agreements, whether individual or collective, authorizing and governing the remuneration for the public performance of the musical works and phonograms incorporated in their programs or in their audiovisual works.

Art. 69. The author shall, in accordance with local practice, impose a period for the presentation or performance on the show organizer unless one has previously stipulated by agreement.

Art. 70. The author has the right to oppose a performance that has not been sufficiently rehearsed, and also to attend the show, for which purpose he shall have free access, during the performances, to the premises in which they take place.

Art. 71. The author of the work may not alter the substance thereof without the consent of the show organizer who causes it to be performed.

Art. 72. The show organizer may not communicate the work to a person having no connection with the performance without the author's permission.

Art. 73. The main performers and also the orchestra conductors or choir leaders, having been selected by common consent by the author and the producer, may not be replaced by the latter without the author's consent.

Art. 74. The author of a stage work who authorizes the translation and adaptation thereof may set a time limit for its use in public performance.

*Sole Paragraph.* After the expiry of the time limit referred to in this Article, the translator or adapter may not object to the use of another authorized translation or adaptation, except where it is a copy of his own work.

Art. 75. Where the performance of a stage work produced as a collaborative venture has been authorized, none of the joint authors may withdraw his authorization in such a way as to cause the suspension of the theater run agreed by contract.

Art. 76. The portion of the proceeds from the shows that is reserved for the author and the performer is unattachable.

### **Chapter III**

#### **Use of a Work of Three-Dimensional Art**

Art. 77. Unless otherwise agreed, the author of a work of three-dimensional art, on disposing of the object in which it is embodied transfers to the acquirer the right to display it but not to reproduce it.

Art. 78. The authorization to reproduce a work of three-dimensional art by whatever process shall be set down in writing and presumed to be granted for a consideration.

### **Chapter IV**

#### **Use of the Photographic Work**

Art. 79. The author of a photographic work has the right to reproduce it and to offer it for sale, with due regard to the restrictions applicable to the display, reproduction and sale of portraits, and without prejudice of the author's rights in the work photographed in the case of a protected work of three-dimensional art.

(1) Any photography shall legibly mention the name of its author when used by third parties.

(2) Any reproduction of a photographic work that is not perfectly true to the original is prohibited unless previously authorized by the author.



## **Chapter V**

### **Uses of a Phonogram**

- Art. 80. On publishing a phonogram, the producer shall mention on each copy:
- I. the title of the work incorporated in the phonogram and the name of its author;
  - II. the name or pseudonym of the performer;
  - III. the year of publication;
  - IV. the name or identification mark of the producer.

## **Chapter VI**

### **Use of an Audiovisual Work**

Art. 81. The authorization given by the author and of the performer of a literary, artistic or scientific work for the production of an audiovisual work shall, unless otherwise provided, constitute authorization for its commercial exploitation.

(1) The exclusive character of the authorization shall be written into a specific clause, and shall lapse on the period of 10 years following the conclusion of the contract.

(2) The producer shall mention on each copy of the audiovisual work:

- I. the title of the audiovisual work;
- II. the name or pseudonym of the director and other joint authors;
- III. the title of the work adapted and the name of its author where appropriate;
- IV. the names of the performers;
- V. the year of publication;
- VI. the name or identification mark of the producer.

Art. 82. The audiovisual production contract shall specify:

- I. the remuneration payable by the producer to the joint authors of the work and to the performers, and also the date, place and manner of payment;
- II. the period allowed for the completion of the work;
- III. the responsibility of the producer towards the joint authors and the performers in the case of a joint production.

Art. 83. Any person participating in the production of an audiovisual work who temporarily interrupts or finally discontinues his contribution may not object to that contribution being used in the work or to a third party taking his place, without prejudice to the rights that belong to him in relation to the part already completed.

Art.84. Where the remuneration of the joint authors of an audiovisual work is determined by the proceeds from its commercial exploitation, the producer shall submit statements to them every six months, except where different intervals have been agreed upon.

Art. 85. Unless otherwise provided, the joint authors of an audiovisual work may use in a different genre the part of the work that constitutes their personal contribution.

