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MINISTÈRE DES AFFAIRES ÉTRANGÈRES ET EUROPÉENNES

Audiovisual and films contracts

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**A PRACTICAL GUIDE
FOR USE BY AFRICAN
PROFESSIONALS**

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Audiovisual and films contracts



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**A PRACTICAL GUIDE
FOR USE BY AFRICAN
PROFESSIONALS**

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Karine RIAHI, Anne-Judith LÉVY, Caroline IFRAH

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Karine RIAHI, Nathan KLEIN



Henri de RAINCOURT,
Minister, attached to the *Ministre d'État*,
Minister of Foreign and European Affairs,
responsible for Cooperation

P R E F A C E

France has a sincere interest in foreign films, especially in the emerging new generations of filmmakers and technicians in Sub-Saharan Africa who are now producing their films in a digital economy. To assist them in striving to achieve higher levels of professional excellence, the Ministry of Foreign and European Affairs is preparing a new education and training programme in 2012-2013 to support Sub-Saharan regional schools which, in difficult economic times, are still offering quality teaching with training staff from the African Continent and even Europe.

Copyright, neighbouring rights and the protection of artists are at the heart of audiovisual and cinematographic production development: for many years, the best known festivals, such as the Pan-African Film and Television Festival (FESPACO) and the Amiens Festival, have rightly focused on these issues, organising topical workshops to discuss them.

The Ministry of Foreign and European Affairs has therefore decided to update the *Practical guide for use by African professionals*, first published in 2008 and prepared with the French-speaking countries of West Africa in mind. This new edition aims to cover the entire African Continent, with its diversity of legal systems, in the spirit of removing barriers and promoting cross-border cooperation and co-productions. It offers a complete panorama, now combining the “copyright” approach applied by countries’ with common law systems (such as the USA) and French-inspired law, and is published in French and English.

This manual is an expression of the Ministry’s desire to support the new generation of creative Africans and the development of dynamic industries in a promising sector of the economy. It is intended as a reference for all those wishing to engage in projects in this sector and reflects France’s commitment to work with the African Continent to meet the challenges of cultural diversity, mutual comprehension and development.

“ It is my hope that this guide will inspire the new generation of undeniably-talented young African filmmakers whom we propose to support by providing a new fund for their professional training. ”



INTRODU[©]TION

About 15 years ago, Jean-Pierre Garcia, as head of the Amiens International Film Festival, noticed that with the rise of the African film industry, it became necessary to strengthen legal practices and provide better information to its actors.

A serious education of the rules governing copyright law and agreements transferring copyright was clearly required too.

It is on the basis of this assessment, which seems obvious today as the law is present in any business environment at any level, that Jean-Pierre has approached Anne-Judith Levy and I, as young attorneys, in order to organize, with him, a legal conference which finally took place at the Amiens International Film Festival and was dedicated to issues of copyright and film production.

The first edition happened in 1990, and year after year, according to the topics we found most relevant, we have presented the basic principles of copyright law and the rules governing copyright transfer agreements, co-production agreements, distribution agreements, music rights used in films, legal compliance of the chain of titles, etc. With our means, we have helped the actors of the African film industry to realize how necessary it was to take into consideration these legal issues.

These conferences were faithfully reproduced in the journal *Le Film Africain* and all the articles have been included in the first edition of *L'Arbre à Palabres*.

Following these steady conferences, the French Ministry of Foreign Affairs has organized, during the 20th edition of the FESPACO that took place in Ouagadougou on February 28th, 2007, a conference on copyright issues, which was then followed by the publishing of the first edition of the handbook entitled "*Les Contrats audiovisuels et cinématographiques – Guide pratique à l'usage des professionnels africains*".

Mainly intended for professional filmmakers from African French speaking countries, this handbook was presenting the basing concepts of French copyrights in order for the readers to be able to understand a copyright transfer agreement drafted in respect of French law.

And in the light of the short sections of the handbook providing an overview of the different statutes implemented in the member countries of the Bangui Convention, the readers have noticed how much French copyright have influenced their own legislations.

In the second part, a “check list” was focusing on the basic points regarding co-production agreement and any other kind of partnership, since today, films and audiovisual works are mainly the result of a partnership.

Three years later, in 2010, the French Ministry of Foreign Affairs found necessary to translate the first edition of the handbook in English in order to give access to this work to professional filmmakers from African English speaking countries. It has also appeared useful to present, under a short and complete form, the rules of copyrights as applied in common law countries, principally in the U.S, and the basic provisions used in purchase rights agreements performed in common law countries. This will be found in the second part of the present handbook, followed by a table including African English speaking countries copyrights statutes.

The two parts of the handbook presented together within a single manual are a great “toolbox” which will allow professional African filmmakers, whichever country they are coming from, to find what is necessary in order to draft the first agreement of the chain of titles, as well as provisions inspired by European or U.S practices.

A legally safe environment will allow to spread the works widely, to use them more efficiently and thus, these works will be more seen.

The rules found in the “check list” regarding co-production agreements, introduced in the first edition of the handbook, remain the same for any African country, for international co-productions and why not even for inter-African co-productions?

Even if this handbook gives an opportunity to compare different systems of law in force, the alleged conflict between civil law and common law is far from being so vigorous and as a matter of fact, the remaining differences of legal concepts will be resolved if addressed with understanding and should therefore not be an obstacle.

Like Jean-Luc Godard once said, these professionals *“only want to talk about movies, why talking about something else? With movies, we speak about everything, we achieve everything”*.

Have a nice reading!

Karine Riahi

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The top half of the page features a vibrant red background. On the left side, a vertical strip of film with sprocket holes is visible. On the right side, a close-up of a human eye is shown, looking directly at the viewer. The text is centered in the lower right quadrant of this red area.

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THE FRENCH APPROACH**

CHAPTER

1

Fundamental principles of copyright law



UN HOMME QUI CRIE
By Mahamat-Saïet HAROUN
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COPYRIGHT CONTRACT “JUST LIKE ANY OTHER CONTRACT”

A contract is a legal act binding on the parties that sign it, **the undersigned**. Nevertheless, in film and audiovisual matters, non-signatories to the contract, third parties, can appear later. The latter will be able to take advantage of the existence of a contract once it has been registered in the **Register of Films and Animated Pictures (RPCA - Article L.122.2 of Film Industry Code - CIC)**.

A contract reflects the final stage of the negotiations between the signatory parties to the contract. It must express all that has been decided and only what has been decided.

At least two signatories are involved in a contract, but it can be signed by an infinite number of people who agree to be committed in the same instrument.

Only the parties for whom the contract decrees a certain number of rights and obligations must execute the contract for they are signatories to it, but it may happen that a contract is also signed by one or more parties who are mentioned in the contract by the term **“with the involvement of”**. This indicates that these parties to the contract had knowledge of it and that they will not be able to claim to be unaware of its existence. It is as if it were binding on them.

Only reality must be mentioned in the contract. If the contract contains false information, the fact that all its terms have been ratified by the parties affords it a truth which it is impossible to contradict.

A contract can only be amended with the agreement of the parties that signed the first version of the contract. These amendments are made valid in an **addendum or rider to the contract**.

Each page of a contract must be initialled (at the bottom of page) by all the parties. The last page carries the signature of the parties.

A contract must be signed in as many **original** copies as there are parties.

If, when the parties, after finalizing the drafting of the contract, meet again to sign it and notice that details must be brought in at the last minute and they do not have the opportunity to have a modified version of the contract typed, any changes will have to be formalized as follows:

- to cross out by hand (i.e. handwritten) the words that are not suitable;
- to indicate by hand the number of crossed out and invalid words;
- to write by hand the detail added;
- to have all the parties to the contract initial the handwritten notes.

If the initial of one of the parties is missing alongside an amendment, and even if the bottom of the page is initialled by the same party, the amendment will not be deemed valid because it may be deduced that one of the parties did not accept it.

THE AUTHOR'S POWERS OVER HIS WORKS

It is impossible to deal with the articles that make up a French copyright assignment without first mentioning the legal rules which govern copyright. These are listed in the Intellectual Property Code (CPI), under Articles L.111-1 to L.343-4 CPI, or in the copyright laws adopted by each country in application of the Bangui Agreement. Compliance of French copyright assignments with the relevant rules is mandatory. Copyright is an intellectual property right enjoyed by a creator, a natural person, the author, who created an original work.

When an author creates his work he owns copyright in it. This comprises two types of rights: the moral right and the economic right.

MORAL RIGHT

The moral right is a special feature of French copyright law and legal systems adhering to the Bangui Agreement (as opposed to the copyright laws that does not recognize such a prerogative for the author).

The characteristics of the author's moral right and its four components are described in Articles L.121-1 to L.121-4 of the CPI.

This right attaches to the person of the author, who is always a natural person.

Another important concept is a successor in title, which means the right holder (in the case of author's rights). A successor in title can be both a natural person, for example a relative, heir of the author's rights, and a legal entity, for example a production company which had obtained the author's rights with a view to producing the film.

The moral right confers on the author the following prerogatives:

- **the right to respect for his name (or right to paternity)** is the right of the author to see his work disclosed under his name. That specifically means that whenever the work is made public, the name of its author must be associated with it.
- **The right to respect for his work:** where the author has accepted that his work be made public in a certain form, this work cannot be modified without his agreement. Modification might mean the cutting of a few minutes of the cinematographic work, a re-montage, additions, etc.
- **The right of disclosure,** which means that the author is the only person able to decide to release his work to the public in the manner and on the terms and conditions he wishes.
- Finally, there is a fourth power, **the right to reconsider or of withdrawal.** It allows an author who has assigned his right of exploitation to forbid the assignee to exercise this right on the condition that he compensates the assignee beforehand for any injury suffered by the exercise of this right of withdrawal or to reconsider. In practice, in audiovisual or film matters, the author rarely exercises this right, for the cost of the compensation (development costs, film production costs, loss of earnings, etc.) acts as a deterrent.

Moral right such as described above is perpetual, inalienable and imprescriptible.

Moral right is perpetual: this means that it survives after the death of the author, even when the author's work has finally fallen into the public domain. Thus, even a century after the death of an author, any person wishing to use his work will still have to comply with his moral right with its four components.

Thus, a producer who adapts a work which is free of rights because it is in the public domain will always have to respect the spirit of the work, even if an adapting author does have a great deal of freedom in this regard. A key aspect of respect for work is ensuring that it is not debased or distorted.

Moral right is inalienable, which means that it cannot be bought and that it may not be waived in any way.

Any clause in a contract purporting to waive any component of the moral right will be deemed struck from the agreement (as if it did not exist) and the author may at any time enforce that component of his moral right that he purportedly waived by contract.

Moral right is imprescriptible, which means that the moral right cannot be obtained by whomsoever through extended usage, and that the author cannot lose his moral right by, for example, not having exercised it for a certain time.

ECONOMIC RIGHTS

Economic rights are those that can be assigned by the author to the producer. It is these rights that allow the producer to exploit the work. They are covered by the Articles L.122-1 to L.122-12 of the CPI.

Economic rights are the subject matter of the contract for the assignment of copyright.

There are two main categories of economic rights:

- right of reproduction, which consists of the physical and multiple fixation of a work, by any process, with the intention of public distribution;
- right of performance, which consists of communication of the work to the public by any process.

The forms of exploitation covered by these two main categories are:

- television and film exploitation by all possible technical means;
- video exploitation, multimedia;
- exploitation on the Internet, via telephone lines, by all possible technical means;
- merchandising exploitation of any sort, etc.

Since these rights are intended to be assigned by the author to the producer, the Intellectual Property Code makes very strict provision for the terms and conditions on which this assignment may be operated.

THE ASSIGNMENT OF ECONOMIC RIGHTS BY THE AUTHOR TO THE PRODUCER

Any assignment of economic rights must be **in writing**. That is why copyright assignment is always embodied in a contract.

Article L.131-2: "the performance, publishing and audiovisual production contracts defined in this Title shall be in writing..."

Oral assignments are not valid.

The document containing the assignment must satisfy a number of rules, which are set out in Article L.131-3 CPI:

“Assignment of copyright shall be subject to each of the assigned rights being separately mentioned in the instrument of assignment and to the field of exploitation of the assigned rights being defined in terms of its extent and purpose, territory and duration”.

Thus, the producer’s obligation to list very precisely all the rights that are obtained is particularly onerous because not complying with it will render the contract invalid, wipe out the rights assignment and will prohibit, de facto, any exploitation of the work by the producer.

REMUNERATION: FINANCIAL CONSIDERATION FOR THE ASSIGNMENT OF COPYRIGHT

Article L.122-7 of the CPI sets out that:

“The right of performance and the right of reproduction may be assigned free of charge or for valuable consideration”.

The assignment **without payment** will have to clearly define the extent of the assignment (territories, intended types of exploitations, duration, etc.) in addition to the motives and reasons for it being free of charge (reputation of the author owing to his gift, services rendered, etc.).

When assignment is for valuable consideration or **payment**, the CPI is very demanding in its requirements for the definition of the financial compensation for the copyright assignment. In consideration of the assignment of copyright, the author generally receives remuneration which is proportional to the earnings or receipts from exploitation. This principle of mandatory proportional remuneration is peculiar to French law, and is not found in contracts that adhere to the American copyright system.

The author’s remuneration is governed by two articles of the Intellectual Property Code: the principle of remuneration proportional to receipts is stated in Article L.131-4:

“Assignment by the author of the rights in his work may be total or partial. Assignment shall entitle the author to a proportional share in the proceeds received from the sale or exploitation of the work.”

The terms under which this principle applies are stated in Article L.132-25:

“Remuneration shall be due to the author for each form of exploitation. Where the public pays a price to receive communication of a given, individually identifiable audiovisual work, remuneration shall be proportional to that price, subject to any decreasing price scale granted by the distributor to the party exploiting the work; the remuneration shall be paid to the authors by the producer”.

This article specifies therefore that the author cannot be paid only on the earnings or profits of the producer, that is to say on the gross income less the costs of production and exploitation. This is a matter of “public policy” i.e. of mandatory application, meaning that any contractual provision to the contrary inserted in any agreement will be void.

Proportional remuneration of the author stems from a percentage of the income from the exploitation of a work. This percentage and the definition of the basis for calculation must therefore be specified in the contract.

The basis for assessing proportional remuneration is gross income, calculated pursuant to what the public has paid to have access to the work when the method of exploitation is determined and individually identifiable. This is the case for a cinema seat, a DVD, or a book.

In the case of a film showing in a film theatre, the author is paid on the gross receipts from the exploitation, excluding taxes (VAT is not included in the assessment).

In the case of video exploitation, the basis for calculation is the retail price, excluding taxes. In the case of a work exploited on a television channel, the calculation is usually based on the producer’s share of net receipts (gross income less operating costs).

If the parties are not free to choose the basis of the author's remuneration, they nevertheless have a choice as to the percentage.

THE GUARANTEED MINIMUM

The principle of proportional remuneration obliges the author to await the end of the production and the exploitation of his film before receiving any remuneration.

Customary practice is that the author may receive an advance on his future proportional remuneration: this is the guaranteed minimum (GM).

This advance is guaranteed, which means that it remains the property of the author even if receipts are insufficient to allow the producer to recoup the advance.

Whilst the guaranteed minimum is customary, it is not compulsory. Thus, a copyright assignment which does not specify any guaranteed minimum is still valid.

The law allows for exceptions in Article L.131-4 CPI where it is difficult to determine proportional remuneration:

- where it is impractical to define the basis for assessing the author's remuneration (the calculation basis), for example, in the case of free access to the work or when the public does not pay to access the work (e.g. terrestrial public television);
- where there is no means of checking income; for example, where exploitation is in a country with no official ticketing system;
- where the cost of calculating and checking would be out of proportion with the results to be achieved; for example, where exploitation is so insignificant in a remote territory of the world that applying the author's percentage would result in minute remuneration. In such a case, the expenses incurred in calculating and checking would really be too high;
- where the author's contribution is merely incidental in terms of the work exploited or the author's creation is not an essential element of the work. For example, if the author is a translator, his contribution will be incidental. He may therefore be paid by fixed fee.

In these examples, rights will be assigned in consideration of a fixed fee or a percentage calculated on a narrower basis than the price paid by the public, for example a percentage based on the producer's share of net income.

LEGAL DURATION OF COPYRIGHT

The Intellectual Property Code limits the protection of an author's economic rights in time. The moral right is not affected by this rule: it is a perpetual right.

This duration is defined in Articles L.123-1, L.123-2, L.123-3 and L.123-4 of the CPI.

Article L.123-1: "The author shall enjoy, during his lifetime, the exclusive right to exploit his work in any form whatsoever and to derive pecuniary profit therefrom.

On the death of the author, this right shall subsist for his successors in title during the current calendar year and the 70 years thereafter."

Legal protection for an author's economic rights used to be 50 years after the death of the author. A European directive of 1 July 1995 changed this to 70 years.¹ The Directive of 12 December 2006 (on the term of protection of copyright) then imposed a uniform term of protection throughout the entire territory of the European Union.

1. The seventy year period covered what used to be referred to as the "war extension" for works published before the First World War (6 years and 152 days), and for works published before the Second World War (8 years and 120 days). The only surviving extension is the "war hero extension" (i.e. those who sacrificed their lives for France), an acquired right expressly covered in the Directive.

All these details concerning the duration of protection of a work may seem futile to the reader, yet this question takes on great importance for a producer wishing to adapt a work for film or audiovisual exploitation and who needs to know whether the work has fallen into the public domain.

Once the legal duration of copyright has expired, it is said to have fallen into the **public domain**, which means that it is “free of rights”: to use it, a producer will not need to procure an assignment of copyright. He will only have to respect the moral right of the author or authors of the said work.

EXCEPTIONS TO THE NEED TO APPLY FOR CONSENT TO EXPLOIT

There are special cases where a producer does not need to apply for the consent of the rights owner to use a work.

Some of the exceptions concern comedy. The law allows caricatures, parodies and pastiches provided there is an intention to cause laughter and that such use cannot lead to any confusion with the work itself.

In addition, use “within the family circle” exempts the person using a work in this context from paying royalties to the successors in title.

The exception of true interest to the producer is that of “**quotation**”. Where a producer wishes to incorporate an excerpt from another work into his own he must verify in advance if he can do so without buying the rights from the successors in title.

The general rule regarding quotation is the following: a quotation of a work is lawful where it is **short**, when the **name of the author** and the **source** are clearly stated and when it is justified by the **critical, provocative, educational, scientific and informatory nature** of the work into which it is incorporated.

In addition, not all works can be quoted. This is the case of the following situations:

- **pictorial quotations.** A scene in a film is set in a luxurious apartment. By way of decoration, the producer hangs a reproduction of a masterpiece not fallen in public domain on the wall. This “pictorial quotation” is forbidden. The producer will have no choice but to apply for the consent of the artist’s successors in title, even if the scene is short, the copy seen from a distance and in small format.
- **Literary quotations.** Such quotations will be allowed provided they illustrate a comment or statement in a dialogue for example, or in a documentary. This exception will be acceptable provided the name of the quoted author and source are stated.
- **Musical quotations.** They are only allowed with a single aim, illustrating a demonstration, and provided they are short.
- **Quotation of an audiovisual work.** For example in a documentary where the subject of the documentary is a film director and author of the quoted work. Such a quotation will need to satisfy the comment or statement illustration requirement: it must be short and the name of the author and source stated.

SUBJECT MATTER OF THE ASSIGNMENT: IDENTIFIED WORKS

A rights assignment can only cover existing and clearly-identified works already produced by author. The Intellectual Property Code prohibits global assignments of future works.

Accordingly, if a contract provides that an author will assign to a producer in advance all of the works he may create in the years to come, such a contract will be null and void. Consequently, the producer cannot then claim that it owns the rights.

However, if the producer were to commission the creation of a work which will only be delivered to him at a later date, the rights assignment is possible because the work is clearly identified.

However, nothing prevents a producer from soliciting from an author a **right of priority**, or a **right of first option** or even a **right of first viewing**, on works that the author may create in the future.

This mechanism affords a producer a sort of “right of first refusal” over projects of an author whom he may have discovered.

This right of priority would be exercised as follows: an author offers a new work to the producer who will be granted a period in which to agree to purchase the author’s rights on the terms and conditions put forward by the author. If the producer does not accept, the author will recover his freedom to offer his work to whom he wishes.

RIGHTS INFRINGEMENT

A work must always be used in accordance with what the author wished to disclose to the public.

This choice is exercised by virtue of the moral right (choice of the method of disclosure, indication of paternity, use of the work without changes).

Likewise, the author intends his economic rights to be used by those who own them under a contract that is perfectly valid and still in force, or through the effect of a continuous chain of contracts: **the chain of rights**.

All uses of the author’s rights which do not respect all the components of his moral right constitute an infringement of those rights.

In the same way, any use of the author’s rights that does not comply with the terms and conditions of the copyright assignment constitutes an infringement of those rights.

Infringement is both a civil wrong and a criminal offence. It is defined in Article L.122-4 of the CPI:

“Any complete or partial performance or reproduction made without the consent of the author, his successors in title or assigns shall be unlawful. The same shall apply to translation, adaptation or transformation, arrangement or reproduction by any technique or process whatsoever.”

Infringement covers practices as diverse as:

- the exploitation of a work without citing the name of the author in the credits;
- the exploitation of a work beyond the duration of the rights granted by the author or his successors in title;
- the exploitation of an audiovisual work where the editing was modified by the producer after delivery of the work without the author’s consent;
- the exploitation of the work in a territory not granted by the author or the successor in title;
- the use of an excerpt of a work in another work without authorization of the author or his successor in title;
- the adaptation of a literary work into an audiovisual work without the consent of the author of the book or his publisher;
- the remake by a producer when he has not been assigned the right to remake;
- plagiarism;
- the exploitation of a work without paying the financial consideration due to the author;
- usurping a creation, etc.

Where a rights infringement is proven, its victim will need to bring the matter before a court (civil or criminal). The victim will then have to provide compelling evidence of the infringement as quickly as possible, before the rights infringer has the opportunity of making them disappear.

CHAPTER **2**

The copyright assignment



The contract assigning the author's rights is the first contract that the producer must sign. This is the contract whereby that he acquires ownership of the intangible rights, the substance that will nourish "the finished product", the film or audiovisual work, which he will undertake to sell.

This is the first contract in the **chain of rights**.

By justifying acquisition of the rights, the producer will be able to guarantee that he owns a secured asset, allowing him to mobilize the funding and his partners, especially his financial partners, to the cause of his film.

THE PARTIES

The parties must be clearly named and identified without error.

THE PERSON ACQUIRING THE COPYRIGHT

A copyright assignment will name the party acquiring the rights: the assignee. As a rule, the assignee is the producer. However, an author's rights can just as well be purchased by any natural person or corporate entity, even one that does not intend to produce. The person will then be able to pass on rights to a producer, if that person cannot produce the film or television programme himself.

If the buyer is a company, the assignment must include the name of the company (and not just its trade name), the address of its principal office, its registration number and the place (court registry) where it is registered, the nationality of the company and the name of its legal representative (or its agent if he has a special power to sign the contract).

If two companies are acting in association to acquire the author's rights together, the relevant details of both companies will need to be included. For example:

*Company X (full identification) and
Company Y (full identification), hereinafter together known as the "Producer"*

If the buyer is a natural person, his full "civil identity" will need to be cited (name, first name, date and place of birth, nationality), his address and, if possible, his occupation.

THE PERSON ASSIGNING COPYRIGHT

The assignor is usually a natural person (the author himself). It may also be another natural person or corporate entity who/which has acquired the rights. For example:

*Mrs Z
born on at of nationality
Residing at
Hereafter known as the "Author" (or Rights Owner)*

As signatory to the contract, alongside the author, a rights society (the SACD² or the SCAM³ in France) can act as agent and/or representative of the author. It is necessary for any such organisation to be precisely identified.

RECITALS

The recitals to a contract should always be drafted with care. They express the status of the parties at the time the contract is signed and provide full information about the context and origins of the contract, in particular:

- the origin of the project (e.g. a project suggested by an author to the producer or a project suggested by the producer to the author, commissioning a screenplay);
- the purchase of audiovisual adaptation rights by the producer or the author, as the case may be;
- a mention of other possible co-authors of the screenplay;
- the skills or expertise of each party as regards the planned project (specialist in animation, youth programmes, documentaries, etc.);
- the parties' declarations of intention as expressed at the time of the negotiations;
- the objectives of each of the parties which prompted them to form the agreement expressed in the terms and conditions of the contract.

It is essential for this information to be included in the recitals because it assists in interpreting some provisions of the contract in the light of their context and, in particular, facilitates a better understanding of the role of each party in the event of a conflict.

The definition of terms and expressions used in the body of the contract may be included as part of the recitals. Such definitions promote a clear understanding of the terms used and thus reduce drafting by removing the need for repeated explanation of a term or expression each time it is used.

However, such definitions are not essential. It will suffice, where a term is used for the first time in the body of the contract, to state next to this defined term, that it will be identified in the body of the contract by a capital letter. For example:

The producer has decided to produce an animated series of 12X26' provisionally or definitively entitled "XXXX" (hereinafter referred to as the "Series").

Recitals often begin with the word "whereas" and finish with the wording: "*having completed their negotiations, the parties have hereby agreed (or it is hereby agreed) as follows*".

The following presentation of the terms and conditions of a rights assignment does not claim to be exhaustive. The content of the agreement depends in part on contractual freedom. The producer and the author are therefore able to take special circumstances into account and to insert certain provisions. Comments on the essential clauses are set out below.

ARTICLE 1 : PURPOSE

The purpose clause is one that describes:

"PROPERTY" THAT THE AUTHOR AGREES TO DELIVER TO THE PRODUCER

In a scriptwriter's rights assignment, for example, this is the wording of the screenplay. In a director's rights assignment, it is the combination of the takes filmed according to the staging imagined by this director and the direction and instructions given to the actors. It may also include dialogues.

2. Société des auteurs compositeurs dramatiques (Dramatic Authors' and Composers' Society).

3. Société civile des auteurs de multimédia (Multimedia Authors' Society), of which the authors of documentaries are often members.

At the film writing stage, three types of situation can arise:

- the producer commissions an author to write a screenplay. In this case, what the producer asks the author to deliver is the screenplay he undertakes to write;
- the author has already written a screenplay. In this case, what the producer asks the author to give him is this already written screenplay;
- the author has already written a screenplay, the producer would like to buy it from him but is not yet not sure of the financial feasibility of his project. The producer will therefore suggest to the author that he takes an option on his screenplay. The object of the contract is the “reservation of the exploitation rights for a fixed duration “ in the screenplay.

USE OF THE “PROPERTY” THAT THE AUTHOR AGREES TO ALLOW THE PRODUCER TO USE

In itself, it is of no value to the producer to have the screenplay. What the producer needs is to own the exploitation rights in this screenplay.

At the time of the rights assignment is drafted, it will be specified that the purpose of the contract is to procure the writing / delivery of the screenplay and the author's undertaking to assign the intellectual property rights he owns in this screenplay to the producer. For example:

“This contract sets out the terms and conditions on which the producer commissions the author to write the screenplay and the author agrees to assign his rights in the screenplay to the producer, on the terms defined in Article 2 of this contract.”

The subject matter of the contract can be identified and/or specified by means of the following criteria:

- the provisional or final title of the film (in France the titles of cinematographic works are deposited at the RPCA⁴; in the case of a title change, the life of a venture can be traced);
- the expected length of the film (or episode of a series);
- the scheduled release date;
- the number of episodes in the series;
- the combined work of one or more co-authors;
- the name of the director approached.

The parties to the contract must then agree delivery deadlines for the “property”. Where a screenplay has already been written, it suffices to indicate the date of delivery of the screenplay by the author to the producer (delivery may be prior to the signing of the contract⁵) and in what form (in paper or digital format).

Where the producer commissions the author to write a screenplay, the number of versions that the author agrees to deliver to the producer needs to be defined. The producer will certainly want to have the capacity of requiring rewrites of the screenplay by the scriptwriter. Intermediate versions may be necessary. It is essential in these circumstances to state how many versions of the screenplay the author agrees to deliver to the producer. It will also be necessary to state within what time, after the delivery of each version, the director must notify the author of the changes he would like and how much time the author then has to make them.

4. Public Register of Films and Audiovisual Works maintained by the National Film Centre (CNC).

5. In practice, if the producer acquires the author's rights, this is because he will have already read the screenplay; any statement regarding delivery will therefore be purely for form.

ARTICLE 2: **RIGHTS ASSIGNMENT**

IN GENERAL

As the title indicates, this is the core provision of this type of agreement.

The fundamental rule to bear in mind is as follows: any exploitation right of the work in question (e.g. the screenplay) that is not **expressly** assigned by the author to the producer will remain the exclusive property of the author.⁶

By exclusive property, we mean the attributes or components of title, i.e.:

- **the right to forbid:** e.g. to prohibit the producer from exploiting the film produced and finished in the form of a DVD because the producer did not acquire the right to exploit the screenplay for video use.
- **the right to authorize:** e.g. to authorize a third party that is not the producer to exploit the screenplay in the form of a film sold on DVD.⁷

This means that any use of the screenplay to which the author has not expressly consented will constitute a rights infringement. A scriptwriter who consent to a producer using the screenplay that he wrote for a “cinematographic work” does not necessarily consent to its use for a DVD release.

Many books and Internet sites offer standard form agreements for the assignment of rights containing a clause entitled “rights assignment” which often appears long. If he decides to use such standard forms, the producer must always satisfy himself that all the rights he wants to own are clearly included in the clause.

Without engaging in a tedious description of all possible and imaginable forms of exploitation of the work, the list of rights assigned by the author is traditionally divided up as follows:

- film adaptation rights: for adaptation of the screenplay for the purposes of the film, which will be the finalised work;
- film and television rights.

A distinction needs to be drawn between the following:

the reproduction right, that includes:

- the right to shoot the film in its original language version;
- the right to record the images in black and white or in colour, the original sounds and dubbing, titles or subtitles of a series, and any still photographs representing scenes from the film using all available technical procedures and in all formats, whether analogue or digital;
- the right to produce in such numbers as the producer may require at his discretion, all originals, duplicates or copies of the final version of the film in all analogue or digital formats.

The performance right, that includes:

- the right to exhibit and/or allow to be exhibited in public copies of the finished film in its original, dubbed or subtitled version in any film theatre, charging for entry or free of charge, both in the commercial sector and so-called “non-commercial” sector;
- the right to exhibit or to allow the film to be exhibited in public, in its original, dubbed or subtitled version, by broadcast on terrestrial, satellite or cable television, by online transmission, over networks, including the Internet and mobile telephone networks, with a view to its communication to the public at no cost or in consideration of a fixed price subscription or a “per view” price, it being understood that the producer will be responsible for warning broadcasters based in or whose programmes are broadcast in France, Argentina, Belgium, Bulgaria, Canada, Spain, Italy, Luxembourg, Poland, Monaco, Switzerland and in any other territory in which SACD, to which the

6. This rule is embodied in Article L. 131 of the Intellectual Property Code.

7. Obviously, if a third party wishes intends to exploit the film in question (incorporating the screenplay covered by the agreement assigning rights) in the form of a DVD, he will need to procure the consent of many other authors and contributors.

- author is affiliated, or any other authors' rights society representing him, may act at a later date, that honouring the obligations agreed with the producer does not release the said broadcasters from the obligations that they have or will have to contract with the aforementioned authors' rights societies;
- the right to distribute or allow the distribution of these originals, duplicates or copies, for the broadcasting of the film and any form of exploitation listed hereafter.

In the list of the rights associated with the performance right, the following clause is almost always included:

*"The right to exploit the film through any audiovisual process now **known or yet to be discovered.**"*

An assignment for exploitation through a process yet to be discovered is allowed under the Intellectual Property Code⁸ conditional upon a corresponding remuneration being provided for in the "Remuneration" section of the contract for any such forms of exploitation yet to be invented or discovered (based on the retail sale price wherever possible).

It is also possible to provide that when a new method of exploitation is invented and the producer wishes to use it, the parties will contact each other and negotiate a rate of remuneration for the author in good faith. This avoids the pitfall of "derisory remuneration" that might invalidate the assignment. On this occasion, it would be wise for the parties to sign an amendment to the initial rights assignment explicitly defining any new methods of exploitation envisaged to avoid ambiguity. There may be a multitude of cases:

Secondary forms of exploitation

- Performance and/or the release of the film in the form of excerpts;
- public exhibition of the film at any market, festival or promotional event;
- the right to exploit the film in the non-commercial film sector (for the producer, this right includes the option to assign the film to the French Ministry of Foreign and European Affairs, for exploitation via the French overseas cultural network and for the purpose of various cultural events);
- the right to authorize the reproduction and performance of fragments of the film;
- the right to produce a remake;
- the right of follow-up (sequel and prequel);
- spin-off rights;
- the right to produce a "making of".

Derivative forms of exploitation

- The right to adapt the wording of the screenplay and dialogues in the film;
- the right to reproduce all or some of the images taken from the film or photographs taken during shooting;
- the merchandising right;
- the right to adapt all or some of the visual and audio elements of the film, combining them, as the case may be, with any new contributions, for the production and exploitation of multimedia programmes.

Finally, it is advisable for the producer to include a "**priority right**" clause in the contract. It is often stated in the contract that all the rights that the author does not assign to the producer are "reserved rights" that remain fully and absolutely vested in the author, as a reminder of the legal rule.

The priority right clause will provide that if the author himself or a third party contacting him wishes to exploit the work via a means of exploitation not covered in the contract between the author and the producer, then the author will inform the producer of this new planned exploitation and the producer will have a right of first refusal ahead of any other person to undertake the said form of exploitation himself. An addendum or rider to the copyright assignment will then be signed between the author and the producer (in which the basic terms and conditions will be the same as in their first agreement and which will abide by the legal rules governing intellectual property rights).

8. Article L.131-6 of the Intellectual Property Code.

ARTICLE 3: DURATION (TERM) AND TERRITORIES

It is **mandatory** for the copyright assignment to make **express** provision⁹ regarding:

- the geographical scope for exploitation of the rights authorized by the author (often, however, the assignment will be effective “worldwide”);
- the term for which the author consents to the producer exploiting the rights assigned to him. This duration cannot exceed the legal term of protection of copyright. If the parties opt for the legal term, they will have to say so expressly and avoid any wording such as “this assignment is granted without limitation in time”.

If either of these criteria for defining the copyright assignment in the contract is omitted, the assignment will be invalid and any producer exploiting the copyright under such conditions will be guilty of infringement.

Example clause:

“ARTICLE 3: TERM AND TERRITORY:

The author assigns the rights set out in Article 2 of this contract to the producer for exploitation worldwide for a term of “x” years (or for the legal term of copyright), effective from the date of signature of this contract.”

ARTICLE 4: REMUNERATION

The exploitation of his work is, for the author, his means of subsistence. Not all authors are equally prolific and creation is not an act that can be compared with the many commercial transactions or employees’ tasks. The Legislature has therefore elected to associate the author with the success of his work. This conception is very different from the one applied by American legislators, who have opted for a system where the author is, as a rule, just paid once by the producer, who becomes the sole owner of the work. American producers are not subject to the constraints imposed on French producers due to the author’s inalienable and timeless moral rights over his work, despite the assignment his economic rights in the work.

The author’s assignment of his rights to the producer does require some financial consideration.¹⁰

The fundamental rule is that **there must be some form of financial consideration for every right assigned (for any planned and listed form of exploitation). An assignment is only valid if a corresponding price is effectively paid to the author (if there are actually proceeds or receipts) in respect of that form of exploitation.**

This is the reason why the section entitled “rights assignment” often starts as follows:

*“Conditional upon the complete performance of this agreement **and full settlement by the producer of the relevant fees and royalties that he is contractually bound to pay**, the author hereby assigns the rights hereinafter defined...”*

THE RULE IS PROPORTIONAL REMUNERATION

The author’s remuneration is based on a percentage of proceeds or receipts.

A percentage

The author is paid in proportion to earnings for the various forms of exploitation of his work. There are two aspects to this rule:

9. Article L.131-3 of the Intellectual Property Code.

10. See on this subject Article L. 131 – 4 of the Intellectual Property Code.

- there has to be a specific proportional remuneration, stated in Article 4¹¹, for each form of exploitation of the scriptwriter's rights assigned in Article 2;
- as long as the work is being exploited (within the period of the legal term of copyright or a shorter term defined in the copyright assignment), the author has the right to receive a share of the income generated by the exploitation of his work.

The author will therefore be paid a percentage, calculated on income that is not the same for each form of exploitation. The most widely used basis for the calculation of royalties is "Producer's Net Receipts". Others such as the "Retail Box Office Receipts, excluding taxes" and the "Published Price to Dealers" or PPD are also used. They are covered below.

It is necessary to pay particular attention to the definition of the income on which the percentage will be calculated.

It is always preferable for an author to be entitled to a small percentage of a big earnings base than a large percentage of a calculation base that shrinks away to nothing.

The percentage of the receipts payable to the author depends on various criteria that are considered together, i.e.:

- the experience and notoriety of the author;
- sharing with possible co-authors (e.g. for the writing of the screenplay if there are several scriptwriters);
- the film production budget;
- the type of the work (feature film, animation, televised series, etc.);
- the size of the advance or guaranteed minimum (GM) awarded;¹²
- the film's success potential.¹³

Although the law does not impose a minimum percentage, the producer should take the precaution of indicating the reason when this is set low so that the remuneration agreed with the author cannot be challenged by the author at a later date or the contract invalidated due to a derisory financial consideration.¹⁴

It may thus be provided that:

"The Author has been informed that several co-authors will collaborate on the creation of the film, including the authors of the screenplay, contributors to production, etc. The percentages allocated to the Author have been determined according to the fact that they remunerate the assignment of the author's rights in the Treatment, being one of the steps towards producing a screenplay, and according to the number of authors involved in writing this Treatment and/or the screenplay, which the rights holder acknowledges, and he considers, with full knowledge of the facts, their amount to be just and justified within the meaning of the law and case law".

Some examples offering a guide to the percentages paid to authors are set out in Appendix 1¹⁵:

Basis for calculation

The law requires the author to be paid on a gross income basis. The gross income basis in question in this case will be from exploitation of the film in film theatres in France.

11. If a form of exploitation is provided for in Article 2 of the contract, but there is no corresponding remuneration in Article 4, then the assignment in Article 2 will be null and void, which means that if the producer engages in such a form of exploitation, he will be committing an infringement.

12. As explained in our discussion on advances, the author may have been granted a guaranteed minimum. The producer will therefore wish to reduce entitlement to Producer's Net Receipts where he made an effort to grant a comfortable guaranteed minimum to the author.

13. A French film is generally considered successful if it achieves 300 000 box office tickets in France.

14. Where the author is paid a fixed financial consideration, he may apply for the contract to be revised due to excessive loss (inadequate consideration) in an attempt to have his remuneration increased.

15. Source: RPCA.

Exploitation of the work in film theatres in France

For cinematic exploitation of films in France, the author's royalty is based on the retail box office price paid by members of the public at film theatres, excluding VAT and a special surcharge (TSA), known as "Retail Box Office Receipts, excluding taxes" (RBO) .

For films which came out in 2004, average author remuneration from gross cinema receipts was 0.45% of RBO.¹⁶

Where it is difficult to determine the RBO, an author's remuneration may be based on "Producer's Net Receipts ("PNR"): PNR includes all the proceeds received and collected by the producer for the exploitation of the film or of all or part of its components worldwide, after deducting certain expenses incurred for the purposes of this exploitation.

A definition of PNR is included in many standard form contracts, in an appendix to the contract. In the context of film production, it is defined by the Ministerial Order of 7 February 2011, issued pursuant to Article L. 132-25 of the Intellectual Property Code, extending the Agreement of 16 December 2010 concerning Transparency in the Film Industry¹⁷. Many contracts stipulate in their recitals that the parties' agreement includes the recitals and appendices, and not just the main body of the contract. Even where this is not stated, this appendix needs to be read very carefully. SACD makes several types of contract available to professionals on its website at www.sacd.fr.

When each relevant contract is drafted and validated, the provisions contained in this appendix need to be checked carefully, to analyse what is included and what excluded from PNR. The author should pay particular attention:

- to the sums that the producer defines as being sources of funding for the film and not as receipts;
- to the expenses that the producer can deduct from receipts from exploitation; the more deductible expenses there are the more the basis for the author's remuneration will be reduced.

Appendix 1 offers a definition of PNR, in compliance with the wording of the Ministerial Order applicable to films and audiovisual production not within the scope of this Ministerial Order.

Some contracts define a specific distribution fee. However, for audiovisual works, where the producer is not able to determine this amount in advance, and to avoid it being imposed on him by the distributor, it would be in his best interests to write "*at the effectively charged and duly justified rate*".

PNR are used as a basis for calculating the royalties payable to the author for the following forms of exploitation:

- cinematographic exploitation of the film in France in the non-commercial sector;
- cinematographic exploitation of the film abroad;
- broadcasting of the film abroad in the countries with which SACD does not have a performance rights agreement;
- secondary forms of exploitation of the film, excluding video release in France, VOD and pay per view¹⁸;
- exploitation of audiovisual excerpts integrated into multimedia programmes;
- commercial exploitation of a "making of" film.

The payment of proportional remuneration through the mechanism of collective management by royalty collection societies: the so-called SACD reserve clause.

16. Source: Ecran Total Study – June 2005 (according to data published in the RPCA).

17. www.cnc.fr accueil/textes juridiques/arrêté.

18. For video release, VOD and pay per view, the reader should refer to the information given about recent developments regarding the application of the SACD clause in point 4 of this chapter.

Television exploitation

This is the classic area in which the SACD clause applies.

Where the work is broadcast by television (non-specialized, public or private channels, thematic channels, *via* cable or satellite, in France and in certain foreign countries¹⁹), it is not the producer who pays royalties to the author but SACD.

This clause is therefore advantageous to the producer who has nothing to pay for this form of exploitation and to the author who does not need to seek payment from the producer.

The clause will apply where the author is a member of SACD.

The producer must then inform the broadcasters that the author's remuneration will be paid through collective management procedures and that they have therefore to pay their dues pursuant to statute and agreement to the royalty collection societies.

The clause that SACD suggests should be included in the rights assignment is the following²⁰:

“Exploitation by broadcasting

In consideration of the rights assigned to the producer pursuant to Article 2 - 1 above, the author shall receive remuneration according to exploitation on the following terms and conditions:

For all the countries cited in Article 2-I-B above, and any new territory in which SACD or any society of authors representing it, collects or will in the future collect royalties from broadcasters for the use of the work listed in their catalogue, authors' remuneration shall consist of said royalties shared out in accordance with the rules applied by SACD.

If, in any of these countries, the producer were to deal with a broadcaster not yet bound to SACD or a company representing it under a general agreement, the producer undertakes to remind the said broadcaster that it should, before any broadcast of the work covered by this contract, make the necessary agreements with SACD with regards to the author's remuneration.

It shall be for the author to register the work in the SACD catalogue, in accordance with the rules and regulations of that society, having made it clear that, if it is a collaborative work, the rights will be shared between the rights holders according to the agreed percentages, without the Producer having to take action or being in any way held liable in relation thereto.”

The SACD clause also applies to the video release of fictional audiovisual works for first exploitation on television, pay-per-view and video-on-demand.

Video release

SACD, USPA²¹, SDRM²² and SCELFF²³ signed an agreement on 18 December 2006 concerning the management of authors' remuneration. This agreement concerns the exploitation by video release of fictional audiovisual works for first exploitation on television.

Since 1 January 2006, authors can be paid using two different methods. Authors and producers need to select a method in the copyright assignment.

- the parties choose collective management: the author will be paid through SACD and only in the territories where SACD operates;
- the parties choose individual management: the author is then paid directly by the producer.

An important detail needs to be highlighted: all the co-authors of the same audiovisual work must be subject to the same management option, either individual or collective. This is to ensure equal treatment of the co-authors.

19. SACD has entered into performance rights agreements with collective management societies in Argentina, Belgium, Bulgaria, Canada, Spain, Italy, Luxembourg, Poland, Principality of Monaco, Switzerland, Latvia and Morocco.

20. www.sacd.fr - Section: Contracts

21. USPA: Union syndicale de la production audiovisuelle (Television Production Union).

22. SDRM: Société pour l'administration du droit de reproduction mécanique (Mechanical Rights Society).

23. SCELFF: Société civile de l'édition littéraire française (French Literary Publishers' Society).

For rights assignment contracts entered into before 18 December 2006, the author and producer can agree an addendum in which they opt for collective management.

The income base on which the author's share of receipts is calculated for video releases is PPD – Published Price to Dealers, i.e. the wholesale catalogue price, excluding taxes or the highest price charged for the work, before taxes published by the video publisher for the relevant period.

In case of collective management, SACD collects the royalties for all authors of a given work:

- 2.5% of PPD up to 10,000 copies sold, 5% of PPD in excess of this number for new works or under contracts in force before the agreement of 18 December 2006 was signed;
- 5% of PPD for the renewal of the rights in the work on the expiry of the term defined in the contract.

If the parties decide that the producer is to pay the author directly in respect of video sales of his work, they will freely agree the percentage of PPD payable to the author after good faith negotiations. In this case, the producer will notify the video publisher in writing that he and the author have opted for individual management.

Pay-per-view and VOD

Pay-per-view and VOD (video-on-demand) are methods of accessing audiovisual and cinematographic works on payment of an individualised price²⁴. It is now possible to state in the rights assignment that the author will be paid by SACD for this form of exploitation.

The minimum remuneration received by SACD from audiovisual communication services is 1.75% of the price (excluding taxes) paid by the viewer of these services for receiving the work by broadcast. This remuneration is then shared between the authors by SACD in accordance with the collective management rules of the society.

The clause that SACD suggests should be included in the rights assignment is the following²⁵:

“Pay per view/Video on demand

The assignment by the author to the producer of the right to exploit the work by any means of telecommunication affording the public access to it on payment of an individualised price, including pay-per-view and video on demand, is granted on the terms and conditions defined in the agreement of 12 October 1999 between SACD and producers' professional organizations. If this agreement should expire without being renewed, the terms and conditions of said assignment shall be defined in an addendum agreed in good faith by the parties.”

A POSSIBLE EXCEPTION: FIXED-RATE REMUNERATION

Firstly, as with any exception, the fixed-rate remuneration exception is construed in the strict sense of the term, that is to say that when the parties decide to use it, they are required to follow the rules laid down by law to the letter. This exception must be given a narrow interpretation.

A producer can pay an author fixed-rate remuneration in four cases:

- where it is not practical to define a basis for paying the author a proportional share of the receipts from exploitation;
- where the means for verifying the calculation of a proportional share are lacking²⁶;
- where the expenses incurred in calculating and verifying proportional remuneration would be disproportionate to the results to be achieved;
- where the form of exploitation and the applicable terms and conditions would make it impossible to apply the proportional remuneration rule, either where the author's contribution is not one of the core elements in the intellectual creation of the work or where the use of the work is only incidental in the overall “property” being exploited.

24. Application of the Order of the Ministry of Culture and Communication dated 15 February 2007.

25. <http://www.sacd.fr> - Section: Contracts.

26. These first two situations are primarily cases in which the producer cannot separate out his receipts from exploitation under separate headings, e.g. when the work is exploited abroad.

As fixed-rate remuneration is not the norm for paying an author, it is important to explain in the rights assignment why it has been used.