*Sole Paragraph.* If the producer does not complete the audiovisual work in the agreed time or does not start exploiting it within two years of its completion, the use referred to in this Article shall be free.

Art. 86. The royalties for musical and dramatico-musical works and phonograms incorporated in audiovisual works shall be payable to the owners of the corresponding rights by those responsible for the premises or establishments referred to in paragraph (3) of Article 68 of this Law who present them, or by the television organizations that broadcast them.

## **Chapter VII**

### **Use of Databases**

Art. 87. The owner of the economic rights in a database shall enjoy the exclusive right to authorize or prohibit the following in relation to the form of expression of the structure of that database:

- I. complete or partial reproduction by any means or process;
- II. translation, adaptation, rearrangement and any other modification;
- III. distribution of the original or copies of the database, or communication of the database to the public;
- IV. reproduction, distribution or communication to the public of the results of the operations referred to in item II of this Article.

## **Chapter VIII**

### **Use of the Collective Work**

Art. 88. On the publication of a collective work, the organizer shall mention on each copy:

- I. the title of the work;
- II. the list of all the participants, in alphabetical order, except where another order has been agreed upon;
- III. the year of publication;
- IV. the name or identification mark of the organizer.

*Sole Paragraph:* A participant wishing to avail himself of the provisions of paragraph (1) of Article 17 shall advise the organizer accordingly in writing, by the date on which he submits his contribution.

## **Title V**

### **Neighboring Rights**

## **Chapter I**

### **Introductory Provisions**

Art. 89 The provisions on authors' rights shall apply, *mutatis mutandis*, to the rights of performers, producers of phonograms and broadcasting organizations.

*Sole Paragraph.* The protection under this Law of the rights referred to in this Article shall leave intact and in no way affect the guarantees afforded to the authors of literary, artistic or scientific works.

## **Chapter II Rights of Performers**

Art. 90. A performer enjoys the exclusive right to authorize, for a consideration or free of charge, or to prohibit:

- I. the fixing of his performances;
- II. the reproduction, public performance and the rental of his fixed performances;
- III. the broadcasting of his fixed or unfixed performances;
- IV. the making available to the public of his performances in such a way that any person may have access to them at the time and in the place of that person's choosing;
- V. any other form of use of his performances;

(1) When two or more performers take part in a performances, their rights shall be exercised by the leader of the group.

(2) The protection of performers shall extend to the reproduction of their voices and likenesses where they are associated with their performances.

Art. 91. Broadcasting organizations may fix the performances of performers who have authorized such fixations with a view to their use in a certain number of broadcasts; fixation made in that way may be preserved in public archives.

*Sole Paragraph.* The subsequent re-use of the fixation in Brazil or abroad shall be lawful only with the written authorization of the owners of the intellectual property embodied in the program, and additional remuneration shall be payable to the owners for each new use.

Art. 92. Performers shall enjoy the moral right to the integrity and their authorship of their performances, including after the assignment of the economic rights, provided that the abridgment, condensing, editing or dubbing of the work in which they have taken part may be undertaken on the responsibility of the producer, but must not alter the nature of the performer's performance.

*Sole Paragraph.* The death of any of the participants in an audiovisual work, whether completed or not, shall not prevent the presentation and commercial exploitation of the said work, and shall not require additional authorization to be obtained; the remuneration accruing to the deceased under the contract and the law shall be incorporated in his estate or paid to this successors.

### **Chapter III**

#### **Rights of the Phonogram Producers**

Art. 93 A phonogram producer has the exclusive right to authorize or prohibit either for a consideration or free of charge:

- I. the direct or indirect, total or partial reproduction of his phonograms;
- II. the distribution by sale or rental of copies of phonograms so reproduced;
- III. the communication of his phonograms to the public by public performance, including broadcasting;
- IV. (VETOED)
- V. any other form of use of his phonograms that exists at present or might be devised in the future.

Art. 94 . The phonogram producer shall be responsible for collecting the proceeds from the public performance of phonograms from the users referred to in Article 68 of this Law and for sharing them with the performers in the manner agreed upon with them or with their associations.