Justifying fixed-rate remuneration requires:

- explicit reference in the contract to Article L.131-4 (2) of the Intellectual Property Code²⁷, and specifically to the paragraph that relates to the parties' circumstances;
- a description of the parties' factual circumstances that are causing them to opt for one or any of the cases in which fixed-rate remuneration is allowed.

THE GUARANTEED MINIMUM (GM), AN ADVANCE ON PROPORTIONAL REMUNERATION

The development, production and exploitation of a film is a process that takes a long time. An author writing a screenplay will sometimes have to wait several years before the first income starts flowing in and this needs to be taken into account. This is why, where the production budget allows, the producer may pay the author an advance or guaranteed minimum (GM).

The GM is a **non-refundable** advance on copyright royalties. This means that if the film generates little or no income, the author will not have to repay the GM, even if the producer does not cover expenses. If the film earns income, this will be first applied against recouping the GM paid to the author. Once the producer has recouped the GM, the author will receive royalties as defined in the rights assignment.

The GM should not be confused with a payment on account, an advance on income that is repayable to the producer.

The GM is freely set by the parties and depends on several criteria, including the experience and notoriety of the author, the genre of the work (movie, cartoon, etc.), and the production budget.

The GM payment terms are freely set by the parties, for example:

- in a one-off payment on signature of the contract;
- in instalments (generally, with the first payment on signature of the contract, the following instalments reflecting various delivery stages of intermediate versions of a screenplay and the last one at the date the film goes into production).

In practice, the GM may be the only remuneration an author receives for his work if it does not achieve the anticipated success.

Note that a guaranteed minimum is only customary (albeit very widespread) and not obligatory. Where a producer agrees to pay a guaranteed minimum, he must be sure that he can meet the instalments.

OTHER METHODS OF REMUNERATION

Where the contract already provides for percentage remuneration for the author, nothing prevents the parties providing for additional forms of financial consideration.

An exclusive rights premium

A premium for exclusivity and/or "bonus" calculated according to success in cinemas and/or additional remuneration once the costs of the film have been recouped in the form of a freely-defined percentage generally based on Producer's Net Receipts;

27. Article L.131-4 (2):

"However, the author's remuneration may be calculated as a fixed sum in the following cases:

- it is not practical to define a basis for paying the author a proportional share of the receipts from exploitation;*
- the means for verifying the calculation of a proportional share are lacking;*
- the expenses incurred in calculating and verifying proportional remuneration would be disproportionate to the results to be achieved;*
- where the form of exploitation and the applicable terms and conditions would make it impossible to apply the proportional remuneration rule, either where the author's contribution is not one of the core elements in the intellectual creation of the work or where the use of the work is only incidental in the overall "property" being exploited; (...)"*

Assignment without financial reward

An author may decide to assign one or more rights to exploit his work to a producer without requiring payment. This option, acknowledged in the Intellectual Property Code²⁸, stems from the parties' freedom to negotiate.

As all exploitation rights assigned by the author to the producer must be separately defined and listed in the rights assignment, as must any form of special remuneration, an assignment waiving any right to financial reward must be expressly provided for in the contract.

Express provision is all the more necessary and important since the courts require any clause assigning rights without payment to be totally unambiguous²⁹. It is therefore advisable for the contract to state the author's reasons for assigning rights without financial reward in clear terms.

Private copy levy

The law introduced remuneration for authors, producers and performers of works fixed on phonograms or videogrammes. This remuneration is awarded as financial consideration for the right granted to private individuals to record protected works, making copies for private use. It applies to all media on which works can be recorded by private individuals (VHS, DVD, CDR, hard drive). In practice, this "equitable remuneration" is paid by the manufacturers, importers and purchasers of blank recording media, who pass this cost on to consumers³⁰.

This private copying levy is partly allocated to efforts to assist in creation and broadcasting. 75% of the private copying levy is divided up between the different groups of rights holders.

For audiovisual private copying, the breakdown is the following:

- authors: 1/3
- performers: 1/3
- producers: 1/3

It is regularly stated in rights assignments that the author's share of the private copying levy remains fully vested in him.

Agents' remuneration

An author may be represented by an agent. In this case, the producer will, in addition to the author's remuneration, have to pay remuneration to the author's agent.

An agent's share of income is generally 10% of the author's remuneration.

ARTICLE 5: ACCOUNTING TO AND PAYING THE AUTHOR

Frequency of accounts

The producer has a duty to report and account to the author, **at least once a year**, on those forms of exploitation of the work that the producer is authorised to undertake.³¹ In practice, it is often stated that during the two first years, the producer will account to the author twice a year.

28. Article L.122-7 of the Intellectual Property Code.

29. See inter alia a ruling of the Paris Court of Appeal of 10 December 2004 in the L'Harmattan case.

30. The private copying levy is collected by two collection societies which are associated with SDRM: SORECOP, Société de perception de la rémunération pour la copie privée sonore (Private Sound Copy Royalty Collection Society), and COPIE-FRANCE.

31. Article L.132-28 of the Intellectual Property Code.

The rights assignment should provide for accounting periods and end dates and how soon they will be sent to the author. For example:

“Accounts will end annually on 31 December and the author will receive a statement of account within three months of this end date”.

Accounts statements

The law does not define in detail the accounts headings that should be included in the statement. However, the Intellectual Property Code does stipulate that the producer should supply the author with a statement of income earned **from each method of exploitation** of the work. All forms of exploitation by the producer should therefore be covered in sufficient detail and appropriate clarity.

The producer also has a duty to provide the author with all invoices and receipts to prove the accuracy of the accounts, including copies of the third party rights assignment and licensing agreements for all or some of the rights he holds.

In practice, it is generally provided in the rights assignment that the producer will keep separate books and records in relation to the film and that these will be available to the author for the purpose of auditing the producer’s accounts at the producer’s head office at any time, on working days and in working hours, on fifteen days’ notice.

Provision is also often made for the author to be assisted by an accountant or other advisor when he audits the producer’s accounts.

Where the author is also paid after the costs of the film have been recouped, the author must also be granted access to the film production accounts to verify whether the costs have been recouped.

Payment of royalties

It is generally provided that royalties will be paid directly to the author by cheque in his name, sent to the address cited in the headings of the rights assignment.

A statement should also be made that VAT will be applied to these payments at the rate applicable from time to time (currently 5.50%) and that pursuant to Article 285 bis of the General Tax Code (unless the author has expressly opted out of the mechanism for deduction at source provided for by this section – it being his duty to notify the producer that he has done so, if need be), 4.70% will be paid by the producer to the Treasury, and 0.80% to the author by virtue of his rights to fixed rate deduction.

Failure by the producer to honour his duty to account to the author

Remuneration must be paid for each form of exploitation covered by rights assigned by the author to the producer. The rules can be summarised as “no remuneration, no assignment”. This is true both when the rights assignment is being signed and when it is being performed.

For example, the author of a screenplay has consented to a producer adapting the work as a film and to reproduce it and exhibit it on DVD. The DVD of the film is marketed, the producer has already recouped the GM paid to the author but the author does not receive any royalties or other income based on DVD sales. If this is the case, the rights assignment under this heading from the author to the producer will be invalid. The producer and his distributor will therefore be guilty of a rights infringement in selling the DVDs.

In practice, the copyright assignment often provides that if the producer does not account to the author at the requisite date, the author will issue a letter or formal notice to the producer who will have fifteen days to reply, failing which the author will be entitled to terminate the rights assignment. Any failure to account will therefore expose the producer to the cancellation of the contract and the inability to exploit the film in the future.

ARTICLE 6: CREDITS AND PUBLICITY

This section of the contract deals with the acknowledgements to be included in the film credits (opening and closing credits) and on all the film's promotional materials. These acknowledgements are commonly referred to as the "credits".

The credits are important because they fulfil the author's moral rights, his right for his name to be associated with his work, his right of paternity and his right of disclosure of the work.

The parties need to agree how the author's name will be featured. The following acknowledgements may be used:

- if the author is the director of the film:
"A film by XXX"
- if the author wrote the screenplay/and or film dialogue:
"Screenplay and dialogue by XXX"³²

The contract must specify:

- where the author's name is to be stated;
- whether there is to be equal treatment for all co-authors;
- the font size to be used for the name or at least that it will be the same as for co-authors of comparable importance;
- whether the acknowledgement will appear in the opening or closing credits;
- if the credit is to be displayed in all the film's advertising and promotional materials and, as appropriate, those from which it is to be excluded;
- how other co-authors are to be acknowledged.

ARTICLE 7: CONSERVING COMPONENTS USED IN CREATING THE FILM

The duty to conserve the physical components used in the creation of the film (reel, negatives, internegatives, hard drives, etc.) and to define the terms and conditions for such conservation, are referred to in the Intellectual Property Code³³, which specifically prohibits destroying the master copy of the film³⁴.

As the producer is the assignee of the film exploitation rights, he is responsible for conserving these physical components. In practice, he will place these with a laboratory or licensed organisation.

The producer must tell the author where these elements are being stored.

ARTICLE 8: WARRANTY

The Intellectual Property Code provides that the author must offer the producer a warranty of quiet enjoyment of the rights assigned, i.e. that no one will challenge the content or value of the rights assigned by the author or the validity of the assignment. This clause is necessary to protect the producer who invests heavily in development and is then responsible for financing the film.

32. Inclusion in the credits is a recognition of paternity (a way for the author to make himself known to advance his career) a poor credit can upset the ego and possibly block the release of the film.

33. Article L.132-24 of the Intellectual Property Code.

34. Article L.121-5 (2) of the Intellectual Property Code.

Accordingly, the author generally warrants to the producer that:

- his work has not copied anything from other works protected by intellectual property rights (e.g. a book on which a film might be based);
- his work is not in breach the personal image rights, name rights or privacy rights of anyone who the film is about;
- he alone owns the rights in his work and has the legal capacity to assign them;
- he has not already assigned his rights in the work to another producer or third party and that he will not enter into such an assignment after signing the contract with the producer;
- no legal proceedings are pending or are about to be brought that may challenge or undermine the rights that the author is assigning to the producer.

A film may be an adaptation of a work that has itself already been adapted, for the theatre for example or may have been translated. It is not always possible to retrace the chain of the rights that the producer needs to secure in full. This is why it is advisable for producers to take out “errors and omissions” insurance.

ARTICLE 9: ONWARD ASSIGNMENT TO A THIRD PARTY

The producer owning the film exploitation rights may wish to assign those rights onwards to another company for catalogue management purposes.

The rights assignment may provide that in such a case, should notify the author. Provision needs to be made for how much notice should be given and in what form (generally a letter sent by recorded delivery [signed for] and that the producer will guarantee the author the payment of royalties by the rights holder³⁵.

ARTICLE 10: TECHNICAL PROTECTION MEASURES

The Law of 1 August 2006 introduced new provisions into the Intellectual Property Code to ensure the technical protection of works.

Rights assignments must now state that the producer is entitled to use effective technical measures (technology, scrambling systems, encryption, for example) to prevent or to restrict unauthorised use of the work. These technical protection measures are not allowed to prevent consumers exercising their right to make a copy of the work for private use.

The contract should also state the objectives for each form of exploitation and the circumstances under which the author may be allowed access to the essential features of these technical measures or the electronic data used by the producer in exploiting the work.

ARTICLE 11: TERMINATION CLAUSE

The parties, especially the producer, need to make provision for the circumstances in which the contract may be terminated.

It is generally provided that where either party is in breach of any of its obligations, the other party will give formal notice of the breach (by recorded delivery mail [signed for] requiring that the breach be remedied within a given period (generally fifteen days), failing which the contract will be terminated.

35. As was indicated in the accounting section (Article 5), the producer will send the author a copy of the onward assignment.

For the producer, termination means that he will no longer own the author's copyright in, for example, a screenplay or dialogues, completely preventing him from exploiting the film. If the contract is terminated due to the misconduct of the producer, this will cause injury not only to the producer but also all other "authors" of the film, and the distributor, who may in turn hold the producer legally accountable.

Whether or not termination is automatic varies from contract to contract. Accordingly, where the parties are not in agreement on termination, a legal action may be brought "on the merits"³⁶. It may also be the case that where the party in breach fails to remedy that breach within the relevant timescale, termination may be automatic and the parties might only apply to the summary hearings judge for confirmation³⁷. The parties should therefore be vigilant as to the terms and conditions of termination defined in the rights assignment.

ARTICLE 12: REGISTRATION WITH THE FILMS AND ANIMATED PICTURES REGISTRY

A contract for the assignment of an author's rights for a feature film needs to be filed for registration with the Films and Animated Pictures Registry (RCA).

The rights assignment must be drawn up in as many original copies as there are signatories, plus a copy for filing with the RCA. The producer usually handles registration.

ARTICLE 13: DISPUTES, APPLICABLE LAW AND MEDIATION

Finally, the contract will state how the parties will settle any dispute that may arise between them. It is desirable to provide for an obligation for the parties to meet initially to try to find an amicable solution. Not only does this avoid the expense of legal proceedings but is also much faster than going through the courts which takes time. It is preferable to provide for time limits in the contract by which the producer and author should meet and react to each other in their quest for a solution.

Provision can also be made for mediation, using mediator from an organisation such as the Paris Mediation and Arbitration Centre (CMAP).

The following clause may therefore be inserted into the contract:

"Any disputes arising regarding the execution, non-performance, validity, interpretation, interruption or termination of this contract shall be referred for settlement by mediation to which the parties agree.

It is agreed that within 72 hours of the commencement of the dispute, either party may apply to CMAP in for a mediator to be appointed.

In the case of mediation or arbitration, without a referral to CMAP within the aforementioned period, a CMAP mediator will be appointed by order of the President of the Paris Commercial Court, ruling in summary proceedings pursuant to an application for such an order by the first party to take action."

Where no amicable settlement has been reached, this section states that the parties will apply to the court of competent jurisdiction, as a rule the District Court (*Tribunal de Grande Instance*) for the district in which the defendant is domiciled.

36. "Standard track" litigation before the courts can take twelve to eighteen months at first instance.

37. Terminating a rights assignment is a major decision: it can have serious financial consequences for the producer who will have invested significant amounts. This is why judges examine the parties' relationship as a whole and take any tolerance of breaches of contract on both sides into account.

Finally, it is necessary to specify the law applicable to the contract, it being understood that the rules set out in this chapter are those of French law.

Nevertheless, the parties may decide to subject the contract to the law of another country, e.g. a Bangui Agreement Signatory State. In this case, it will be advisable to draft some of the contractual terms and conditions in accordance with the law of the chosen country. This is why to guarantee a user of this Guide the possibility of choice in terms of applicable law that the summary sheets of relevant legal rules have been included in chapter 4.

The contract ends with:

- a statement of the place where it was signed and the date;
- the number of original copies of the contract drawn up and signed;
- the parties' signatures.

The following appendices will be attached to the rights assignment agreement. They embody the provisions introduced by the Ministerial Order of 7 February 2011, issued pursuant to Article L. 132-25 of the Intellectual Property Code, extending the Agreement of 16 December 2010 concerning Transparency in the Film Industry.

These appendices define the producer's share of net receipts, the cost of a film and the terms and conditions for recouping film costs.

DEFINITION OF PRODUCER'S NET RECEIPTS

The parties hereto agree to apply and abide by the terms of the Ministerial Order of 7 February 2011, issued pursuant to Article L. 132-25 of the Intellectual Property Code, extending the Agreement of 16 December 2010 concerning Transparency in the Film Industry.

The term "Producer's Net Receipts" is understood, in general terms, as meaning all proceeds, excluding taxes, regardless of their nature or source, received and collected from exploitation of the Film, and all or some of its constituent parts, throughout the world, in all formats, in all languages, under any title, by any method, means or procedure now known or yet to be discovered, less the commissions referred to below and only those duly substantiated expenses incurred in connection with exploitation which are ultimately borne by the Producer.

Advance sales, royalty advances and guaranteed minima will be fully accounted for as part of the Producer's Net Receipts.

The term "Producer's Net Receipts" is interpreted, in detail, as meaning the following.

EXPLOITATION IN FRANCE

CINEMA EXPLOITATION

In commercial sector film theatres

Producer's Net Receipts are the proceeds effectively paid by film theatres for the right to exhibit the Film in cinemas in the commercial sector, less:

- distribution commission at the rate actually charged by the distributor, not exceeding 25% of the distributor's gross receipts where there is no guaranteed minimum, and not exceeding 35% where the distributor has paid a guaranteed minimum;
- the share of receipts allocated to a short film, the price or percentage of which will be set according to industry practice, provided the short film is not supplied by the Producer, in which case the receipts will be those of the full programme;
- advertising costs for the launch and support on the first exclusive release of the Film in France and on any re-releases;
- the cost of copies of the Film and trailer, digital distribution costs (virtual print fees, KDM, etc.), provided that cost is contractually borne by the Producer, and VAT on the copies if such VAT is non-recoverable;
- turnover tax payable by the Producer, calculated on the "distributor's receipts" earned by the feature film or full programme, as the case may be;

- the contribution due to the National Centre for Cinema and Animated Pictures (CNC) with respect to the exploitation of the Film in the relevant territories;
- legal and other costs incurred in connection with exploiting the Film;
- all other expenses paid by the Producer, substantiated by receipts and vouchers, provided these are usual expenses, in line with standard distribution practice and associated, *inter alia*, with technical or economic developments specific to the said exploitation.

In the non-commercial sector

Producer's Net Receipts are the proceeds, excluding taxes, collected by the Producer (or paid to a third party such as a bank or credit institution on the authority of, or pursuant to an assignment by, the Producer) or any person acting in place and on behalf of the Producer in negotiating the Film exploitation rights in the non-commercial sector, less, where appropriate and duly substantiated, the following expenses, excluding taxes:

- distribution commission at the rate actually charged by the distributor, not exceeding 30%;
- the cost of the copies required for exhibition provided that cost is contractually borne by the Producer;
- contributions payable to the CNC with respect to the exploitation of the Film;
- all other expenses paid by the Producer, substantiated by receipts and vouchers, provided these are usual expenses, in line with standard distribution practice and associated, *inter alia*, with technical or economic developments specific to the said exploitation.

VIDEOGRAMS FOR PRIVATE USE BY THE PUBLIC

Producer's Net Receipts, as defined below, are not the proper basis for calculating the percentage payable for such exploitation in France because, pursuant to Article L.132-25 (2) of the Intellectual Property Code, the Author receives remuneration as a percentage of the price paid by the public. However, this definition will apply, where appropriate, in calculating Film cost recoupment and in calculating additional remuneration once Film costs have been recouped.

Producer's Net Receipts are the proceeds, excluding taxes, collected by the Producer (or paid to a third party such as a bank or credit institution on the authority of, or pursuant to an assignment by, the Producer) or any person (hereinafter the "Sales Agent") acting in place and on behalf of the Producer in negotiating Film exploitation rights with a purchaser in respect of videograms for sale or rental for private use by the public, less, where appropriate and duly substantiated, the following expenses, excluding taxes:

- commission on sales of the said rights to a purchaser at the rate actually charged by the Sales Agent, but not exceeding 15%; no commission will be levied on advances or guaranteed minima paid by the rights purchaser or licensee, used in funding the film or any additional advances or guaranteed minima paid at a later date; sales commission will be levied by the Producer if no Sales Agent is appointed;
- the cost of copies required for the transfer of the Film onto video or other media or for duplication, the costs of producing any bonuses made for exploitation purposes and all items required by the publisher, provided these costs are contractually borne by the Producer;
- royalties due to SDRM (Mechanical Rights Society) if they are to be paid directly to the society by the Producer;
- contributions payable to the CNC with respect to exploitation of the Film;
- all other expenses paid by the Producer, substantiated by receipts and vouchers, provided these are usual expenses, in line with standard distribution practice and associated, *inter alia*, with technical or economic developments specific to the said exploitation.

It is hereby stated that:

- where payments are made to the Producer by the video publisher of the Film in the form of royalties, “Producer’s Net Receipts” will be the amount of the royalties, excluding taxes, collected by the Producer or its Sales Agent, less, where applicable and duly substantiated, the aforementioned costs and expenses, but only where they are the Producer’s and not the publisher’s liability. The Producer’s or its Sales Agent’s sales commission will only be payable once the film has entered the so-called “catalogue” stage, i.e. once the initial video publishing agreement has expired;
- no sales commission will be levied where the video publisher is the Producer or a member of the Producer’s corporate group.

SINGLE VIEW VIDEO ON DEMAND OR PAY-PER-VIEW

Producer’s Net Receipts are the proceeds, excluding taxes, collected by the Producer (or paid to a third party such as a bank or credit institution on the authority of, or pursuant to an assignment by, the Producer) or any person acting in place and on behalf of the Producer in negotiating Film exploitation rights in respect of pay-per-view and video on demand, less, where appropriate and duly substantiated, the following expenses, excluding taxes:

- sales commission at a rate not exceeding:
 - 30% up to 100,000 euros of net turnover, excluding taxes, collected by the Producer or any person negotiating in its place and on its behalf (hereinafter the “Net Turnover, excluding VAT”);
 - 20% between 100,001 and 200,000 euros of Net Turnover, excluding VAT;
 - 15% between 200,001 and 300,000 euros Net Turnover, excluding VAT; in excess of 300,001 euros, commission will not be payable on a diminishing scale, as above, but will be at a fixed rate of 15%, applicable from the first euro of Net Turnover, excluding VAT;

Where no agent has been appointed, commission will be levied by the Producer:

- the cost of technical and publicity materials supplied to VOD and PPV service providers, and advertising and promotional costs, if such costs are contractually borne by the Producer;
- contributions payable to the CNC with respect to exploitation of the Film;
- all other expenses paid by the Producer, substantiated by receipts and vouchers, provided these are usual expenses, in line with standard distribution practice and associated, *inter alia*, with technical or economic developments specific to the said exploitation.

It is hereby stated that:

- no sales commission will be levied where the pay-per-view or video on demand service provider is the Producer or a member of the Producer’s corporate group;
- no commission will be levied on advances or guaranteed minima paid by the agent and used in financing the film.

TELEVISION BROADCASTING

“Producer’s Net Receipts” are the proceeds, excluding taxes, actually paid by each television service (terrestrial, cable, satellite, etc.) in purchasing broadcasting rights in the Film, less, where appropriate and duly substantiated, the following expenses, excluding taxes:

- sales commission at a rate not exceeding:
 - 15% for sales at a tax-exclusive price not exceeding €50,000 and for “catch up TV”;
 - 10% for all other sales.

No commission will be levied on proceeds from sales used to finance the Film or on any supplements paid at a later date, such as the Canal + supplement. A commission of 15% for sales at a tax-exclusive price not exceeding €50,000 and for “catch up TV”, and 10% for all other sales, will be levied by the Producer where no agent has been appointed.

- The cost of the copies required for exploitation and all other items requested by the television services, where that cost is contractually borne by the Producer;
- contributions payable to the CNC with respect to exploitation of the Film;
- all other expenses paid by the Producer, substantiated by receipts and vouchers, provided these are usual expenses, in line with standard distribution practice and associated, *inter alia*, with technical or economic developments specific to the said exploitation.

Where the Producer grants a “global” licence of the television broadcasting rights in the Film for a defined term and where that licence, in agreement with the Producer, attributes liability for remunerating the Author to the licensee, with a right for the licensee to deal on its own account with television services in France and/or all or some of the French-speaking countries, it will be the Producer’s liability to ensure that its licensee has accepted liability for payment of the Author’s remuneration, as defined above.

SUBSCRIPTION VIDEO ON DEMAND

Producer’s Net Receipts are the proceeds, excluding taxes, collected by the Producer (or paid to a third party such as a bank or credit institution on the authority of, or pursuant to an assignment by, the Producer) or any person acting in place and on behalf of the Producer in negotiating Film exploitation rights in respect of subscription video on demand, less, where appropriate and duly substantiated, the following expenses, excluding taxes:

- sales commission at a rate not exceeding:
 - 30% up to 100,000 euros of net turnover, excluding taxes, collected by the Producer or any person negotiating in its place and on its behalf (hereinafter the “Net Turnover, excluding VAT”);
 - 20% between 100,001 and 200,000 euros of Net Turnover, excluding VAT;
 - 15% between 200,001 and 300,000 euros Net Turnover, excluding VAT; in excess of 300,001 euros, commission will not be payable on a diminishing scale, as above, but will be at a fixed rate of 15%, applicable from the first euro of Net Turnover, excluding VAT;

Where no agent has been appointed, commission will be levied by the Producer.

- the cost of technical and publicity materials supplied to subscription VOD service providers, and advertising and promotional costs, if such costs are contractually borne by the Producer;
- contributions payable to the CNC with respect to exploitation of the Film;
- all other expenses paid by the Producer, substantiated by receipts and vouchers, provided these are usual expenses, in line with standard distribution practice and associated, *inter alia*, with technical or economic developments specific to the said exploitation.

It is hereby stated that:

- no sales commission will be levied where the subscription video on demand service provider is the Producer or a member of the Producer’s corporate group;
- no commission will be levied on advances or guaranteed minima paid by the agent and used in funding the film.

EXPLOITATION ABROAD

FIXED PRICE AND/OR PERCENTAGE SALES

Producer's Net Receipts are the proceeds, excluding taxes, actually paid by purchasers or distributors based abroad to the Producer (or paid to a third party such as a bank or credit institution on the authority of, or pursuant to an assignment by, the Producer) or any person acting in place and on behalf of the Producer in negotiating Film exploitation rights, whether fixed fee, advance and/or guaranteed minimum, and any proceeds paid by distributors in excess of the said advances and guaranteed minima, less:

- commission to a sales agent operating abroad at a rate not exceeding 25%, including sub-commission; the Producer will levy a 25% commission where no agent has been appointed;
- the cost, excluding VAT, of copies, duplicates and sub-titling, publicity materials required for the exploitation of the Film in the licensed territories, customs duties, copy shipping costs, materials and miscellaneous expenses, including costs incurred in promoting the Film abroad, insurance for errors or omissions, substantiated by vouchers or receipts, provided such costs are ultimately borne by the Producer;
- contributions payable to the CNC with respect to exploitation of the Film;
- the royalties due to SACEM (Authors, Composers and Music Publishers Society) and any other authors' or artists' rights and royalty collection societies in non-contracting countries where they are not paid by the exploiting party;
- all other expenses paid by the Producer, substantiated by receipts and vouchers, provided these are usual expenses, in line with standard distribution practice and associated, *inter alia*, with technical or economic developments specific to the said exploitation.

FRENCH-FOREIGN COPRODUCTION

If the Film is a French-foreign co-production, the foreign co-producer's financial contribution (and any supplementary revenues paid to the Producer) will be deemed flat rate Producer's Net Receipts for countries in which the exploitation rights belong exclusively to the foreign co-producer under international co-production agreements, as will that portion of receipts payable to the foreign co-producer in territories in which it is not the exclusive rights holder but which are shared between the co-producers under co-production agreements.

Accordingly, receipts earned from exploitation in the reserved and shared territories, attributed to the foreign co-producer will not be counted for the purposes hereof. For example, if the foreign co-producer is granted a 30% share of receipts in the rest of the world (excluding reserved territories), only the remaining 70% will be counted as Producers Net Receipts.

OTHER FORMS OF EXPLOITATION IN ALL COUNTRIES (EXCLUDING MUSIC)

Producer's Net Receipts are the proceeds, excluding taxes, collected by the Producer (or paid to a third party such as a bank or credit institution on the authority of, or pursuant to an assignment by, the Producer) and/or any person or company acting in place and on behalf of the Producer in negotiating other exploitation rights of the Film and all secondary and derivative forms of exploitation (excluding remakes, prequels, sequels, spin-offs and merchandising), less any sales or distribution commissions, up to a limit of 20%, and expenses duly substantiated by receipts and vouchers incurred in respect of

such forms of exploitation which are ultimately borne by the Producer and remunerations payable to rights holders in respect of these specific forms of exploitation, where applicable.

A 20% commission will be levied by the Producer if no agent has been appointed.

FILM MUSIC IN ALL COUNTRIES

All proceeds, excluding taxes, collected by the Producer (or paid to a third party such as a bank or credit institution on the authority of, or pursuant to an assignment by, the Producer) and/or any person or company acting in place and on behalf of the Producer in negotiating the aforementioned Film exploitation rights with respect to musical works featured in the Film (*SACEM/SDRM* rights) and the rights in any associated recordings (phonographic royalties, neighbouring rights and all secondary uses) will be deemed Producer's Net Receipts, less any sales or distribution commissions, up to a limit of 20%, and expenses duly substantiated by receipts and vouchers incurred in respect of such forms of exploitation which are ultimately borne by the Producer and remunerations payable to rights holders in respect of these specific forms of exploitation, where applicable.

A 20% commission will be levied by the Producer if no agent has been appointed.

It is hereby specified that these proceeds include both those received by the Producer as owner of the recordings and those paid to the Producer by third party rights owners in the compositions and/or recordings.

Where relevant, it is hereby stated that:

- the exploitation expenses referred to in this section are understood as being net of any discounts, rebates, reductions, credits and other financial advantages granted by suppliers and other service providers to the Producer in relation to the Film;
- in compliance with the terms and conditions set out in Appendix 3, Article 1, paragraph 5, any profit earned from merchandise exchanges, partnerships and sponsorship arrangements must be reflected in the operating accounts for inclusion in the final financial statements.

The co-production contract



The co-production contract is the second type of contract that a producer will have to deal with. It is through co-production (joint venture) contracts that partnerships between producers take shape.

There are several ways of getting involved with the production of a film or television programme.

It may be just a financial association, the partner's involvement being limited to investing funds in the project of a producer who is creative but lacks sufficient financial means. It will be in this producer's interest to recoup his investment as quickly as possible.

The association may also involve the producer expecting executive production services from his co-production partner in exchange for a co-production share (i.e. a right to a share in receipts earned from exploiting the film and/or ownership shares in the film). However, co-production agreements most often reflect a true partnership, a combination of complementary skills and expertise.

This is the type of co-production contract that we propose to look at below.

PRELIMINARY REMARKS

FORMALIZING THE CO-OPERATION BETWEEN CO-PRODUCERS

A co-production contract is an agreement that formalizes the decision to collaborate in the production, manufacture and exploitation of an audiovisual work or film between the producing partners, the co-producers.

More than two co-producers can sign the same contract³⁸; a co-production contract can be combined with another and be part of a chain of contracts and rights.

When contracting with a partner, each producer will bring skills, money, rights, etc. to the co-production.

The co-produced audiovisual work or film will be an indivisible joint property according to the sharing terms and conditions set forth in the contract between the co-producers signing the relevant co-production contract.

ESTABLISHING THE RULES OF THE GAME

It is essential for the co-production contract to be preceded by the detailed negotiation of its various aspects between the co-producers, so that the terms and conditions for how the arrangements will operate between the co-producers are defined as comprehensively as possible.

38. However, the Film Industry Code provides that there can be no more than two executive producers on the same film – Article 6 of Decree No. 99-130 of 24 February 1999.

These details are all the more important because the parties will be bound to each other for the possible term of the exploitation of a film that can be to 70 years after the death of its “authors” (based on the legal term of copyright under French law) and for life under American law.

It is essential that there is no misunderstanding, nothing that has not been covered.

UNDERSTANDING WHAT A CO-PRODUCTION CONTRACT REPRESENTS IN LEGAL TERMS

The joint venture is an entity with no legal personality, created on an ad hoc basis to achieve a stated purpose.

The joint venture can be defined in a contract.

A joint venture agreement needs to state the relevant shares in terms of contributions to capital, a share in the losses and *affectio societatis* i.e. an intention of those involved (the contracting parties) to associate with the intention of completing their project.

A co-production agreement that satisfies these criteria will be legally viewed as a joint venture.

The executive producer will be the “manager” of the joint venture. He will be responsible to his partners, the other co-producers, for the success of the production of the audiovisual work. He will act for and on behalf of the other co-producers.

The joint venture which is the expression of the terms and conditions of the agreement between co-producers will not be concealed, especially in film production since the Film Industry Code (Article L. 122-2) requires agreements relating to films to be entered in the Films and Animated Pictures Register (RCA).

Registration of television productions is not obligatory but is nevertheless advisable.

Creditors, who are third parties to the contract, will be aware of the existence and terms and conditions of the co-production contract. They will be able to take rely on the passive joint and several liability between the co-producers and therefore claim payment of any debt owed to them from any one of the co-producers bound under a same contract.

Affording a co-production contract a specific legal classification makes it possible, in case of difficulty in construing the clauses of the contract or when a given situation arises between two co-producers in the course of film production that was not fully anticipated in the contract, to find a solution according to the legislation and case law on joint ventures.

If, in practice, the phrase *“this contract may not be deemed as forming a joint venture between the parties”* is often found in co-production contracts, this is merely a stylistic provision that will not stand up to legal scrutiny. In the majority of cases, a co-production contract is undoubtedly a joint venture.

THE CLAUSES OF THE CO-PRODUCTION CONTRACT

RECITALS

The **recitals** are an important component of the contract since they “set the scene” prevailing when the parties entered into the co-production contract.

The parties retrace the history of the partnership in the recitals: who they are, who bought the first rights, who engaged in the artistic development of the project, who sought and obtained the initial funding, which steps have already been taken, etc.

The recitals should only set out accurate facts. Once the contract is signed, these facts are ratified by the parties and it will then be very difficult, in case of disagreement, to convince a court that this endorsed version of the facts was not reality.

The parties’ intentions indicated in the recitals offers an insight into the circumstances of the agreement and therefore clarifies the terms and conditions of the contract.

This important introduction often follows the heading:

“Whereas”

ARTICLE 1 : PURPOSE

As for any contract, the aims of the contract need to be defined under this heading **purpose of the contract**.

The purpose of the co-production contract is to define the terms and conditions defining the production and exploitation of a work.

This section will set out a description of the work:

- provisional or final title of the work;
- genre of the work (feature film, TV film, fiction series, documentary, etc.);
- length of the work;
- technical process;
- name of the scriptwriter(s);
- name of the director.

This description of the work should only include facts that are not likely to change to avoid a producer dishonestly using the pretext of a change of any of these facts as a reason for withdrawing from the contract.

If a partner insists that no such changes can be allowed, there will need to be a statement that all of the details cited are fundamental and essential without which the party in question would not have agreed to enter into the contract.

ARTICLE 2: **TERM**

The term of the contract should be stated. The contract will then qualify as a fixed-term contract which cannot be terminated at the convenience of one of the parties.

The fixed-term contract will be performed until the expiry of its term unless a party fails to respect his obligations. If this is the case, the contract will be terminated for breach.

The standard term of a co-production contract is the duration required for the production and exploitation of the work for as long as the co-producers own the copyright.

Accordingly, if the copyright assignment is for 30 years, this term of the co-production agreement will be 30 years; if it is for the full legal term of copyright, this will be the duration of the partnership between the co-producers.

It should be stated indicated that the term of the partnership includes possible extensions of copyright.

ARTICLE 3: **OWNERSHIP OF TANGIBLE AND INTANGIBLE PROPERTY**

All intangible property assets (acquired or to be acquired) and tangible property assets (all physical assets, negatives, rushes, etc.) will be the joint and indivisible property of the two parties in stated shares:

– *producer X* : ----%

– *producer Y* : ----%

ARTICLE 4: **CONTRIBUTIONS**

The purpose of this section is to define each party's contributions as precisely and comprehensibly as possible.

The following list sets out examples of contributions:

- contribution of copyright and its possible economic development;
- cash contributions;
- signed contracts or contracts awaiting signature contributed to the joint property of the co-production;
- guaranteed minima under such or such contract;
- procedures completed;
- applications filed;
- services provided;
- casting (promise of a leading actor);
- know-how in audiovisual or film production.

Where contributions are pursuant to copyright assignments, it is prudent for the other co-producer to request disclosure of those contracts to verify that the rights are real, their value (to verify, for example, that an option has not lapsed, that a contract is not about to be terminated). It may be useful to verify that the due dates for payments to the author have been duly honoured.

ARTICLE 5: **EXECUTIVE PRODUCER**

This section defines who the executive producer is to be. He will be the decision-maker, negotiating partner with third parties, co-production representative responsible for the success of the jointly produced work.

The executive producer is usually a majority holder.

Joint executive production is possible although limited to a maximum of two executive producers for the production of a film.

In this case, it will be important to define with the utmost precision the responsibilities of each co-producer.

Producer X will be executive co-producer and in this role shall make decisions in the following areas:

-
-
-

Producer Y will be executive co-producer and in this role shall make decisions in the following areas:

-
-
-

For example, according to the skills and expertise of each, tasks involving accounting, funding and economic considerations can be assigned to producer X, while tasks of an artistic nature, overseeing production can be assigned to producer Y.

The contract may include common areas. If so, it is advisable to specify a solution in case of disagreement, in particular which producer will have the final say to avoid deadlocks.

The executive producer's remuneration will also be defined, if this item is included in the costs estimate, as will the rules for sharing income in the case of an executive co-production.

ARTICLE 6: **LINE PRODUCER**

One of the co-producers may assume responsibility for line production, i.e. the actual production of the work or film. The contract will then state:

"Producer Y will assume the role of line producer"

and will set out contractual provisions relevant to a line producer in this section:

- responsibilities of a line producer: preparations for shooting, managing files, maintaining expenditure accounts, preparing estimates, arranging contracts, defining a work schedule, signing contracts on behalf of the co-production, etc.;
- line producer's remuneration;
- terms and conditions for reporting regularly to the other co-producer on progress in production, the form of reports can even be defined in an appendix to the co-production contract.

On the basis of the provisions contained in this section, the co-producers will be able to decide whether to draft a separate and more comprehensive line production contract. The co-producers can also entrust line production to a third party.

ARTICLE 7: **PRODUCTION COSTS**

This section deals with the terms and conditions for defining costs, the items that are included in production costs (not forgetting the executive producers' remuneration, the percentage of general expenses or overheads - usually 7% of the cost -, the percentage for contingencies, legal costs) and the liability of one or other of the producers if these costs exceed the projections.

There are two options in relation to production costs:

- at the time the co-production contract is signed, the estimate may already have been drawn up; in this case, the clause should read *"the production cost estimate has been drawn up and is*

attached to this co-production contract as an appendix". When the parties sign the co-production contract, they will also validate this appendix. The production cost estimate will be authoritative and binding on them and may not be amended without their joint agreement; or

- the estimate has not yet been drawn up at the time of the co-production contract is signed; this section will then state on what terms and conditions it is to be produced, subject to ratification by the other co-producer. In this case, all the production cost headings need to be identified in this section (from the cost of acquiring relevant rights to the cost of producing the final version of the film).

Finally, the section needs to cover what happens in the event of a cost overspend: either liability for the overrun needs to be shared on the same basis as each producer's share of production profits or covered by just one of the co-producers, who may then expect to see his share of receipts increased in proportion to the amount of the excess costs covered.

ARTICLE 8: **SHARING OF INCOME AND SAVINGS**

The purpose of the co-production contract is also to define how receipts from exploiting the audiovisual work or film will be shared between co-producers.

Receipts will be the proceeds earned from exploiting the audiovisual work or film, after all the partners who have contributed to funding have been repaid.

Receipts are generally applied to cover production costs not covered by the financing. The co-producers will then be paid after all those contributing to funding the television programme or film have been paid.

The section may provide for the apportionment of possible savings made during the production of the television programme or film.

The percentages of income (and of savings) of each of the co-producers often precisely reflect their percentage share in the rights.

For example, if the co-producers own 50/50 shares in the rights, their share of receipts will very often reflect this apportionment. However, this is not a mandatory rule.

Various receipt apportionment, cost repayment and recoupment formulas are possible as between the co-producers.

"One co-producer may be paid in preference over the other by being granted 100% of receipts until a defined income threshold is reached, allowing the other co-producer all receipts thereafter with no ceiling."

In each case, such terms are negotiated by mutual agreement for each co-producer.

In this section, there may be provision for sharing the support account where the two co-producers are executive co-producers.

ARTICLE 9: **FINANCING**

This section will define the provisional funding plan and all the intended source of financing.

These sources of funding may include subsidies and grants, producer's support account investment, tax credits, advance sales to television channels, capital contributions from other co-producers, distributors' guaranteed minima (or advances), grants from SOFICA (Society for the Financing of the Film and Television Industry), etc.

The financing will be managed by the two co-producers.

It may be provided that the sharing of the rights to the tangible and intangible assets and rights to receipts will be calculated in accordance with the contribution to financing.

Each party's share in expenditure funding will also need to be provided for as follows:

"Producer X will contribute €-----or-----% to the financing of expenditure, producer Y will contribute €-----or-----% to the financing of expenditure.

Each producer agrees to respond within 48 hours to any calls for funds made to him."

Another possibility is to provide for a payment schedule with late payment penalties in the event of non-compliance.

ARTICLE 10: **BANK ACCOUNT**

This section provides for the opening of a joint bank account by the two co-producers in the name of the television programme or film to be produced.

All amounts to be spent on the production of the film will be paid into this account.

If there is just one executive producer, he will operate the account (spending / deposits). In this case, it would be advisable for the other co-producer to specify that the executive producer should report to him regularly on the state of the accounts (weekly, fortnightly...), and allow him to question the bank directly on this subject.

If the two producers are executive co-producers, access to accounting information will be joint.

ARTICLE 11 : **MUSIC**

Specific provisions relating to any music need to be set out in the co-production contract. If, for example, original music has been commissioned, the name of the music publisher needs to be stipulated.

Music publisher's status earns specific receipts in terms of exploitation arising from the publication of the music.

The producers may be co-publishers of the music, in which case the apportionment of proceeds from the music needs to be defined.

ARTICLE 12: **CREDITS AND PUBLICITY**

The manner in which the producers are to be featured in the opening and/or closing credits of the film and in all advertising and promotional materials for the film needs to be spelled out.

In the event of a discrepancy imbalance between the final credits and the credits clause in the contract, the latter will prevail.

The order of presentation of the co-producers will be as follows:

*"Producer X and producer Y present
a film by....."*

Or vice versa.

The majority share producer is often credited first.

The name of the director of the executive production company sometimes appears even before the credits for the production companies:

*“Mr Z presents
A film by
co-production: producer X –producer Y”*

ARTICLE 13: **INVOLVEMENT OF A THIRD PARTY**

It may happen that another partner joins the initial co-producers, also as a co-producer. It is then necessary to provide for the share of receipts to be apportioned to this new partner.

This partner may either absorb an equal percentage of each co-producer’s share and the apportionment between the initial producers X and Y will remain unchanged.

It may be that one of the co-producers brings the new co-producer to the co-production (to help him complete his financial contribution to the film). In this case, the share granted to the new partner will only be taken from the previous share of one of the co-producers.

The terms and conditions for the approval of such a new partner by the other co-producer must also be defined: prior approval or assignment of the agreement already signed on condition that this agreement respects the rights acquired by the other co-producer.

ARTICLE 14: **INSURANCE**

Insuring the audiovisual work or film is mandatory.

This section will therefore state the need to take out *“insurance to cover all the production, pre-production and post-production risks (civil liability, loss or damage of the negative, equipment, etc.)”*

The executive producer must provide a certificate of insurance with an approved company.

The insurance policy must provide that *“in case of partial or total loss, the compensation due to the company will be paid into the film account to be used exclusively for production purposes and to complete the film.”*

“Errors or omissions” insurance may be taken out if the subject of the work or film lends itself to such insurance (biography, news or crime story treated in fictional form, etc.).

This insurance covers everything involving infringement of intellectual property.

Finally, if the production risk is significant (major film, existing risk in terms of the director’s state of health, requirement of a financial institution, etc.), the parties may take out special insurance: a completion bond, the significant cost of which must be included in the film cost estimate.

ARTICLE 15: **EXPLOITATION**

The co-production contract will always state the terms and conditions for marketing the work or film. The purpose of the parties’ co-production obviously includes the exploitation of the work.

Either one of the producers, who is also a distributor and/or international seller, will handle marketing.

A number of different options are possible:

- In this case, the terms and conditions of the future contract/distribution mandate between the co-production and the producer in his role as distributor and/or international salesman will be included in the co-production contract. The scope of the distribution mandate in France and the mandate for marketing in the rest of the world will need to be defined.

Or the parties agree to engage a specialist third party, chosen by mutual agreement, to handle marketing.

- In this case, it should be stated that the choice should be ratified by both parties who will have to co-sign the distribution and international sales agreements. This will compel the producer introducing a third party distributor to keep his co-producer fully informed as regards the various stages of negotiation.

If need be, a guaranteed minimum may be specified as payable to the co-production.

For example:

“Under his mandate to market the film worldwide, the distributor will pay the co-production a guaranteed minimum of ----- € on account of the receipts from exploitation earned in this territory. The guaranteed minimum will be paid in the following instalments”

This clause should also state the commissions to be paid to the international distributor/seller of the work or film on sales per medium and per type of exploitation.

For example:

“Distribution of the film in cinemas in France: from the 1st Euro, --% gross receipts from the commercial sector.

Video exploitation in France: from the 1st Euro, --% of collected turnover, excluding taxes.

VOD in France: from the 1st Euro, ---% of gross receipts

World mandate: on gross receipts from exploitation worldwide, outside France: ---% of gross income.”

A ceiling may also be applied to expenses incurred in exploitation.

A more detailed contract will then need to be drawn up between the executive co-producers or the executive producer and the producer acting as distributor. This contract should reflect precisely what has been provided for in the co-production contract.

ARTICLE 16: **ACCOUNTING**

This clause will enable the producer who is less involved in production to receive regular information about the film's accounting.

There may be two phases:

- first phase: production accounting;
- second phase: exploitation accounting.

“During the first phase, the producer will receive fortnightly from the executive producer a production accounts statement, a cash statement and a ongoing updated balance. He will also have the right to verify all receipts, invoices and supporting documents.

During the second phase, the executive producer will provide the producer with a statement regarding the marketing of the work and the film once a year on the anniversary date of this contract and on first demand. The exploitation accounts will clearly show receipts from exploitation, receipts actually collected and the up-to-date exploitation expenses. The executive producer will also have the right to verify all receipts, invoices and supporting documents.

In general, the production and exploitation accounts will be made available for consultation by producer Y who will the right to see on 8 days' notice at the offices of producer X on working days and in office hours."

ARTICLE 17: **ASSIGNMENT OF THE CONTRACT**

The co-production contract can provide for the possibility for one of the co-producers to assign his share of the co-production to a third party of his choice.

The contract will define the relevant terms and conditions. There are several possibilities:

- right of first refusal: the assigning producer agrees to offer his co-producer the right of first refusal to buy out his share;
- a straightforward right of substitution: the assigning producer will merely notify his co-producer of the substitution;
- right of priority of the other co-producer to buy out his counterpart where a third party makes an offer to purchase;
- prohibition on assigning a share without the prior consent of the co-producer.

For each eventuality, time limits for the offer and reply need to be provided for in the contract.

Regardless of the circumstances, it should be stated that if a co-producer decides to assign his share, he will remain jointly and severally liable to his co-producer with the third party buyer as regards honouring his contractual obligations.

ARTICLE 18: **DEFAULT BY A PRODUCER**

A breach by a producer in performing and honouring the terms and conditions of the contract may incur several types of consequences that may even go as far as the termination of the contract.