### **Chapter IV**

#### **Rights of Broadcasting Organizations**

Art. 95. Broadcasting organizations shall have the exclusive right to authorize or prohibit the retransmission, fixation and reproduction of their broadcasts, and the communication of those broadcasts to the public by television in places frequented by the said public, without prejudice to the rights of the owners of the intellectual property embodied in the programs.

### **Chapter V**

#### **Term of Protection for Neighboring Rights**

Art. 96. The term of protection of neighboring rights shall be 70 years from the first of January of the year following fixation for phonograms, transmission for the broadcasts of broadcasting organization, and public performance in other cases.

### **Title VI**

#### **Associations of owners of Author's rights and Neighboring Rights**

Art. 97 Authors and the owners of neighboring rights may form non-profit-making associations for the exercise and defense of their rights.

(1) Membership of more than one association for the collective administration of rights of the same kind is prohibited.

(2) Any owner of copyright or neighboring rights may at any time change associations, subject to written notification of the facts to the original association.

(3) Associations with headquarters abroad shall be represented in Brazil by national associations set up as provided in this Law.

Art. 98. By the act of affiliation, the members mandate the associations to perform all such acts as may be necessary for the judicial or extrajudicial defense of their copyright, and for the collection of royalties

*Sole Paragraph.* The owners of copyright may perform the acts referred to in this Article in person subject to prior notification of the association to which they belong.

Art. 99. The associations shall jointly maintain a single central office for the collection and distribution of the royalties generated by the public performance of musical works with or without words and phonograms, including performance by broadcasting and transmission by any means and by the presentation of audiovisual works.

(1) The central office organized under the provisions of this Article shall not have any profit-making purpose and shall be directed and managed by the associations of which it is composed.

(2) The central office and the associations referred to in this Title shall act in their own names in court and elsewhere, and shall substitute themselves for their members.

(3) The central office may only collect funds by means of bank payments.

(4) The central office may employ inspectors, who shall be prohibited from accepting cash payments from show organizers on whatever ground.

(5) Failure to observe the provisions of the foregoing subparagraph shall cause the offender to be disqualified from his position as inspector, without prejudice to such civil and criminal sanctions as may be applicable.

Art. 100. A trade union or professional association representing at least one-third of the members of an author's association, may, once a year and subject to eight days' advance notice, have the accuracy of the statements of account distributed to its members verified by an auditor.

## **Title VII**

### **Sanctions for copyright infringement**

#### **Chapter I**

#### **Introductory Provision**

Art. 101. The civil sanctions provided for in the following Chapter shall be applicable without prejudice to criminal sanctions.

## **Chapter II Civil Sanctions**

Art. 102. Any owner of rights whose work is fraudulently reproduced, disclosed or used in any other way may apply for the seizure of the copies or originals made or the stoppage of the disclosure, without prejudice to whatever indemnification may be applicable.

Art. 103. Any person who publishes a literary, artistic or scientific work without the authorization of the owner of the copyright shall forfeit to the latter the copies that are seized and shall pay him the price of those that have been sold.

*Sole Paragraph.* Where the number of copies constituting the fraudulent edition is unknown, the offender shall pay the value of 3,000 copies in addition to the copies seized.

Art. 104. Any person who, for the purposes of sale or the securing of direct or indirect gains, advantages or profits for himself or for another, sells, displays for sale, receives and conceals, acquires, distributes, keeps on deposit or uses a fraudulently reproduced work or phonogram shall be jointly liable with the infringer in terms of the foregoing Articles; if the reproduction has been carried out abroad, the importer and the distributor shall answer for the infringement.

Art. 105. The transmission and retransmission by any means or process, and the communication to the public of literary, artistic or scientific works, performances and phonograms, carried out in violation of the rights of the owners shall be immediately discontinued or interrupted by the competent judicial authority, without prejudice of a daily coercive fine for non-observance and such other indemnities as may be applicable, and without regarding to the applicable criminal sanctions. Where the offender is found guilty of recidivism in the infringement of the rights of owners of author's rights or neighboring rights, the amount of the fine may be doubled.