In the case of a breach by one of the co-producers in performing his co-production financing or general obligations that delays the making of the film, the other co-producer may:

- either replace the defaulting co-producer himself or with a third party of his choice, after issuing notice requiring him to comply with his obligations or to remedy his breach, served by recorded delivery mail (signed for) which has elicited no positive response in the 15 days following service, without prejudice to any damages that may be awarded.

The defaulting co-producer's rights may be reattributed either in total or pro rata to those replacing him.

For example:

"Accordingly, all the defaulting co-producer's intangible and tangible rights, entitlement to receipts and to the support account deposits will vest in the non-defaulting co-producer or third party replacement"; or

- the contract will be deemed terminated, without need for any further formality and without prejudice to any damages that may be awarded.

Where one of the co-producers is in breach after delivery of the film, and after a formal demand that he honour his obligations or remedy his breach has been served by recorded delivery mail (signed for) that has elicited no positive response in the 15 days following service, the non-defaulting co-producer may deem the contract terminated without any further formality and without prejudice to any damages that may be awarded.

ARTICLE 19: **DISPUTES AND APPLICABLE LAW**

The purpose of this clause is, at the date of signature of the contract, to provide for how any future disputes will be settled.

Given how long court proceedings take to resolve a dispute, and their cost, which could seriously impede progress in production, it would be worthwhile inserting a mediation clause.

Any disputes arising with regard to the validity, interpretation and/or performance of the contract will be submitted to CMAP (Paris Mediation and Arbitration Centre) for mediation in accordance with its mediation rules with which the parties acknowledge they are familiar. If mediation fails, the dispute will be referred to the courts of competent jurisdiction.

In case of an international co-production involving partners of different nationalities, it will be **imperative** to provide for a law applicable to govern all issues to do with contract.

EXAMPLES PERCENTAGES OF AUTHORS' REMUNERATION

The professionals who contribute to the creation of a film or audiovisual work, whether as scriptwriter or director, are generally paid, outside SACD territories, for broadcasting and video exploitation rights, at a rate of 1 to 2% of Producer's Net Receipts ("PNR")³⁹ until the costs of the film have been recouped. Thereafter, the royalty varies from around 5 to 10%.

With regard to cinema box office receipts, royalties paid in France range from between 0.5 and 1.5% of Retail Box Office Receipts, excluding taxes (RBO) before the costs of the film have been recouped, and 2 to 10% thereafter. If a "remake right" is granted, the percentages vary from 10 to 30% of the assignment royalty for the work depending on the reputation of the Author.

The general rule regarding the guaranteed minimum (GM) is that the smaller this is, the larger the percentage will be after the film costs have been recouped.

For worldwide exploitation of the film, the right holders often appoint an exporter to sell the film, territory by territory, who is paid on a commission basis (around 25%). The film is generally sold, inclusive of all rights, to a distributor for a very variable GM (from 0 to several hundred thousand euros) according to the territory and the film's potential.

The Public Register of Films and Audiovisual Works (RPCA) in France records all of the information relating to the assignment of copyright.

Two examples of African films clearly illustrate the provisions agreed in terms of copyright assignment (source RPCA):

LE BALLON D'OR by Cheik Doukouré (registered with the RPCA under No. 81590 on 13 November 1992).

Commercial Cinema Receipts in France: 0.1% of receipts.

Other types of exploitation: 0.25% of PNR .

In the event of a remake: 4.5% of receipts, excluding taxes, in the case of assignment; percentage to be determined in the case of production by the producer.

After film cost recoupment: 3% of PNR until PNR have reached twice the cost of the film and then 5% of PNR.

A guaranteed minimum of €7,622 (50 000 francs).

BAMAKO by Abderrahmane Sissako (registered with the RPCA under as No. 111392 on 8 October 2004).

Commercial Cinema Receipts in France, Monaco and Andorra: 1% of receipts until the cost of the film have been recouped; 5% or 1% of RBO thereafter.

Broadcasting receipts outside SACD territories and other exploitations: 1% of PNR until the cost of the film have been recouped, 5% thereafter.

In the event of a remake or sequel: 25% of receipts, excluding taxes, on assignment.

A guaranteed minimum of €50,000.

39. The term "Producer's Net Receipts" is understood, in general terms, as meaning all proceeds, excluding taxes, regardless of their nature or source, received and collected from exploitation of the Film, and all or some of its constituent parts, throughout the world, in all formats, in all languages, under any title, by any method, means or procedure now known or yet to be discovered, less the commissions referred to below and only those duly substantiated expenses incurred in connection with exploitation which are ultimately borne by the Producer.

THE COST OF THE FILM - DEFINITION

The parties to this agreement agree to apply and abide by the provisions of the Agreement of 16 December 2010 concerning Transparency in the Film Industry between ARP, GUILDE, SACD, SCAM, SCELFF, SRF, SFAAL and APC, API and SPI **extended by the Ministerial Order of 7 February 2011.**

The “cost of the Film”, determined four months after its cinema release and certified by a statutory auditor or independent accountant, will include all of the costs and expenses, excluding taxes, for which the Producer has assumed liability in preparing for, shooting and in post-production of the Film, where such costs and expenses are not deducted from the Producer’s Net Receipts.

The cost of the Film includes:

- 1.** the advances or guaranteed minima granted to authors, directors, publishers, neighbouring rights holders and any other rights holder in consideration of the purchase or licence granted in their copyrights and/or neighbouring rights and, where relevant, “personality rights” (rights over personal image) and, generally, amounts paid to various co-authors, consultants, all rights holders and their agents (including for Dolby, SRD and DTS licenses);
- 2.** the costs of preparing and producing the Film, trailers, teasers, promo-reels, “making of” films and other bonus materials, provided they are borne by the Producer, including the cost of the original image and sound negative and all of the materials relating to the Film delivered to the various partners contributing to its funding, and the cost of purchasing any addition to the programme not supplied by the distributor;
- 3.** all expenses due to third parties (social security and welfare contributions, non-recoupable incidental taxes, including all costs and social contributions exclusively connected with or generated by production of the Film) for their contribution or services in the production of the Film, including the remuneration of technicians, actors, line or associate producers (provided they are not permanent members of staff of the Producer or a company controlled by the Producer within the meaning of Article L. 233-3 of the Commercial Code), including any deferred expenses (but excluding any shares in net receipts of the Film after the Film costs have been recouped on the terms and conditions set out in Appendix 3, Article II, paragraph 1) until completion and closure of the Film cost accounts;
- 4.** all forms of expense necessary to satisfy the obligations of the Producer, its foreign co-producers (distributors, broadcasters, video publishers, sellers abroad, festivals etc.) including but not limited to manufacturing costs and delivery costs of all materials, all costs relating to the first composite print, sample print, digital files, interpositives, internegatives, video masters, encoding and international sound version of the Film and trailers, expenses relating to the “DVS” version and the French- and foreign-language versions, provided they are borne by the Producer (including dubbed and sub-titled versions);
- 5.** all forms of expense connected with producing and recording the original sound track of the Film, including original music composition costs and phonographic and/or digital mastering costs, including but not limited to all remuneration due to original music writers and composers, original music recording and mixing costs and/or existing music copying and usage costs;

- 6.** the cost of publicity during Film production (including a press officer during the shoot), but excluding launch publicity of the Film on its release in the countries in which it is to be exploited;
- 7.** non-recoverable VAT, taxes payable on release of the Film pursuant to applicable legislation, and all other non-recoverable taxes and contributions due in connection with production ultimately borne by the Producer, including any taxes levied in the future, calculated according to criteria directly linked to production and preliminary financing parameters (preliminary funding, payroll, taxes and contributions based on the added value of enterprises connected with or generated by the production of the Film, etc.);
- 8.** the VAT-inclusive cost of insurance, including but not limited to insurance covering pre-production, production, negatives, civil liability, sets, accessories, etc. and, where applicable, performance bonds and/or errors or omissions insurance, and any accident losses ultimately borne by the Producer after deducting compensation paid out by insurance companies;
- 9.** all costs incurred in registering the Film and its associated agreements with national film and audio-visual registries;
- 10.** all legal fees, court costs, accountancy fees, dispute and audit costs, and fees connected with the production of the Film (not including production service costs and expenses incurred in attempting to secure financing), excluding any costs or expenses incurred as a result of the Producer's proven negligence or misconduct, held to be such by a court ruling constituting *res judicata* in the final instance. These expenses will be included in the film costs until the relevant accounts are completed and closed. Any fees and expenses incurred thereafter will be administered in accordance with Appendix 3, Article II, paragraph 2 of this agreement;
- 11.** the executive producer's remuneration (which will include a line producers' or an associate producers' remuneration if he is a permanent member of staff of the Producer or a company controlled by the Producer within the meaning of Article L. 233-3 of the Commercial Code), including all (both the employer's and employees' share) social security and welfare contributions, up to a ceiling of 5 % of the cost of the Film, not including the executive producer's remuneration, general overheads and financial expenses;
- 12.** general overhead expenses up to a ceiling of 7% of the cost of the Film, not including the said general overheads, executive producer's remuneration and financial expenses;
- 13.** fixed-rate financial expenses, up to a ceiling of 5% of the cost of the Film, including the Producer's remuneration and general overheads, calculated according to the following formula: 100% of the cost of the Film (including the Producer's remuneration and general overheads) x 18 months x (Euribor 3 month rate + 3%). The Euribor 3 month rate used will be the average of the Euribor 3 month rates published between the date of application for investment approval and the date of application for production approval. However, if the cost of the Film is less than three million euros (€3,000,000), the actual financial expenses, including a provision for the four months following the application for approval, as established 4 months after the cinema release of the Film, will be calculated and this specific amount applied in calculating the final cost of the Film. If the financial expenses calculated in this manner exceed 5%, the aforementioned ceiling will not apply.

It is hereby stated, as required, that the aforementioned production costs will be understood as being net of any discounts, rebates, reductions, credits and other financial advantages granted by suppliers and other service providers to the Producer in relation to the Film.

The cost of the Film, accounting item by accounting item, the remainder of the Film costs not yet recouped and the nature and amount of any publishing costs recoupable against the Author's share will be disclosed by the Producer to the Author no later than four months after the completion and closure of the accounts calculating the final cost of the Film, as stipulated in this Appendix 2.

FILM COST RECOUPMENT

The parties hereto agree to apply and abide by the terms of the Agreement of 16 December 2010 concerning Transparency in the Film Industry between ARP, GUILDE, SACD, SCAM, SCELFF, SRF, SFAAL and APC, API and SPI **extended by the Ministerial Order of 7 February 2011.**

I - The following proceeds and receipts will count towards recoupment of Film costs:

- the Producer's Net Receipts, as defined in Appendix 1 to this agreement;
- after first deducting an excess of fifty thousand euros (€50,000), 75% of the amounts calculated and entered in the Producer's (and any co-producers') account in respect of automatic financial support on the terms and conditions set out in Article III of this Appendix 3;
- any tax credit granted to the Producer for the Film and according to its characteristics, on the terms defined in Articles 220 sexies, 220 F and 223 O of the General Tax Code and their implementing legal instruments;
- any non-refundable aids or subsidies contributing to the financing of the Film, except the automatic financial support invested in production of the Film by the CNC;
- the Producer's share of any income from product placements, publicity and advertising or other similar arrangements for which payment is received, less any agents' commissions and substantiated expenses borne by the Producer;
- the Producer's share of any damages awarded in legal proceedings directly relating to the production and/or exploitation of the Film, including reimbursed expenses and insurance compensation, less expenses, professional fees, court costs and legal fees and other related substantiated costs.

II- The following will be deducted from the proceeds and receipts detailed in Article I above:

- all forms of deferred remuneration, regardless of the beneficiary, where the amount is payable after the Film account completion and closing date, excluding any share in Film net receipts (either as an additional percentage of receipts and/or a fixed payment) after the Film costs have been recouped, and not paid as salary;
- professional fees, legal and court costs, and the cost of any tax, social security or welfare payment readjustment connected with the production and exploitation of the Film, incurred after the Film account completion and closing date – other than those incurred through the proven negligence or misconduct of the Producer, held to be such by a court ruling constituting *res judicata* in the final instance.

III- Place of producer's financial support and tax credit in calculating Film cost recoupment

Amounts calculated and entered in the Producer's (and any co-producers') account representing automatic financial support awarded for the exploitation of the Film, and any tax credit, will not be considered receipts, even indirectly through any "accounting equivalent" mechanism. In particular, they will not be counted in the Producer's Net Receipts as defined in Appendix 1 of this agreement and will not be used as a basis for calculating any additional remuneration to the Author after the cost of the Film has been recouped.

However, the parties agree that the tax credit and (after deducting the excess referred to in Article I, paragraph 2 of this Appendix 3, subject to the terms of the preceding paragraph and up to the cost recoupment ceiling) the amounts calculated and entered in the Producer's (and any co-producers') account representing automatic financial support for the Film, will be taken into consideration, retrospectively, in

calculating Film cost recoupment in priority to all other proceeds and receipts referred to in Article I of this Appendix. Accordingly, in calculating Film cost recoupment, the parties agree to account for the proceeds and receipts set out in Article I of this Appendix in the following order:

- 1.** any non-refundable aids or subsidies contributing to the financing of the Film and the tax credit granted to the Producer in respect of the Film and according to its characteristics, on the terms defined in Articles 220 sexies, 220 F and 223 O of the General Tax Code and their implementing legal instruments;
- 2.** the Producer's share of any product placements, publicity and advertising or other similar arrangements for which payment is received, less any agents' commissions and substantiated expenses borne by the Producer;
- 3.** the Producer's share of any damages awarded in legal proceedings directly relating to the production and/or exploitation of the Film, including reimbursed expenses and insurance compensation, less expenses, professional fees, court costs and legal fees and other related substantiated costs;
- 4.** after deducting the rebates and allowances referred to in Article I, paragraph 2, of this Appendix 3, the amounts calculated and entered in the Producer's (and any co-producers') account representing automatic financial support awarded for the exploitation of the Film;
- 5.** any sources of pre-financing of the Film, including guaranteed minima and advance sales stated in the Film finance plan, as submitted to the CNC for production approval;
- 6.** the Producer's Net Receipts, as defined in Appendix I of this agreement.

Country by country datasheets summarising copyright rules and the rules governing other contributors' rights

ACCORDING TO BANGUI AGREEMENT (2 MARCH 1977)



SÉRIE NOIRE À KOULBI
By Boubakar DIALLO
© Les Films du Dromadaire

BENIN

The law which protects copyright and neighbouring rights is from 2006 (Law No. 2005-30 of 5 April 2006 on the Protection of Copyright and Neighbouring Rights).

Benin is a signatory to the Berne Convention and to the WIPO Convention⁴⁰, as well as to Treaties on copyright and performances and phonograms.

In Benin, there is a general collective management society, the Copyright Office of Benin, BUBEDRA, a governmental entity under the Ministry of Culture, Tourism and Crafts.

INTERNATIONAL INSTRUMENTS

The Republic of Benin is bound by the following instruments:

- Bangui Agreement since 1962;
- Berne Convention (literary and artistic property) since January 1961;
- WIPO Convention since March 1975;
- Copyright Treaty since April 2006;
- Performers and Phonograms Treaty since April 2006.

NATIONAL LEGISLATION

- Law No. 2005-30 of 5 April 2006 on the Protection of Literary and Artistic Property;
- Decree No. 93-114 of 25 May 1993, on the responsibilities, structure and operation of the Benin Copyright Office (BUBEDRA);
- Order No. 257/MCJS/DMG/BUBEDRA of 30 December 1988, establishing the general regulations of BUBEDRA.

REGIME OF CINEMATOGRAPHIC AND AUDIOVISUAL WORKS IN NATIONAL LAW

PROTECTED WORKS

Literary, artistic, scientific and folklore works.

RIGHTS HOLDERS

- Authors;
- performers;
- producers of phonograms and videograms;
- broadcasting organisations.

41. WIPO: World Intellectual Property Organization.

PROTECTED RIGHTS

Authors

- Economic rights: right of reproduction; right of adaptation and transformation; of translation; right of distribution; right of control over the rental of the work; right of performance or public showing of the work; right of communication of the work to the public; right to broadcast; right to import copies of the work.
- Moral right: paternity right; right to respect for integrity; right of disclosure; right to reconsider or of withdrawal.

Performers

- Economic rights: right of communication to the public; right to broadcast; right to make public, by wire or wireless means, performances on phonogram or videogram; right of control over the rental of the work; right to the fixation of the work; right of reproduction.
- Moral right: paternity right; right to respect for integrity.

Rights of producers of phonograms and videograms

- Economic rights: right of reproduction; right of first distribution to the public; right to make public, by wire or wireless means; right of control over the rental of the work; right to the import copies of the work.

Rights of broadcasting organizations

- Economic rights: right of communication of programmes to the public; right to fixation of broadcast programmes; right to rebroadcast programmes; right of reproduction of the fixation of broadcast programmes.

ASSIGNABILITY OF RIGHTS

Authors

- Economic rights: assignable inter vivos and upon death.
- Moral right: non-assignable inter vivos; assignable by testament or by operation of law upon death.

Existence of presumption of assignment of rights to the producer: yes.

DURATION OF RIGHTS

Authors

- Economic rights: 70 years after the death from the end of the year of death of the author or the last of the co-authors for a collaborative work. This duration varies in accordance with the legal status of the author.
- Moral right: perpetual.

Performers' rights

50 years from the end of the calendar year of the performance or provision (without fixation) or that of its fixation.

Rights of phonogram producers

50 years from the end of the year of fixation.

Rights of broadcasting organizations

25 years from the end of the year when the programme was broadcast.

REMUNERATION FOR PRIVATE COPYING

Yes.

INFRINGEMENTS OF RIGHTS SUBJECT TO CRIMINAL SANCTIONS

- All infringements of rights enshrined in law;
- unlawful reproduction;
- import and export of counterfeit copies;
- distribution, sale, rental of counterfeit copies;
- unlawful disclosure and undermining the integrity of a work or performance.

PROCEDURES AND PENALTIES

- Summary proceedings;
- substantive proceedings;
- imprisonment of between 3 months and 2 years (penalty doubled in the event of a repeat offence);
- fines (between 500,000 and 10,000,000 CFA francs);
- seizures;
- suspension of any performance or public recital, ongoing or announced;
- suspension of the manufacture and distribution of unlawful reproduction formats;
- confiscation of the proceeds arising from unlawful exploitation;
- confiscation or destruction of unlawfully reproduced goods and the materials used in their manufacture;
- temporary or permanent closure of the establishment;
- restitution to the rights holder;
- awarding of damages (material and moral harm);
- publication of the sentence.

COMPETENT MINISTRY

Ministère de la Culture, du Tourisme et de l'Artisanat
BP 142
Bohicon, République du Bénin
Tel.: (229) 22 51 00 63

COLLECTIVE RIGHTS MANAGEMENT

Bureau béninois du droit d'auteur (BUBEDRA)
Address: 53, boulevard Saint Michel, Carré 590 E, 06 B.P. 2650 Cotonou
Tel.: (229) 21 32 10 43 / 21 32 45 76/ 90 94 53 76 (mobile)
Fax: (229) 21 32 10 43
Email: bubedra@intnet.bj

The Benin copyright office is a multidisciplinary collective rights management organization. It is answerable to the Ministry of Tourism, Culture and the Arts. It holds a monopoly on the representation, collection and administration of rights. It manages, in the territory of Benin, the interests of various foreign societies of authors within the framework of agreements it is tasked with agreeing with them.

USEFUL LINKS

International Conventions: www.ompi.org; www.wto.org; www.oapi.int.

BURKINA FASO

The law which protects literary and artistic property is from 1999 (Law No. 032-99/AN of 22 December 1999 on the Protection of Literary and Artistic Property).

Burkina Faso is a signatory to the Berne Convention (1971 Paris Act) and the WIPO Convention, the Rome Convention, the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, and to the Treaties on films, copyright and performance and phonograms.

In Burkina Faso, there is a general collective management society, the Copyright Office of Burkina, BBDA, a governmental entity under the Ministry of Culture and Arts.

INTERNATIONAL INSTRUMENTS

The Republic of Burkina Faso is bound by the following instruments:

- Bangui Agreement since 1962;
- Berne Convention (literary and artistic property) since August 1963;
- Rome Convention (protection of performers, producers of phonograms and broadcasting organizations) since January 1988;
- WIPO Convention since August 1975;
- Phonograms Convention since January 1988;
- Treaty on the film registry since February 1991;
- Copyright Treaty since March 2002;
- Performers and Phonograms Treaty since March 2002.

NATIONAL LEGISLATION

- Law No. 032-99/AN of 22 December 1999 on the Protection of Literary and Artistic Property;
- Decree No. 2000 – 150/PRES/PM/MCA of 20 April 2000, approving the statutes of the Burkina Copyright Office (BBDA).

REGIME OF CINEMATOGRAPHIC AND AUDIOVISUAL WORKS IN NATIONAL LAW

PROTECTED WORKS

Literary, artistic, scientific and folklore works.

RIGHTS HOLDERS

- Authors;
- performers;
- producers of phonograms and videograms;
- broadcasting organizations.

PROTECTED RIGHTS

Authors

- Economic rights: right of reproduction; right of adaptation and transformation; of translation; right of distribution; right of rental; right of performance or public showing of the work; right of communication of the work to the public; right to broadcast; right to import copies of the work.
- Moral right: paternity right; right to respect for integrity; right of disclosure; right to reconsider or of withdrawal.

Performers

- Economic rights: right of communication to the public; right to broadcast; right to make public, by wire or wireless means, a performance fixed in a phonogram or videogram.
- Moral right: paternity right; right to respect for integrity.

Rights of producers of phonograms and videograms

- Economic rights: right of reproduction; right of distribution to the public; right to make public, by wire or wireless means; right of rental of the work; right to import copies of his phonogram or videogram.

Rights of broadcasting organizations

- Economic rights: right of communication of programmes to the public; right of fixation of broadcast programmes; right of rebroadcasting programmes; right of reproduction of the fixation of broadcast programmes.

ASSIGNABILITY OF RIGHTS

Authors

- Economic rights: assignable inter vivos and upon death.
- Moral right: non-assignable inter vivos; assignable by operation of law upon death.

Existence of presumption of assignment of rights to the producer: yes.

DURATION OF RIGHTS

Authors

- Economic rights: 70 years after the death of the last of the co-authors for a collaborative work. This duration varies in accordance with the legal status of the author. The starting point for the calculation of the duration is set by article 36 and the following articles of the law.
- Moral right: perpetual.

Performers' rights

70 years from the end of the calendar year of the performance or provision (without fixation) or that of its fixation.

Rights of phonogram producers

70 years from the end of the year of fixation.

Rights of broadcasting organizations

30 years from the end of the year when the programme was broadcast.

REMUNERATION FOR PRIVATE COPYING

Yes.

INFRINGEMENTS OF RIGHTS SUBJECT TO CRIMINAL SANCTIONS

- All infringements of rights enshrined in the law (or by the Bangui Agreement);
- unlawful reproduction;
- import and export of counterfeit copies;
- distribution, sale, rental of counterfeit copies;
- unlawful disclosure and undermining the integrity of a work or performance.

PROCEDURES AND PENALTIES

- Summary proceedings;
- substantive proceedings;
- imprisonment of between 2 months and 3 years (penalty doubled in the event of a repeat offence);
- fines;
- seizures;
- suspension of any performance or public recital, ongoing or announced;
- suspension of the manufacture and distribution of unlawful reproduction formats;
- confiscation of the proceeds arising from unlawful operations (there is a limit in article 100);
- confiscation or destruction of unlawfully reproduced goods and the materials used in their manufacture;
- temporary or permanent closure of the establishment;
- restitution to the rights holder;
- award for damages (material and moral harm);
- publication of the sentence;
- border measures.

COMPETENT MINISTRY

Ministère de la Communication et de la Culture
03 B.P.7007 Ouagadougou 03
Burkina Faso
Tel.: (226) 50 33 09 63
Fax: (226) 50 33 09 64

COLLECTIVE RIGHTS MANAGEMENT

Bureau burkinabé du droit d'auteur (BBDA)
01 B.P.3926 Ouagadougou 01
Tel.: (226) 50 32 47 50: 30 06 80
Fax: (226) 50 30 06 82
Email: bbda@liptinfor.bf

The Burkina copyright office is a multidisciplinary collective rights management organization. It is answerable to the Ministry of Communication and Culture. It holds a monopoly on the representation, collection and administration of rights. It manages, in the territory of Burkina, the interests of various foreign societies of authors within the framework of agreements it is tasked with agreeing with them.

USEFUL LINKS

International Conventions: www.ompi.org; www.wto.org; www.oapi.int; www.bbda.bf

CAMEROON

The law relating to copyright and neighbouring rights is from 2000 (Law No. 2000/011 of 19 December 2000 on the Protection of Copyright and Neighbouring Rights).

Cameroon is a signatory to the Berne Convention, Paris Convention and the WIPO Convention.

In Cameroon, there are four civil societies for collective management, the Cameroon Music Corporation (CMC), the National Civil Society for Literary and Dramatic Rights (SOCILADRA), the National Civil Society for Photographic and Audiovisual Arts (SOCIDRAP) and the National Civil Society for Visual and Graphic Arts (SOCADAP), which are all governmental entities under the Ministry of Culture.

INTERNATIONAL INSTRUMENTS

The Republic of Cameroon is bound by the following instruments:

- Bangui Agreement since September 1962;
- Paris Convention since May 1964;
- Berne Convention since September 1964;
- WIPO Convention since November 1973;

NATIONAL LEGISLATION

- Law No. 200/011 of 19 December 2000 on the Protection of Copyright and Neighbouring Rights;
- Decree No. 2001/956/PM of 1 November 2001 setting the methods of application and operation of the Law of 19 December 2000 on the Protection of Copyright and Neighbouring Rights.

REGIME OF CINEMATOGRAPHIC AND AUDIOVISUAL WORKS IN NATIONAL LAW

PROTECTED WORKS

Literary, artistic, scientific and folklore works.

RIGHTS HOLDERS

- Authors;
- performers;
- producers of phonograms and videograms;
- audiovisual communications companies.

PROTECTED RIGHTS

Authors

- Economic rights: right of reproduction; right of adaptation; of translation; of transformation; right of performance or public showing of the work; right of communication of the work to the public; right to rental and right of resale.
- Moral right: paternity right; right to respect for integrity; right of disclosure; right to reconsider or of withdrawal.

Performers' rights

- Economic rights: right of communication to the public; right of fixation of the work; right of reproduction and right of distribution (right of rental or exchange) of his work.
- Moral right: paternity right; right to respect for integrity.

Rights of producers of phonograms and videograms

- Economic rights: right of reproduction; right of control of rental or exchange of the work; right to make available to the public, by wire or wireless means and right of communication to the public.

Rights of audiovisual communications companies

- Economic rights: right of fixation; right of reproduction of the fixation; right of rebroadcasting programmes and of communication of programmes to the public (including making available to the public, by wire or wireless means, its programmes in such a way that the recording may be accessed by any person from a place and at a time chosen by him) and right to make public by sales, rental or exchange of its programmes.

ASSIGNABILITY OF RIGHTS

Authors

- Economic rights: assignable inter vivos and upon death.
- Moral right: non-assignable inter vivos; assignable by testament or by operation of law upon death.

Existence of presumption of assignment of rights to the producer: yes.

DURATION OF RIGHTS

Authors

- Economic rights: 50 years after the death from the year after the death of the author or the last of the co-authors for a collaborative work. This duration varies in accordance with the legal status of the author.
- Moral right: perpetual.

Performers' rights

50 years starting from the end of the calendar year of fixation for phonograms, videograms and performances which are fixed therein.

Rights of phonogram producers

50 years starting from the end of the calendar year of performance for performances which are not fixed on phonograms or videograms.

Rights of audiovisual communications companies

50 years starting from the end of the calendar year of the broadcast, for audiovisual communication company programmes.

REMUNERATION FOR PRIVATE COPYING

Yes.

INFRINGEMENTS OF RIGHTS SUBJECT TO CRIMINAL SANCTIONS

- All infringements of rights enshrined in law;
- unlawful reproduction;
- import and export of counterfeit copies;
- distribution, sale, rental of counterfeit copies;
- unlawful disclosure and undermining the integrity of a work or performance.

PROCEDURES AND PENALTIES

- Substantive proceedings;
- imprisonment of between 5 and 10 years (penalty doubled in the event of a repeat offence);
- fines of between 500,000 and 10,000,000 CFA francs (penalty doubled in the event of a repeat offence);
- seizures;
- suspension of any performance or public recital, ongoing or announced;
- suspension of the manufacture and distribution of unlawful reproduction formats;
- confiscation of the proceeds from unlawful exploitation;
- confiscation and/or destruction of materials used in the manufacture of the counterfeit items;
- destruction of the counterfeit items;
- temporary or permanent closure of the establishment;
- restitution to the rights holder of revenues from the unlawful exploitation and of the materials used in the manufacture of the counterfeit items;
- award for damages;
- publication of the sentence.

COMPETENT MINISTRY

Ministère de la Culture
Ancien palais présidentiel
Yaoundé
Cameroun
Tel: (237) 22 22 65 79/ 22 22 16 06
Fax: (237) 20 22 65 79/ 22 22 19 22

COLLECTIVE RIGHTS MANAGEMENT

Cameroon has four collective management organizations, each covering a specific area of literary and artistic property law. They are answerable to the Ministry of Culture. They each hold a monopoly on the representation, collection and administration of rights in their areas of authority. They manage, in the territory of Cameroon, the interests of various foreign societies of authors within the framework of agreements they are tasked with agreeing with them.

USEFUL LINKS

International Conventions: www.ompi.org; www.oapi.int

CHAD

The law protecting copyright, neighbouring rights and folklore was adopted in 2003 (Law No. 005/PR/2003 of 2 May 2003 on the Protection of Copyright, Neighbouring Rights and Expressions of Folklore).

Chad is a signatory to the Berne Convention and the WIPO Convention.

In Chad, there is a general collective management society, the Copyright Office of Chad, BUTDRA, a governmental entity under the Ministry of Culture and Arts.

INTERNATIONAL INSTRUMENTS

Chad is bound by the following instruments:

- Bangui Agreement since September 1962;
- Paris Convention since 1963;
- WIPO Convention since September 1970;
- Berne Convention (literary and artistic property) since November 1971.

NATIONAL LEGISLATION

- Law No.005/PR/2003 of 2 May 2003 on the Protection of Copyright, Neighbouring Rights and Expressions of Folklore;
- Decree No. 313/PRIMCJS/2005 of 30 May 2005, on the organization and operation of the Copyright Office of Chad (BUTDRA).

REGIME OF CINEMATOGRAPHIC AND AUDIOVISUAL WORKS IN NATIONAL LAW

PROTECTED WORKS

Literary, artistic, scientific and folklore works.

RIGHTS HOLDERS

- Authors;
- performers;
- producers of phonograms and videograms;
- audiovisual communications companies.

PROTECTED RIGHTS

Authors

- Economic rights: right of reproduction; right of adaptation and transformation; of translation; right of distribution; right of rental; right of performance or public showing of the work; right to broadcast; right of communication of the work to the public; right to import copies of the work.
- Moral right: paternity right; right to respect for integrity; right of disclosure; right to reconsider or of withdrawal.

Performers' rights

- Economic rights: right of fixation; right of reproduction; right of communication to the public; right of hire or public lending; right to broadcast and right of distribution.
- Moral right: paternity right; right to respect for integrity.

Rights of producers of phonograms and videograms

- Economic rights: right of reproduction; right of distribution; right of communication to the public; right of rental and public lending, and right to import copies of the phonogram or videogram.

Rights of audiovisual communications companies

- Economic rights: right of communication of programmes to the public; right of fixation of broadcast programmes; right of rebroadcasting programmes; right of reproduction of the fixation of broadcast programmes.

ASSIGNABILITY OF RIGHTS

Authors

- Economic rights: assignable inter vivos and upon death.
- Moral right: non-assignable inter vivos; assignable by operation of law upon death.

Existence of presumption of assignment of rights to the producer: yes for performers.

DURATION OF RIGHTS

Authors

- Economic rights: 70 years starting from the year after the death of the author. This duration varies in accordance with the legal status of the author. The starting point for the calculation of the duration is set by article 40 and the following articles of this law.
- Moral right: perpetual.

Performers' rights

50 years from the 1st of January of the calendar year of the performance or provision (without fixation) or that of its fixation.

Rights of producers of phonograms and videograms

50 years from 1st of January of the calendar year following that of the fixation.

Rights of audiovisual communications companies

25 years from the end of the year when the broadcast of the programme took place from the 1st of January of the calendar year following the first public communication.

REMUNERATION FOR PRIVATE COPYING

Yes.

INFRINGEMENTS OF RIGHTS SUBJECT TO CRIMINAL SANCTIONS

- All infringements of rights enshrined in law;
- unlawful reproduction;
- import and export of counterfeit copies;
- distribution, sale, rental of counterfeit copies;
- unlawful disclosure and undermining the integrity of a work or performance.

PROCEDURES AND PENALTIES

- Summary proceedings;
- substantive proceedings;
- imprisonment of 3 months to 2 years (penalty doubled in the event of a repeat offence);
- fines of 50,000 to 5,000,000 CFA francs;
- seizure;
- suspension of any performance or public recital, ongoing or announced;
- suspension of the manufacture and distribution of unlawful reproduction formats;
- confiscation of the proceeds from unlawful exploitation (there is a limit in article 100);
- confiscation or destruction of unlawfully reproduced goods and the materials used in their manufacture;
- temporary or permanent closure of the establishment;
- restitution to the rights holder;
- award for damages;
- legal costs;
- publication of the sentence.
- border measures.

COMPETENT MINISTRY

Ministère de la Communication et de la Culture, de la Jeunesse et des Sports,
Direction de la Culture

COLLECTIVE RIGHTS MANAGEMENT

Bureau tchadien du droit d'auteur (BUTDRA)
Palais du Gouvernement, Ndjama
Tel.: (235) 52 45 94
Fax: (235) 52 55 38 79/ 52 37 09

The copyright office of Chad is a public collective rights management organization. It is answerable to the Ministry of Culture, Youth and the Arts. It holds a monopoly on the representation, collection and administration of rights. It manages, in the territory of Chad, the interests of various foreign societies of authors within the framework of agreements it is tasked with agreeing with them. It promotes and defends the professional, material and moral interests of authors. It ensures the safeguarding and valuing of Chad's folklore heritages.

USEFUL LINKS

International Conventions: www.ompi.org; www.wto.org; www.oapi.int.

CONGO (BRAZZAVILLE)

The law relating to copyright and neighbouring rights is from 1982 (Law No. 24/82 of 7 July 1982 on the Protection of Copyright and Neighbouring Rights).

The Republic of Congo is a signatory to the Berne Convention (Paris Act, 1971) and the WIPO Convention.

In the Republic of Congo, there is a general collective management society, the Copyright Office of Congo, BCDA, a public administrative establishment with legal personality and financial autonomy, under the Ministry of Culture and Arts.

INTERNATIONAL INSTRUMENTS

The Republic of Congo is bound by the following instruments:

- Bangui Agreement since September 1962;
- Berne Convention since May 1962;
- Rome Convention (protection of performers, producers of phonograms and broadcasting organizations) since May 1964;
- WIPO Convention since December 1975.

NATIONAL LEGISLATION

- Law No. 24/82 of 7 July 1982 on the Protection of Copyright and Neighbouring Rights;
- Decree No. 86/813 of 11 June 1986, on the organization and operations of the Copyright Office of Congo (BCDA).

REGIME OF CINEMATOGRAPHIC AND AUDIOVISUAL WORKS IN NATIONAL LAW

PROTECTED WORKS

Literary, artistic, scientific and folklore works.

RIGHTS HOLDERS

- Authors;
- performers;
- phonogram producers;
- broadcasting organizations.

PROTECTED RIGHTS

Authors

- Economic rights: right of reproduction; right of adaptation and of translation; right of distribution; right of rental; right of performance; right to broadcast; right of communication of the work to the public via cable or other means; right of communication of the work broadcast in a public place; right to make available.
- Moral right: paternity right; right to respect for integrity; right of disclosure; right to reconsider or of withdrawal.

Performers' rights

- Economic rights: right of communication to the public; right of broadcast; right of fixation; right of distribution and right of reproduction.
- Moral right: not specified but possible by application of the Bangui Agreement.

Rights of phonogram producers

- Economic rights: reproduction and distribution to the public.

Rights of broadcasting organizations

- Economic rights: right to authorize communication to the public of their programmes, the fixation and rebroadcasting of the programmes as well as the reproduction of fixations of the programmes.

ASSIGNABILITY OF RIGHTS

Authors

- Economic rights: assignable inter vivos and upon death.
- Moral right: non-assignable inter vivos; assignable by operation of law upon death.

Existence of presumption of assignment of rights to the producer: not specified.

DURATION OF RIGHTS

Authors

- Economic rights: 50 years starting from the death of the author, or that of the last of the co-authors for a collaborative work; 50 years starting from communication to the public; 50 years starting from making of the cinematographic work and 25 years starting from the making for photographic work.
- Moral right: not specified but perpetual under the Bangui Agreement.

Performers' rights

20 years starting from the end of the year of the performance or service.

Rights of phonogram producers

20 years starting from the end of the year of the first release of the phonogram or 20 years starting from the first making.

Rights of broadcasting organizations

20 years from the end of the year when the programme was broadcast.

REMUNERATION FOR PRIVATE COPYING

Not specified.

INFRINGEMENTS OF RIGHTS SUBJECT TO CRIMINAL SANCTIONS

- All infringements of rights enshrined in law;
- unlawful reproduction;
- import and export of counterfeit copies;
- distribution, sale, rental of counterfeit copies;
- unlawful disclosure and undermining the integrity of a work or performance.

PROCEDURES AND PENALTIES

- Summary proceedings;
- substantive proceedings;
- imprisonment of between 6 months and 3 years (penalty doubled in the event of a repeat offence);
- fines (60,000 CFA francs for a first offence and 100,000 CFA francs for repeat offences);
- seizure;
- suspension of the manufacture and distribution of unlawful reproduction formats;
- confiscation of the proceeds from unlawful exploitation;
- confiscation or destruction of unlawfully reproduced goods and the materials used in their manufacture;
- temporary or permanent closure of the establishment;
- award for damages.

COMPETENT MINISTRY

Ministère de la Culture et des Arts
Tour NABEMBA, 21^e étage
Brazzaville
Tel: (242) 81 19 29 79/ 81 40 25

COLLECTIVE RIGHTS MANAGEMENT

Bureau congolais du droit d'auteur (BCDA)
23 rue Kimpandzon Ouenzé
Brazzaville
Tel.: (242) 667 8226 / 828 3385
Fax: (242) 811 828 / 820 320

The Congo copyright office is a collective rights management organization. It is constituted as a public administrative establishment with legal personality and financial autonomy under the Ministry of Culture and Arts. It holds a monopoly on the representation, collection and administration of rights. It manages, in the territory of the Congo, the interests of various foreign societies of authors within the framework of agreements it is tasked with agreeing with them.

USEFUL LINKS

International Conventions: www.OMPI.org; www.OAPI.int

N.B: This Law precedes the amendment of the Bangui Agreement which took place in 1999 and came into force in 2002.

IVORY COAST

The law protecting copyright and neighbouring rights dates from 1996 (Law No. 96-564 of 25 July 1996 on the Protection of Intellectual Works and the copyright, Performers and Producers of Phonograms and Videograms).

Ivory Coast is a signatory to the Berne Convention, the Paris Convention and the WIPO Convention.

In Ivory Coast, there is a general collective management society, the Copyright Office of Ivory Coast, BURIDA, a governmental entity under the Ministry of Francophony and Culture.

INTERNATIONAL INSTRUMENTS

The Republic of Ivory Coast is bound by the following instruments:

- Bangui Agreement since September 1962;
- Berne Convention (literary and artistic property) since January 1962;
- Paris Convention since October 1963;
- WIPO Convention since May 1974;

NATIONAL LEGISLATION

- Law No. 96-564 of 25 July 1996 on the Protection of Works of the mind and the copyright, Performers and Producers of Phonograms and Videograms;
- Decree No. 81-232 of 15 April 1981, on the responsibilities, structure and operation of the Ivory Coast Copyright Office (BURIDA).

REGIME OF CINEMATOGRAPHIC AND AUDIOVISUAL WORKS IN NATIONAL LAW

PROTECTED WORKS

Literary, artistic, scientific and folklore works.

RIGHTS HOLDERS

- Authors;
- performers;
- producers of phonograms and videograms.

PROTECTED RIGHTS

Authors

- Economic rights: right of reproduction; right of adaptation and transformation; of translation; right of performance or public showing of the work; right of communication of the work to the public; right of resale.
- Moral right: paternity right; right to respect for integrity; right of disclosure; (the Bangui Agreement allows right to reconsider or of withdrawal).

Performers' rights

- Economic rights: right of communication to the public; right of fixation of the work; right of production.
- Moral right: paternity right; right to respect for integrity.

Rights of producers of phonograms and videograms

- Economic rights: right of reproduction; right of control of rental or exchange of the work; right to make available to the public, by wire or wireless means; right of control on imports and exports of copies of the phonogram or videogram.

ASSIGNABILITY OF RIGHTS

Authors

- Economic rights: assignable inter vivos and upon death.
- Moral right: non-assignable inter vivos; assignable by testament or by operation of law upon death.

Existence of presumption of assignment of rights to the producer: yes.

DURATION OF RIGHTS

Authors

- Economic rights: 99 years after the death from the end of the year of death of the author or the last of the co-authors for a collaborative work. This duration varies in accordance with the legal status of the author.
- Moral right: perpetual.

Performers' rights

99 years from the end of the calendar year of the performance or provision (without fixation) or that of its fixation.

Rights of phonogram producers

99 years from 1st January of the calendar year following the first public communication of the performance of the work or its production.

REMUNERATION FOR PRIVATE COPYING

Yes.

INFRINGEMENTS OF RIGHTS SUBJECT TO CRIMINAL SANCTIONS

- All infringements of rights enshrined in law;
- unlawful reproduction;
- import and export of counterfeit copies;
- distribution, sale, rental of counterfeit copies;
- unlawful disclosure and undermining the integrity of a work or performance.

PROCEDURES AND PENALTIES

- Substantive proceedings;
- imprisonment of between 3 months and 2 years (penalty doubled in the event of a repeat offence);
- fines (between 100,000 and 5,000,000 CFA francs);
- seizure;
- suspension of any performance or public recital, ongoing or announced;
- suspension of the manufacture and distribution of unlawful reproduction formats;
- confiscation of the proceeds from unlawful exploitation;
- confiscation of materials used in the manufacture of the counterfeit items;
- destruction of the counterfeit items;
- temporary or permanent closure of the establishment;
- restitution to the rights holder of revenues from the unlawful exploitation and of the materials used in the manufacture of the counterfeit items;
- award for damages;
- publication of the sentence.

COMPETENT MINISTRY

Ministère de la Francophonie et de la Culture
Tour E, BP: V 39
Abidjan
Côte d'Ivoire
Tel: (225) 20 21 40 34
Fax: (225) 20 21 24 87
Mail: mcf@sndl-ci.com

COLLECTIVE RIGHTS MANAGEMENT

Bureau ivoirien du droit d'auteur (BURIDA)
Cocody II, Plateaux les Vallons
Rue J-81, BP: V 258 Abidjan
Côte d'Ivoire
Tel.: (225) 22 41 21 95 / 22 41 22 11
Fax: (225) 22 41 22 12

The Ivory Coast copyright office is a multidisciplinary collective rights management organization. It is answerable to the Ministry of Francophony and Culture. It holds a monopoly on the representation, collection and administration of rights. It manages, in the territory of Ivory Coast, the interests of various foreign societies of authors within the framework of agreements it is tasked with agreeing with them.

USEFUL LINKS

International Conventions: www.ompi.org; www.oapi.int

MALI

The Law setting the regime for literary and artistic property in Mali was adopted in 1984 (Law No. 8426/AN-RM of 17 October 1984, date of promulgation) and supplemented by Law No. 94-043 of 13 October 1994.

Mali is a signatory to the Berne Convention and to the WIPO Convention, as well as to Treaties on copyright and performances and phonograms.

In Mali, there is a general collective management society, the Copyright Office of Mali, BUMDA, a governmental entity under the Ministry of Culture.

INTERNATIONAL INSTRUMENTS

The Republic of Mali is bound by the following instruments:

- Bangui Agreement since September 1962;
- Berne Convention (literary and artistic property) since March 1962;
- WIPO Convention since August 1982;
- Copyright Treaty since April 2002;
- Performers and Phonograms Treaty since May 2002.

NATIONAL LEGISLATION

- Law No. 842/AN-RM of 17 October 1984 setting the regime for literary and artistic property;
- Law No. 94-043 of 13 October 1994 supplementing the law of 17 October 1984;
- Decree No. 90-55/RM of 9 September 1990, modifying the status of the Copyright Office of Mali (BUMDA).

REGIME OF CINEMATOGRAPHIC AND AUDIOVISUAL WORKS IN NATIONAL LAW

PROTECTED WORKS

Literary, artistic, scientific and folklore works.

RIGHTS HOLDERS

- Authors;
- performers (not specified but possible pursuant to the provisions of the Bangui Agreement);
- producers of phonograms and videograms (not specified but possible pursuant to the provisions of the Bangui Agreement);
- broadcasting organizations (not specified but possible pursuant to the provisions of the Bangui Agreement);

PROTECTED RIGHTS

Authors

- Economic rights: right of reproduction; right of adaptation and transformation and of translation; right of performance or public showing of the work; right of communication of the work to the public, by wire or wireless means; right to broadcast; right of resale.
- Moral right: paternity right; right to respect for integrity; right of disclosure; right to reconsider or of withdrawal.

Performers' rights

Not specified but possible by application of the Bangui Agreement.

- Economic rights: not specified but possible by application of the Bangui Agreement.
- Moral right: not specified but possible by application of the Bangui Agreement.

Rights of producers of phonograms and videograms

Not specified but possible by application of the Bangui Agreement.

- Economic rights: not specified but possible by application of the Bangui Agreement.

Rights of broadcasting organizations

Not specified but possible by application of the Bangui Agreement.

- Economic rights: not specified but possible by application of the Bangui Agreement.

ASSIGNABILITY OF RIGHTS

Authors

- Economic rights: assignable inter vivos and upon death.
- Moral right: non-assignable inter vivos; assignable by testament or by operation of law upon death.

Existence of presumption of assignment of rights to the producer: not specified.

DURATION OF RIGHTS

Authors

- Economic rights: 50 years after the date of death or the declaration of death in the event of absence or disappearance of the author or the last of the co-authors for a collaborative work.
- Moral right: perpetual.

Rights of performers

Not specified but possible pursuant to the provisions of the Bangui Agreement.

Rights of producers of phonograms

Not specified but possible pursuant to the provisions of the Bangui Agreement.

Rights of broadcasting organisations

Not specified but possible pursuant to the provisions of the Bangui Agreement.

REMUNERATION FOR PRIVATE COPYING

Not specified.

INFRINGEMENTS OF RIGHTS SUBJECT TO CRIMINAL SANCTIONS

- All infringements of rights enshrined in law;
- unlawful reproduction is a crime (art.136 of the Law of 13 October 1994);
- import and export of counterfeit copies;
- distribution, sale of counterfeit copies;
- unlawful disclosure and undermining the integrity of a work or performance.