Art. 106. The sentence may include the obligation to destroy all unlawful copies and originals, and also the blocks, molds, negatives and other material used to commit the infringement; and it may provide for the seizure of machines, equipment and materials used for the purpose, including their destruction where they can only serve unlawful purposes.

Art. 107. Without regard to the seizure of the equipment used, any person shall be liable to damages in an amount not less than that resulting from application of the provisions of Article 103 and its sole paragraph who:

I. alters, removes, modifies or in any way disables technical devices that have been incorporated in copies of protected works and productions to prevent or restrict reproduction;

II. alters, removes or in any way spoils the encrypted signals intended to restrict the communication to the public of protected works, productions or emissions, or to prevent the copying thereof.

III. without authorization removes or alters any rights management information;

IV. without authorization distributes, imports for distribution, broadcasts, communicates or makes available to the public works, performances, copies of performances fixes on phonograms and broadcasts in the knowledge that the rights management

information, the encrypted signals and the technical devices have been removed or altered without authorization.

Art. 108. Any person who, in the use of an intellectual work by any means, fails to mention or announce as such the name, pseudonym or conventional mark of the author and performer, apart from having to answer for the moral prejudice, shall be bound to disclose their identity,

I. in the case of a broadcasting organization, at the same time as those at which the infringement was committed, during three consecutive days;

II. in the case of a graphic or phonographic publication, by the inclusion of an *erratum* in the copies not yet distributed, without prejudice to the conspicuous publication of a notice on three consecutive occasions in a major journal at the place of residence of the author, the performer and the publisher or producer;

III. in the case of any other form of use, in the press according to the procedure referred to in the foregoing subparagraph.

Art. 109. The public performance carried out in violation of Articles. 68, 97, 98 and 99 of this Law shall make the offenders liable to a fine corresponding to 20 times the amount that should originally have been paid.

Art. 110. Owners, directors, managers, impresari and renters shall be jointly liable with the organizers of shows for copyright violations committed in the course of shows and recitals held on the premises or in their establishments referred to in Article 68..

### **Chapter III**

#### **Statute-Barring**

Art. 111. (VETOED)

### **Title VIII**

#### **Final and Transitional Provisions**

Art. 112. A work that has passed into the public domain on the expiry of the term of protection provided for in paragraph (2) of Article 42 of Law 5988 of December 14, 1973, may not be granted an extension of the term of protection of the economic rights under Article 41 of this Law.

Art. 113. Phonograms, books and audiovisual works shall bear a seal or any other identifying mark, which the producer, distributor or importer shall be responsible for affixing, without additional cost to the consumer, in order to attest compliance with the legal provisions in force, as provided in the regulations.

Art. 114. This Law shall enter into force 120 days after its publication.

Art. 115. Articles 649 to 673 and 1346 to 1362 of the Civil Code and Laws Nos. 4944 of April 6, 1966; 5988 of December 14, 1973 (with the exception of Article 17 and its

subparagraphs (1) and (2)), 6800 of June 25, 1980; 7123 of September 12, 1983; 9045 of May 18, 1995, and any other provision contrary to this Law are repealed. Laws Nos. 6533 of May 24, 1978, and 6615 of December 16, 1978, remain in force.

Brasilia, February 19, 1998; 177 of the Independence and 110 of the Republic.

**FERNANDO HENRIQUE CARDOSO**

*Francisco Weffort.*

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*Article 17, §§1 and 2 of Law 5.988 of 14 December 1973*

*To ensure his rights, the author of the intellectual work may register it, according to its nature, either in the National Library, or the School of Music, or the School of Fine Arts of the Federal University of Rio de Janeiro, in the National Film Institute, or in the Federal Council for Engineering, Architecture and Agronomy.*

*§1 If the work is of such nature that needs to be registered in more than one agency, it shall be registered at the one having more affinity.*

*§2 The Executive Power may, at any time and by decree, reorganize the registration services, granting to all the agencies the faculties referred to in this provision'.*

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*NOTICE: The English version of this law is provided only as a means of reference. It is noted that the Portuguese version solely constitutes the official one, for any use the reader may intend.*

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