PROCEDURES AND PENALTIES

- Substantive proceedings;
- imprisonment of between 1 and 5 years (penalty doubled in the event of a repeat offence);
- fines of between 50,000 and 15,000,000 CFA francs;
- seizure;
- suspension of any performance or public recital, ongoing or announced;
- suspension of the manufacture and distribution of unlawful reproduction formats;
- confiscation and restitution to the author or his successors in title the revenues from the unlawful operation;
- confiscation and restitution to the rights holder or his successors in title of the counterfeit items and of the materials used in their manufacture;
- temporary or permanent closure of the establishment;
- award for damages.

COMPETENT MINISTRY

Ministère de la Culture
Quartier du fleuve
Tel.: (223) 223 26 40
Fax: (223) 223 26 26
www.maliculture.net

COLLECTIVE RIGHTS MANAGEMENT

Bureau malien du droit d'auteur (BUMDA)
BP. E 2735 Avenue OUA Faladié Sokoro, porte 4980
Bamako, Mali
Tel.: (223) 220 98 70
Email: bumda@cefib.com

The Copyright Office of Mali is a governmental entity of a professional nature with legal personality and financial autonomy. It is answerable to the Ministry of Culture. It holds a monopoly on the representation, collection and administration of rights. It manages, in the territory of Mali, the interests of various foreign societies of authors within the framework of agreements it is tasked with agreeing with them.

USEFUL LINKS

International Conventions: www.bumda.cefib.com ; www.oapi.int ; www.ompi.org

SENEGAL

The law relating to copyright and neighbouring rights is from 1973 (Law No. 73-52 of 4 December 1973 on Protection of Copyright).

The Republic of Senegal is a signatory to the Berne Convention and the WIPO Convention among others.

In Senegal, there is a general collective management society, the Copyright Office of Senegal, BSDA, a governmental entity of a professional nature, with legal personality and financial autonomy, under the Ministry of Culture.

INTERNATIONAL INSTRUMENTS

Senegal is bound by the following instruments:

- Bangui Agreement since September 1962;
- Berne Convention since August 1962;
- WIPO Convention since April 1970;
- Treaty on the film registry since April 1994;
- Copyright Treaty since May 2002;
- Performers and Phonograms Treaty since May 2002.

NATIONAL LEGISLATION

- Law No. 73-52 of 4 December 1973 on the Protection of Copyright;
- Law No. 72-40 of 26 May 1972 creating the Copyright Office of Senegal (BSDA);
- Law No. 85-05 of 24 January 1986 repealing Articles 22, 46, 47 and 50 of the law of 1973;
- Decree No. 72.1195 of 5 October 1972, establishing the rules of the organization and the operation of the Copyright Office of Senegal (BSDA).

REGIME OF CINEMATOGRAPHIC AND AUDIOVISUAL WORKS IN NATIONAL LAW

PROTECTED WORKS

Literary, artistic, scientific and folklore works.

RIGHTS HOLDERS

- Authors;
- performers (yes, under the Bangui Agreement);
- producers of phonograms and videograms (yes, under the Bangui Agreement);
- broadcasting organizations (yes, under the Bangui Agreement).

PROTECTED RIGHTS

Authors

- Economic rights: right of reproduction; right of adaptation and of translation; right of representation; right of broadcasting; right of communication to the public by cable or other means; right of communication of the broadcast work in a public place.
- Moral right: paternity right; right to respect for integrity; right of disclosure.

Performers' rights

- Economic right: not specified but possible under the Bangui Agreement.
- Moral right: not specified but possible under the Bangui Agreement.

Rights of producers of phonograms and videograms

- Economic rights: not specified but possible under the Bangui Agreement.

Rights of broadcasting organizations

- Economic rights: not specified but possible under the Bangui Agreement.

ASSIGNABILITY OF RIGHTS

Authors

- Economic rights: assignable inter vivos and upon death.
- Moral right: non-assignable inter vivos; assignable by operation of law upon death.

Existence of presumption of assignment of rights to the producer: not specified.

DURATION OF RIGHTS

Authors

- Economic rights: 50 years from the death or that of the last of the co-authors for a collaborative work. The starting point for the calculation of the time periods is that of the end of the calendar year of the death.
- Moral right: perpetual.

Performers' rights

Not specified.

Rights of phonogram producers

Not specified.

Rights of broadcasting organizations

Not specified.

REMUNERATION FOR PRIVATE COPYING

Not specified.

INFRINGEMENTS OF RIGHTS SUBJECT TO CRIMINAL SANCTIONS

- All infringements of rights enshrined in law;
- unlawful reproduction;
- import and export of counterfeit copies;
- distribution, sale, rental of counterfeit copies;
- unlawful disclosure and undermining the integrity of a work or performance.

PROCEDURES AND PENALTIES

- Substantive proceedings;
- imprisonment (sentence not specified but, as a criminal offence, the sentences vary between 3 months and 2 years pursuant to the Senegalese Penal Code. They shall be doubled in the event of a repeat offence under the Bangui Agreement);
- fines: from 50,000 to 500,000 CFA francs;
- seizure;
- suspension of the manufacture and distribution of unlawful reproduction formats;
- confiscation of the proceeds from unlawful exploitation;
- confiscation or destruction of unlawfully reproduced goods and the materials used in their manufacture;
- temporary or permanent closure of the establishment;
- award for damages;
- publication of the sentence.

COMPETENT MINISTRY

Ministère de la Culture
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COLLECTIVE RIGHTS MANAGEMENT

Bureau sénégalais du Droit d'Auteur (BSDA)
7, rue Saint Michel X Ngalandou Diouf
B.P. 126 Dakar, Sénégal
Tel.: (221) 889 01 86
Fax: (221) 889 24 59

The copyright office of Senegal is a multidisciplinary collective rights management organization. It is constituted as a governmental entity of a professional nature with legal personality and financial autonomy under the Ministry of Culture. It holds a monopoly on the representation, collection and administration of rights. It manages, in the territory of Senegal, the interests of various foreign societies of authors within the framework of agreements it is tasked with agreeing with them.

USEFUL LINKS

International Conventions: www.ompi.org; www.wto.org; www.oapi.int

TOGO

The law which protects copyright, folklore and neighbouring rights is from 1991 (Law No.91-12 of 10 June 1991 on Protection of Copyright, Folklore and Neighbouring Rights). Togo is a signatory to the Berne Convention, the WIPO Convention, the Rome Convention and the Convention on the protection of phonogram producers, as well as to treaties on copyright and performances and phonograms. In Togo, there is a general collective management society, the Copyright Office of Togo, BUTODRA, a public establishment under the Ministry of Culture.

INTERNATIONAL INSTRUMENTS

The Republic of Togo is bound by the following instruments:

- Bangui Agreement since September 1962;
- Berne Convention since April 1975;
- WIPO Convention since April 1975;
- Copyright Treaty since May 2003;
- Performers and Phonograms Treaty since May 2003;
- Rome Convention since June 2003;
- Phonograms Convention since June 2003.

NATIONAL LEGISLATION

- Law No.91-12 of 10 June 1991 on Protection of Copyright, Folklore and Neighbouring Rights.

REGIME OF CINEMATOGRAPHIC AND AUDIOVISUAL WORKS IN NATIONAL LAW

PROTECTED WORKS

Literary, artistic, scientific and folklore works.

RIGHTS HOLDERS

- Authors;
- performers;
- phonogram producers;
- broadcasting organizations.

PROTECTED RIGHTS

Authors

- Economic rights: right of reproduction; right of adaptation and of transformation; of translation; right of performance; right of communication of the work to the public; right to broadcast; (in application of the provisions of the Bangui Agreement: right of distribution; right of control over rental of the work; right to import copies of the work); right of resale.
- Moral right: paternity right; right to respect for integrity; right of disclosure; (right to reconsider or of withdrawal possible under the provisions of the Bangui Agreement).

Performers' rights

- Economic rights: right of communication to the public; right to broadcast; right of fixation of the work; right of reproduction of a fixation of performance.
- Moral right: not mentioned by the law but the Bangui Agreement allows for the right to integrity and paternity.

Rights of phonogram producers

- Economic rights: right to reproduction; right to import copies of the work; right of distribution to the public.

Rights of broadcasting organizations

- Economic rights: right of fixation of broadcast programmes; right of rebroadcasting programmes; right of reproduction of the fixation of broadcast programmes.

ASSIGNABILITY OF RIGHTS

Authors

- Economic rights: assignable inter vivos and upon death.
- Moral right: non-assignable inter vivos; assignable by testament or by operation of law upon death.

Existence of presumption of assignment of rights to the producer: not specified.

DURATION OF RIGHTS

Authors

- Economic rights: 50 years after the death from the end of the year of death of the author or the last of the co-authors for a collaborative work. This duration varies in accordance with the legal status of the author.
- Moral right: perpetual.

Performers' rights

25 years from the end of the calendar year of the performance or provision (without fixation) or that of its fixation.

Rights of phonogram producers

25 years from the end of the year of fixation.

Rights of broadcasting organizations

25 years from the end of the year when the programme was broadcast.

REMUNERATION FOR PRIVATE COPYING

Not specified.

INFRINGEMENTS OF RIGHTS SUBJECT TO CRIMINAL SANCTIONS

- All infringements of rights enshrined in law;
- unlawful reproduction;
- import of counterfeit copies;
- distribution, sale, rental of counterfeit copies;
- unlawful disclosure and undermining the integrity of a work or performance.

PROCEDURES AND PENALTIES

- Summary proceedings;
- substantive proceedings;
- imprisonment of between 3 months and 2 years (1 to 3 years in the event of a repeat offence);
- fines (between 500,000 and 1,000,000 CFA francs, and between 1,000,000 and 2,000,000 CFA francs in the event of a repeat offence);
- seizure;
- suspension of any performance or public recital, ongoing or announced;
- suspension of the manufacture and distribution of unlawful reproduction formats;
- confiscation of the proceeds from unlawful exploitation;
- confiscation and restitution to the rights holder of the counterfeit items and of the materials used in their manufacture;
- temporary or permanent closure of the establishment;
- restitution to the rights holder;
- award for damages;
- publication of the sentence.

COMPETENT MINISTRY

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COLLECTIVE RIGHTS MANAGEMENT

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Fax: (228) 222 69 00
Email: butodra@laposte.tg; butodra@caramail.com

The copyright office of Togo is a collective rights management organization. It is answerable to the Ministry of Culture. It holds a monopoly on the representation, collection and administration of rights. It manages, in the territory of the Togo, the interests of various foreign societies of authors within the framework of agreements it is tasked with agreeing with them.

USEFUL LINKS

International Conventions: www.ompi.int; www.oapi.int

A red background featuring a film strip on the left and a close-up of a human eye on the right. The text is centered in the lower half of this section.

**COPYRIGHT:
THE AMERICAN APPROACH**



CHAPTER

1

Fundamental principles of copyright law



TEZA

By Haïlé GERIMA

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COPYRIGHT: A PROTECTION OF YOUR WORK

In order to fully apprehend and understand an agreement organizing the transfer of copyright or the financing of a motion picture, let's first browse the basic concepts of copyright law.

In the U.S, copyright is rooted in the Constitution (Article 1, Section 8, Clause 8) and has been further developed in a Federal Statute, the Copyright Act of 1976 and numerous states statutes (which will not be addressed in this guide). U.S is also a member of the International Berne Convention and has signed the TRIPS agreement, one of the agreements establishing the World Trade Organization.

Consequently, any agreement including copyright aspects should be drafted in respect of the principles set forth in these texts.

DEFINITION OF COPYRIGHT

Copyright is a protection granted to authors of creations – denominated **works** – allowing them, in exchange of their contribution to the advancement of science and arts, to control and obtain financial compensation for the use of their works. This protection only subsists when a work is **simultaneously original and fixed in a tangible object**:

- a work is considered **original** when its author has created on his own: one who merely copies a pre-existing work will not enjoy the benefit of copyright protection. Originality also requires the work to show some degree **creativity**, although the threshold is rather low.
- To gain protection, an original work must be **fixed** in a physical instrument – a **copy**. For example, a screenplay needs to be written down on paper, a motion picture shall be embodied in a beta film or a DVD.

The fixation will allow the work to be published and communicated to the public. Most importantly, once an original work is fixed, it is immediately protected under copyright laws; the work does not need (anymore) to be registered or published to gain protection.

There is no doubt that audiovisual works and motion pictures are copyrightable works. However, a producer shall bear in mind that a motion picture includes numerous copyrightable elements other than the motion picture itself: the screenplay, the soundtrack, the film score and eventually, the characters when they actually constitute the “story being told” (as for Rocky Balboa in *Rocky* or Sam Spade in *The Maltese Falcon*).

Only the **expression** – the original work embodied in a tangible medium – gets copyright protection. This is never the case for the underlying **ideas** of the work. Thus, if an author has not materially fixed his ideas, he may not claim protection. Moreover, even fixed, the idea remains free to be used by others. For instance, if one decides to produce a feature film about a love story taking place in a passenger ship that sinks in the freezing water of the Atlantic ocean, he may not prevent any other to use this idea. However, the expression of this idea (the plot, the nature and description of the characters...) remains protected by copyright law.

REGISTRATION

Even though, if as seen above, registration of copyright is not anymore a prerequisite of protection, registration of works is worth being discussed in few lines.

First, let's underline that no copyright infringement suit can be filed without prior registration of the work subject to the infringement. However, registration is only mandatory for works **first published in the U.S or unpublished but created by U.S citizens**.

Furthermore, registration is always recommended, as section 410 (c) of the Copyright Act provides that when registration is made before or within five years after first publication of the work, the certificate of registration granted to the copyright holder constitutes **prima facie evidence of the validity of the copyright**. The copyright holder will therefore be exempted from having to prove the validity of its copyright in case of a legal action for copyright infringement. Registration also constitutes evidence of the **date of creation** of a work.

In order to register your copyright, you must:

- file an application (online or with papers forms) with the U.S Copyright office, a service unit of the Library of Congress based in Washington, D.C;
- pay the according fees and;
- make a deposit of a copy of your work.

Lastly, note that the Copyright Office holds an online database that you may access if you need to investigate whether a work is protected under copyright (more information may be found if you log on: <http://www.copyright.gov/>).

OWNERSHIP OF COPYRIGHT

Ownership of copyright is a quite important issue. The copyright owner is the person enjoying the rights granted by copyright. It initially vests in the author of the work (for instance, the copyright on a screenplay vest in the screenwriter). A single work may also be co-owned by two or more authors of a joint works, as when two screenwriters prepare a screenplay together or when a screenwriter and a cinematographer cooperate to produce a motion picture.

In certain situation, the work is not the propriety of the creator of the work. It is rather owned by the employer of the creator, when the latter has prepared the work within the scope of his or her employment or when a work is ordered or commissioned by a movie producer in order to use it as a part of a motion picture. These kinds of works, called work made for hire, are frequently used in the movie industry.

Work made for hire are defined hereunder as:

- *a work prepared by an employee within the scope of his or her employment; or*
- *a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities."*

Let say a producer wants to make a feature film about a painter and hires someone to create the paintings that the main character is supposed to create in the story. The copyright related to the paintings will vest in the producer and consequently, he will be further free to display the paintings within the film and use them for merchandising purposes.

Nevertheless, to be qualified as a work made for hire and for a producer to claim ownership, the producer and the original author (sometimes referred as an independent contractor) must enter into a **written agreement** signed by both parties, including a provision explicitly stating that both parties intend to create a work made for hire. This is a great protection for authors as it allows making sure that they knowingly abandon their copyrights on their works created for the benefit of the hiring party.

If we take for example a screenplay, when a writer is employed by a producer or is specially hired to prepare a screenplay (by way of a writer services agreement), the copyright owner is always the producer, unless no written instrument has been signed.

However, if an author writes it independently without being hired for this purpose, he may claim copyright ownership until he eventually sells his screenplay and transfers his copyright to a producer. In this case, he will enter into an **option and/or purchase agreement** with a producer, **both contracts being two different instruments usually negotiated at the same time.**

An **option agreement** provides a producer, during a limited period of time, with the exclusive right to acquire the rights to make a film based on a screenplay (*the motion picture rights*).

A **purchase agreement** is the agreement organizing the transfer of copyright between the writer and the producer. It shall include a number of provisions, that will be defined below (chapter II).

THE EXCLUSIVE RIGHTS IN COPYRIGHTED WORKS

The **copyright holder** (author, producer...) is granted with a number of rights that allow him to use his works. These rights are **exclusive** since only the copyright holder may exercise them. But for statutory exceptions like fair use, others will be able to exercise these rights only if they obtain an authorization by the copyright holder, by way of an agreement transferring or licensing these rights.

There are five traditional exclusive rights:

- the **right of reproduction** is the right to manufacture material or digital copies in which a copyrighted work is fixed, by any method now known or later developed. This right allows a producer to fabricate copies of a film in order to have it exhibited in movie theatres or sold in retail shops. Any unauthorized reproduction, in whole or in part, of a copyrighted work, even if undistributed, shall constitute a copyright infringement, unless authorized by a limitation on copyright.
- the **right of adaptation** invests the copyright owner with the right to prepare derivative works based upon a copyrighted work. When a producer wishes to produce a feature film based upon a novel, he shall secure the “movie rights” of the novel in an agreement under which the author of the book will authorize the producer to adapt the book in a screenplay and then in a feature film.
- the **right of distribution** is basically the rights to sale, rent, lend, or lease material or digital copies of a copyrighted work to the public. However, as a result of the “first sale doctrine”, once the copyright owner has exercised its right of distribution, it may not restrict any further distribution. This means for example that, once a producer has released physical copies of a DVD, the buyer of the physical copy of the DVD may resell it or even give it for free.
- the **right of public performance** entrusts the copyright owner with the exclusive right to perform certain copyrighted work publicly. A producer may then exhibit a motion picture in a movie theatre or authorize its broadcasting on TV networks. The “Home Style exception” allows bars or retail shops owners to turn on television set so that customers may watch a program broadcasted on a TV channel (including motion pictures or other audiovisual works) without having to pay a license fee;

- lastly, the **right of public display** grants the copyright owner with the right to show his work in public. This rights needs to be distinguished with the right of public performance. Regarding motion pictures and audiovisual work, the right of public display concerns any situation where still pictures taken from this type of work will be shown in public; as for example when displayed in the hall of a movie theatre.

NO MORAL RIGHTS

The notion of **moral rights** is a characteristic of civil law countries, mostly emphasized in France and set forth in the Bangui Convention. Moral rights are always attached to individuals – never to corporations - and are perpetual, inalienable, and exempt from prescription.

They are composed of four different rights:

- the **right of attribution** allows the author to claim authorship of its work;
- the **right of integrity** allows the author to prevent the distortion of its work without its authorization (for example, the colorization of a black and white movie requires the author prior approval);
- the **right of disclosure** entitles the author with the exclusive right to decide when its work may be disclosed to the public;
- finally, the **right of withdrawal** allows the author who has previously transferred part or all of his exclusive rights, to prevent the transferee from exercising the rights granted in exchange of a financial compensation.

U.K grants moral rights to copyright owners, including director of a copyrighted motion picture, which has the right to be identified as the author or director of the work and not to have his work subjected to derogatory treatment. However, U.K does not recognize a right of disclosure.

In the U.S, copyrights holders are not granted with any moral right at all, with the exception of authors – and only authors, never copyright owners – of work of visual arts, such as painting or photographs, provided only one single copy exists or provided they are produced in limited edition of 200 copies or fewer (see the Visual Artists Rights Acts of 1990, Section 106A of the Copyright Act).

The author of works of visual art is granted with a number of rights:

- the right to claim authorship of a work;
- the right to prevent the use of his or her name as the author of work he or she has not created;
- additionally, the author enjoys a *right of integrity*, the scope of which is particularly narrowed by the statute.

An author may protect the integrity of a work, but only in order to prevent any intentional distortion, mutilation, or other modification **which would be prejudicial to his honor or reputation**. He may also prevent the use of his name in connection with a work that has been distorted, mutilated or otherwise modified if the use of this work would be prejudicial to his or her honor or reputation. Lastly, an author may prevent any destruction of a *work of recognized stature*.

The specific rights granted to authors of works of visual arts are nevertheless particularly limited as they last only during the life of the author and as the author may waive them, even if he may not transfer these rights.

Therefore, it should be noted that movie directors may not claim any right of attribution or integrity even though it is true that, under the adaptation right, a copyright holder may prevent any distortion that could undermine the integrity of its work.

TRANSFER OF COPYRIGHTS

The copyright owner is free to transfer his copyright. The transfer of the integrality of the exclusive rights is called an assignment of copyright. It may be done for compensation or for free. Copyright owner may also license certain of his exclusive rights to another party. The license may be exclusive or non-exclusive. The distinction is crucial since **assignment and exclusive license** must be done in writing in order to be valid while **non-exclusive license** do not require a written instrument.

For instance, if a movie producer hires someone to create special effects to be used in a motion picture but does not enter into a written agreement, he may only claim an oral non-exclusive license which allows the author of the special effects to remain the owner of his work and to license it to others. Evidence of an oral non-exclusive license may be drawn from testimony or from other facts. Some courts have ruled that the existence of such a license may be implied from the conduct of the parties (for example, when the work is handled from licensor to licensee).

The other important distinction is that only the beneficiary of an assignment or of an exclusive license is entitled to sue others in case of copyright infringement.

Movie producers should also remember to insert a provision that anticipates future forms of use of the work as new forms of media are constantly created and gives them new economic opportunities.

Lastly, if recordation of the agreement with the copyright office is not mandatory, recordation constitutes striking evidence in case of conflict with another transferee of the same rights.

DURATION OF COPYRIGHT AND TRANSFERS

A license may last for the entire duration of the copyright or for a limited period of time, according to what is agreed between the parties.

The copyright of works created on or after January 1st, 1978, which runs from the day of the creation and during the author's life, is extended for an additional 70 years after the author's death. The duration of copyright of works made for hire is 95 years from publication or 120 years from creation, whichever is the shorter⁴².

When an author has assigned or licensed his copyright on or after January 1st, 1978, he has a right to recover ownership of copyright by terminating the transfer at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant. The death of the author also triggers a right to termination.

These rights are only granted to the original author and its heirs, never an assignee. It does not cover works made for hire. Furthermore, if one has been granted with the right to prepare a derivative work, he remains entitled to exploit it after the term of the grant.

COPYRIGHT INFRINGEMENT

We know that the rights granted to the copyright holder are exclusive and as a result, his works shall be used accordingly with what he has authorized others to do. Moreover, copyright holder shall have the necessary means to prevent, to end and to punish any violation of his rights.

Copyright holder may sue anyone who copies, adapts, distributes, performs or displays his work either without his permission or beyond the scope of what has been agreed in a contract.

The proof of infringement is a heavy burden to carry for the copyright holder. He must prove first, that he is the owner of a valid copyright or provide a valid certificate of registration of his copyright. Then, he must demonstrate that the alleged infringer has indeed **unlawfully copied** his work.

42. For works originally created and published or registered before January 1st, 1978, the issue is more complex. To be provided with a detailed answer, please download Circular 1 by logging on <http://www.copyright.gov/circls/>.

Proof of copy supposes to demonstrate:

- that the infringer have had **access** to the original work (such as, for example, when he owns a DVD copy of a motion picture, or when the movie was a popular hit, or if a screenplay have been submitted to a movie production company which has refused it but later hired other screenwriters to draft another screenplay largely inspired by the original work...). To prove copy, plaintiff must also show;
- that there are resemblances between the 2 works.

All copies do not constitute a violation of copyrights. To demonstrate a copyright infringement, plaintiff must also demonstrate that the copy is illicit, that is that it constitutes an **improper appropriation** of the work. It requires showing:

- that the alleged infringer has copied **protected material** (the expression) and not just ideas and also;
- that there is substantial similarity between the two works. **Substantial similarity** basically means that the allegedly infringing work is so similar to the original work that a lay observer could conclude that the infringer has unlawfully appropriated the protected expression of the work: the defendant must have copied substantial parts of the original work, not merely the main ideas.

If a plaintiff successfully proves the aforementioned elements, he will be entitled to remedies, such as:

- a preliminary or permanent injunction to prevent further infringement by defendant;
- damages and cost and attorneys' fees;
- the seizure and destruction of the infringing material.

COPYRIGHTS LIMITATIONS AND DEFENCES

There are situations where the use of a copyrighted work does not require the prior permission of the copyright owner.

A large number of statutory limitations give the right to use copyrighted works without seeking permission of the owner, including for example the right for a teacher to exhibit a movie for teaching purposes or the right to publicly perform a movie when it is done for non-profit purposes.

The most noticeable exception is the **fair use**, which is actually conceived as a defense to copyright infringement, mainly used in the framework of litigation. Consequently the fair use defense is uncertain as it may be defeated if a court found that the considered use does not fall within the scope of fair use.

According to the statutory definition of the fair use doctrine (see Section 107 of the 1976 Copyright Act), it is not a copyright infringement to use a copyrighted work, for purposes such as criticism, comment, news reporting, teaching, scholarship or research. When a court addresses the issue of fair use, it always analyzes the following factors:

- *the purpose and character of the use, including whether such use is of commercial nature or is for non profit education purposes.* Courts usually inquires to determine if the use is merely reproductive or transformative;
- *the nature of the copyrighted work.* The more a work is creative, the harder it is to allow fair use;
- *the amount and substantiality of the portion used in relation to the copyrighted work as a whole;*
- *the effect of the use upon the potential market for or value of the copyrighted work.* When addressing the potential markets factor, courts must assess if the faculty for a copyright owner to license his work is particularly undermined by the use in question.

Under the fair use defense, it is authorized to record a movie broadcasted on a TV channel when the user wants to watch the program at a more convenient time. It is also authorized for a movie producer to include in the background of a scene of a movie, a copyrighted item (like a poster) if the item is only visible for a couple of second.

A **Parody** of a work made without the author's consent is admitted under the fair use defense, mainly because most of the authors would be reluctant to authorize someone to make fun of his work. For instance, the parody of a copyrighted photograph used to advertise the future release of a motion picture in movie theatres is considered as fair use.

Description of an assignment in compliance with copyright law



THE CHAIN OF TITLE

It rests upon the movie producer to make sure that the chain of title will allow him to use his motion picture and avoid any legal claim.

The *chain of title* is characterized by a series of option/purchase agreements or services agreement regarding the creation of works, concluded between the producer and the rights holder/author, which therefore makes possible to determine the successive rights owners. By studying the chain of titles, one may verify if the assignment of rights were properly done and thus, if the final assignee will be certain to hold the entire rights assigned by the *original owner of the rights*.

As a consequence of the chain of titles, the producer becomes a rights holder and therefore may use these rights, transfer them to third parties, organize the distribution of the work, etc.

In any circumstances, the producer shall be able to prove that he holds the rights on his work and thus, he must establish a valid *chain of title*.

The means used to purchase rights apply to any kind of works as preexisting books, preexisting screenplays, or any kind of story that may be purchased, etc.

The agreement organizing the purchase of preexisting rights will authorize the producer to use a motion picture containing a preexisting work, such as for example, the adaptation of a novel into a motion picture, or a remake, which is the adaptation as a motion picture of a preexisting motion picture.

Analyzing the chain of titles results in verifying the proper succession of ownership of the agreements and thus makes possible to control that what A has assigned to B matches with what B has assigned to C and so on. The content of each assignment shall be strictly identical regarding each successive rights owner.

THE ASSIGNMENT AGREEMENT

It appears first necessary to study the content of the agreement usually concluded to acquire preexisting rights: *Option and purchase agreement*.

This type of agreement is entered into when a producer wants to obtain the rights on preexisting works (as for instance, a literary work being adapted into an audiovisual work).

THE FIRST STEP WILL CONSIST IN DRAFTING THE PREAMBLE OF THE AGREEMENT

In the preamble, the parties explain the framework of their agreement. They also dress a list of all the various preexisting agreements. For option/purchase agreements of a literary work, it will be mentioned that the agreement is entered into for the purchase of the right to use the literary work and to adapt it into a movie.

By reading the preamble, the parties as well as any other person who would have to read the agreement, are able to reconstitute the chain of titles and to verify it is free of any encumbrances.

DEFINITIONS

It is quite frequent to draft an article containing the definitions of the different terms (referred as such with a capital letter) that the parties will repeatedly find later within the agreement.

It is particularly necessary to define the **work** subject of the assignment. To this aim, the parties should describe as precisely as possible, the work upon which the rights are transferred.

For example: *original screenplay written by X and Y.*

Obviously, if several authors are involved, it is important to make sure that there is an assignment agreement for each of the authors.

The title of the screenplay must be mentioned.

Some contracts additionally include the definition of the term "*property*", meaning the whole version of the work, each of its elements in all of their versions under any form, and its use.

OPTION

Setting forth the *option* and how it works.

To recall the mechanism of the option: the option grants the producer with the right to hold back the rights on a work, for a limited period of time, for free or in exchange of a modest financial compensation. During that time, the rights holder is prevented from transferring his rights or even from granting an option to any other one. The producer, as a beneficiary of the option, may start to develop the work and to show it to potential investors.

The option may be plain simple and run over a single period of time for a certain number of months, but it may also be more detailed and consider a potential renewal period. We will then refer to an *Initial option* (for the first period) and *First extension period*, eventually a *Second extension period*, etc...

The Option is usually granted on an exclusive and irrevocable basis. The day the Option starts and the day it ends must be mentioned. When its granted against compensation ("*Initial option fee*"), it may be agreed that this fee will be charged on the "*Purchase price*" set up for the purchase of the rights. It is therefore conceived as an advance on fee.

The rights holder may also grant to the producer the right to renew the option. This is referred as a "*First extension option*". The rights holder thus authorizes the producer to extend the initial length of the option for an additional period of time (*to extend the Initial Option period for an additional consecutive --- months*) against the payment of an additional fee, which will not be charged on the "*Purchase price*".

Additional renewals of the option may eventually be agreed. In the case no additional extension period is provided and if the producer would like to be granted with a second extension of the option, he will have to negotiate it with the rights holder, with a risk that such negotiation will fail. With this in mind, it appears more careful to either set up longer length of option each times or to provide with the right to extend the option.

The author or rights holder may require that the length of the option will be extended if some conditions are satisfied, such as the presentation of a document establishing that the screenplay is currently being rewritten or that the producer is actually working on the financing of the motion picture.

Lastly, the agreement will describe how the option will have to be exercised, the best way being to mention that the option will be exercised by way of a written notice to be sent. This is quite advantageous as it indicates an accurate date.

THE PURCHASE PRICE

The option is exercised with the sending of a “written notice” which shall be paired with a bank check for the price set up to acquire the rights, the purchase price.

The purchase price may either be determined as a **flat fee**, the amount of which is fixed, as for instance 20,000,00 \$, or also by providing the fine points that will allow to determine the price on the basis of the film’s budget: that will be a percentage of 2% of the “*Final budget*” of the picture, *subject to a floor of \$----- and a ceiling of \$-----*. The producer will define afterward what is referred as the Budget: “*cash budget shall be defined as the direct final production budget approved by Producer*” (and completion guarantor if any).

The producer may include an additional compensation, generally determined on the basis of the net profits and which will take the form of a share of these “*net profits*”.

The right for the author to be granted with *box office bonuses* may as well be included: these bonuses will amount to \$----- if the box office receipts as determined in the Daily Variety Report reached an amount equal to 4 or 5 times the film’s final costs.

Lastly, a supplementary compensation set up as a flat fee may be agreed upon, in case a sequel, prequel or remake will be produced in a motion picture or a TV show.

GRANT OF RIGHTS

This section contains a list of all the rights granted by the authors to the producer and therefore of all the possible and considered ways of using the work. The rights granted shall be defined as extensively as possible, in order for the producer to be able to make the broadest commercial use of his motion picture.

“The right to develop, make, sell, produce, distribute, exhibit, broadcast in any technical means, advertise, license, record, exploit the Picture and all other derivative work upon Property, in any and all language, versions, manners, media, whether known or hereafter devised. Producer’s rights shall include but not limited to all theatrical motion picture rights, all non theatrical rights, all television rights, all animated and live action rights, all prequel, sequel and remake rights, all computer assisted media, electronic, interactive online, and internet, all soundtrack album and music publishing rights all advertising and publicizing rights, merchandising rights, ancillary rights”.

The rights are transferred for the perpetuity and for the universe.

To be more precise there is an example of a very complete section of granted rights:

“without limiting the generality of Section 2 above, the Rights granted hereunder include, without limitation, the following:

- *the sole and exclusive Motion Picture rights, including, without limitation, the sole and exclusive right to produce one or more Motion Pictures or other derivative works (including, without limitation, sequels, prequels, remakes, musicals and/or serials) based, in whole or in part, on the Property and the right to fix, release, distribute, exhibit, perform, transmit, broadcast, advertise, promote and otherwise exploit such Motion Pictures or other derivative works by any and all means and in any and all media whether now known or hereafter devised, including, without limitation, all of the following: theatrical; non-theatrical (including airlines, ships and other carriers, military, educational, industrial and the like); pay-per-view; home video (including videocassettes, digital videodiscs, laserdiscs, CD-ROMs and all other formats); all forms of television (including pay, free, network, syndication, cable, satellite, high definition and digital); Internet, including via download and/or streaming; video-on-demand and near video-on-demand; and all forms of digital distribution and/or transmission (including, without limitation, the interne. CD-ROMs, fiber optic or other exhibition, broadcast and/or delivery systems; all rights of communication to the public, rights of distribution to the public or other forms of public or private communication and/or distribution; and all forms of dissemination, communication or distribution to one or more identifiable locations or parties;*

- all ancillary, incidental and subsidiary rights, including, without limitation, all publishing and merchandising (e.g., games; computer and other electronic games; toys; coloring books, comic books, the right to create and publish graphic novels based on the Property, so-called “making of” books, picture books, photonovels, novelizations and screenplay publications; apparel, food, beverages, posters, and other commodities, services or items), commercial tie-ins, music, music publishing, soundtrack, interactive media, multi-media, and theme park (or other “themed” or location-based attraction) rights in and to the Property;
- the right to develop, produce, distribute, publish, advertise and otherwise exploit interactive video games based on the Property;
- the right to make or publish excerpts, synopses or summaries of the Property; the exclusive right to co-promote the Property which shall mean any advertisement or other promotional item or arrangement which is intended to promote a Motion Picture and/or the Property and one or more other products or services; and
- the exclusive right to use the title or titles by which the Property may be now or hereafter known, or any components of any such title or titles, including, without limitation: (x) as the title of Motion Pictures and/or in connection with the advertising, marketing, publicity, promotion and other exploitation thereof, whether such Motion Pictures are based wholly or partially upon the Property or are independent of the Property, (y) in connection with songs, musical compositions, music or lyrics, whether or not included in any such Motion Pictures, and (z) in connection with the publication, recodation, performance, and any other use whatsoever of the foregoing items.

Producer shall further have the right (to be exercised in its sole discretion) to adapt, modify, fictionalize, add to or take from the Property, and to combine the same with any other literary or musical work. In this regard, Assignor hereby waives the exercise of any provision of law known as “droit moral” or any similar law which may now or hereafter be recognized in any country or place (including, without limitation, the so-called right of paternity [“droit à la paternité], right of integrity [“droit au respect de l’œuvre], right of withdrawal [“droit de retrait” or “droit de repentir”] and/or right of publication [“droit divulgation”]), and agrees not to institute, support, maintain or permit any action or proceeding on the ground that any Motion Picture or other version of the Property produced or exploited by Producer or Producer’s successors, licensees or assigns in any way constitutes an infringement of any of Assignor’s droit moral or is any way a defamation or mutilation of the Property or any part thereof or contains unauthorized variations, alterations, modifications, changes or translations thereof. Assignor further hereby irrevocably assigns to Producer (or if any applicable law prohibits or limits such assignment, Assignor hereby irrevocably licenses to Producer), in perpetuity (but in any event for not less than the period of copyright and any renewals and extensions thereof) throughout the universe, all of Assignor’s rights, if any, to authorize, prohibit and/or control the renting, lending, fixation, reproduction, importation and/or other exploitation of the Property by any media and/or means now known or hereafter devised as may be conferred upon Assignor under applicable laws, regulations or directives, including, without limitation, any so-called “Rental and Lending Rights” pursuant to any European Union (“EU”) directives and/or enabling or implementing legislation, laws or regulations enacted by the member nations of the EU.”

A provision providing the producer with the right to use the rights transferred as he wishes and consequently, that the author “waives his moral rights”, is generally included.

Finally, in the event the producer has exercised his option and in order to prevent the rights to be put on hold in vain, the parties may agree that the rights will revert to the author or to the rights holder if, after a number of years, the producer has not yet begun the shooting of the motion picture.

RESERVED RIGHTS

The reserved rights are the rights that the author or the rights holder does not want to transfer to the producer. The producer will obviously try to reduce the rights reserved by the author or by the rights holder.

Reserved rights are particularly found in agreements organizing the adaptation of a literary work into an audio-visual work, where the author or the rights holder wants to retain the publishing rights on a book based on the film or the merchandising rights when a comic is turned into a film.

RIGHT OF FIRST NEGOTIATION AND LAST REFUSAL

The reserved rights provision is frequently supplemented by a provision aiming to grant the producer with a right of *“first negotiation”*.

As a matter of fact, while the producer has developed the work as motion picture and might have encountered a large commercial success after its release, it is quite logic to force the author or the rights holder, to first negotiate the further purchase of rights previously reserved with the producer, so as to avoid that others could unjustly take advantage of the added value provided to the work.

In this case, the author or the rights holder agrees to offer the reserved rights to the producer before any other party. The producer will have to accept to purchase the reserved rights within 30 days.

“The right of first refusal” means that once the producer has refused to purchase the reserved rights offered by the author as provided under the *“right of negotiation”*, the author or the rights holder should inform the producer that an offer to purchase has been made by a third party, so that the producer may decide to present a similar offer and to finally purchase the reserved rights.

CREDITS

- The name of the author or the name of the rights holder is mentioned in the film’s credits. The advertisement of the name should be set forth in the agreement as followed: on a separate cardboard, a certain size of letters, which author will be mentioned first if there is more than one author, how their name will appear.
- The indications regarding how the names will appear are mandatory and the producer will have to respect what the agreement provides.
- In the event the producer is not certain to be in a position to approve the credits or is not sure he will be able to respect the indication regarding the authors’ names, the agreement should stipulate that the credits will be done under the producer sole’s discretion and even to indicate that any discrepancy between the credits’ contractual provision and the actual final credits shall not be deemed as a breach of contract. The producer further agrees to do the best to correct any mistake.

REPRESENTATION AND WARRANTIES

The author or the rights holder that has transferred the rights on the work shall grant to the producer with a number of warranties:

- he is the sole owner of the rights transferred and is entitled to transfer these rights;
- the work is original;
- the work has not fallen into the public domain;
- the rights transferred are free and are not subject to any kind of legal action or any other conflict;
- the work is not infringing any other rights;
- the author or the rights holder has engaged in a conduct that could harm the rights transferred.

To be more precise there is an example of a very complete section of *“representation ad warranties”*:

Representations and warranties.

Assignor represents and warrants that:

- *except with respect to any material and/or information provided by Producer or any life rights to the life story of-----, Assignor is the sole owner of all Rights herein sold, transferred, granted, assigned and conveyed and purported to be sold, transferred, granted, assigned or conveyed to Producer and has the full and sole right and authority to sell, transfer, grant, assign and convey such rights;*
- *to the best of Assignor's knowledge, the Property may be validly copyrighted or registered for copyright in the United States of America and likewise may be protected elsewhere so far as the laws of other places and countries provide for such protection;*
- *except with respect to any material and/or information provided by Producer or any life rights to the life story of -----, the Property is wholly original with Assignor in all respects or based on incidental material in the public domain and Assignor is the sole author of the Property and all characters depicted therein;*
- *the Property is not in the public domain;*
- *no part of the Rights herein conveyed has in any way been encumbered, conveyed, granted or otherwise disposed of and all such Rights are therefore free and clear of any and all liens, claims, charges or encumbrances whatsoever in favor of any party whatsoever, and said rights and the full right to exercise the same have not been in any way prejudiced, limited, diminished or impaired;*
- *to the best of Assignor's knowledge, including that which Assignor should have known in the exercise of reasonable prudence, the title or titles of the Property may be legally used by Producer in the exercise of all or any of the Rights herein conveyed or agreed to be conveyed, and such use will not infringe upon the federal, state or common law trademark, service mark or trade name of any third party;*
- *the use, reproduction, performance or exhibition of the Property or any part thereof, or the exercise of any of the Rights herein granted or conveyed, or agreed to be conveyed, will not in any way infringe upon any copyright of any person or entity whatsoever, nor, to the best of Assignor's knowledge, any common law, literary, dramatic, or motion picture rights or any other rights of any person or entity whatsoever, nor, to the best of Assignor's knowledge, constitute a libel or defamation of, or invasion of any rights (including, without limitation, the right of privacy or publicity) of any person or entity;*
- *Assignor has not done, nor will do, any act or thing that will or may in any way;*

prevent or interfere in any manner with the full and exclusive enjoyment by Producer of any of the Rights herein granted, conveyed or agreed to be granted or conveyed or which will, or may, impair, impede, invalidate or encumber any such Rights;

- *to the best of Assignor's knowledge, including that which Assignor should have known in the exercise of reasonable prudence, there are no claims or litigations pending, outstanding or threatened that adversely affect, or that may in any way prejudice, Assignor's exclusive rights in the Property or any of the Rights herein granted, conveyed or agreed to be granted or conveyed, or the copyrights therein; and The Rights herein granted, conveyed or agreed to be granted or conveyed have never been exercised by Assignor or any third party.*

It is important to write that *"it is to the best assignor's knowledge"* of the Assignor because the Assignor shall only guaranty what he knows about.

INDEMNIFICATION

The author or the rights holder agrees to indemnify the producer for all damages of any kind, including attorney's fees and costs resulting from the breach of the agreement by the author or the rights holder.

STANDARDS TERMS AND CONDITIONS

As regards its general conditions, the agreement is subject to an addendum entitled "*standard terms and conditions*" including the following elements:

- the right to use the authors' name or the rights holder's name, his biography, in the framework of the production and commercial use of the motion picture; for any other use, producer shall seek the author's or rights holder's prior approval;
- the automatic extension of the length of the option in case of force majeure or in case any existing legal action requires to stop the development until the action comes to an end;
- the absence of any producer's obligation to make the motion picture (having in mind that the agreement already stipulates that if the shooting has not started after a certain date, the rights will revert to the author or rights holder).

ASSIGNMENT

The producer might have to assign his agreement either to a partner or to another producer that would replace him and produce the film. In that case, the parties have an option.

They may either agree that despite the assignment, the producer remains liable vis-à-vis the author or the rights holder regarding the perfect performance of his contractual duties, except if the assignment is made to a studio or a TV network. The exception is justified by the fact that the author should always stand in front of a producer that is able to perform its duties. This is always true when the production company is creditworthy as a studio or a network.

On the contrary, the agreement may provide that the assignment of the agreement to another producer will relieve the producer assignor from having to perform its contractual duties.

GOVERNING LAW

The final provision of the agreement indicates the law governing the agreement and which court has jurisdiction in the event of a legal action arising from the misapplication of the agreement. This is of the uttermost importance for international contracts signed between parties settled in different countries.

The parties may also agree to use alternative modes of dispute resolution, such as arbitration or mediation:

"All disputes arising out of or in connection with the validity, interpretation, performance, non-performance or termination of this Contract shall be submitted to mediation under the ----- Rules of Mediation to which the parties undertake to adhere."

WORK MADE FOR HIRE AGREEMENT

The work made for hire agreement is a contract entered into by an author who, as an employee, is hired by a producer to create a work.

The abovementioned sections regarding the preamble and the definition plainly apply to the work made for hire agreement.

ENGAGEMENT AND SERVICES

Since the agreement is signed between a producer and an employee, the first section should provide a definition of the services performed: the producer hires the author either for the writing of a screenplay, for its rewriting, for directing the film, or for any other services provided for the creation of the film produced.

It is likely that a producer has been assigned with the rights to use a preexisting screenplay by way of an *assignment agreement*, and then enters into a *work made for hire agreement* in order to hire a writer who will provide rewriting services.

The agreement shall mention the kind of services to be provided by the author, the services depending on the position held by the author, the date when the services should start and end. If these dates are not known on the day the agreement is signed, the producer may reserve the right to further notice these dates *on its sole discretion*.

For an agreement concerning rewriting services, it shall contain the different stages of rewriting (*first draft screenplay, etc...*) and the scheduled dates when the author is expected to deliver his work.

If the producer wants to have the possibility of soliciting the author to draft a new version of the screenplay, mostly known as a “polish”, he should include an option (usually running for three weeks) which enables him to decide whether he should order a new version to the author. If the producer exercise the option, the author will have to comply and thus provide a new version. However, if the producer does not exercise its option in a timely fashion, the author will be free to refuse providing any additional writing services.

The producer may mention that the author is employed to provide the services **on an exclusive basis** in order to make sure that the author will dedicate all his time to the work ordered by the producer.

As a consequence of a *work made for hire*, the agreement does not include any assignment of rights provision but most likely a statement of ownership of rights to the benefit of the producer, such as for example:

“Producer is and shall be the sole and exclusive owner for all purposes, in perpetuity, and throughout the universe, of all of the following from the moment of their creation at every stage of their development, production, or completion: all right, title and interest in and to the results and proceeds of author’s services hereunder, all of wick shall be “work made for hire” for producer prepared within the scope of author’s employment and/or as work specially ordered or commissioned for use as a part of the emotion picture or other audiovisual work”.

It should be noticed that in the provision above, it is clearly mentioned that the work is being created in the framework of a “*work made for hire*”, so as to meet the legal requirement (see Part I). It further includes a list of the various rights held by the producer and of the different contemplated uses of the work by the producer. In this respect, the provision is quite similar to the provision found in the *assignment agreement*.

Furthermore, we should find a parachute clause providing that, in the event the agreement would be disqualified as a work made for hire because the author could not be qualified as an employee, the author nevertheless transfers all of his rights on the work. We will then refer to the list of rights and uses mentioned in the producer’s statement of ownership.

COMPENSATION

The author is paid in exchange of the performance of its services. This payment may either be:

- a fixed salary: ---- \$ per weeks of work (for a director), or a fixed salary per version of the screenplay written by the author;
- a proportional compensation granted as a percentage of the net profits, the amount of the percentage being determined differently if the author has worked alone or with a co-author.

CREDITS

- The name of the author or the name of the rights holder is mentioned in the film's credits. The advertisement of the name is set forth: on a separate cardboard, a certain size of letters, who will be mentioned first if there is more than one author, how their name will appear.
- The indications regarding how the names will appear are mandatory and the producer will have to respect what the agreement provides.
- In the event the producer is not certain to be in a position to approve the credits or is not sure he will be able to respect the indication regarding the authors' names, the agreement should stipulate that the credits will be done under the producer sole's discretion and even to indicate that any discrepancy between the credits' contractual provision and the actual final credits shall not be deemed as a breach of contract. The producer further agrees to do the best to correct any mistake.

In any case, the Company shall have the right to use author's name, voice and image, and/or author's biography as it is written hereinafter in, a largest way:

"Company shall have the right, throughout the universe in perpetuity, in any and all media now or hereafter known devised, to use and reproduce, and grant others the right to use and reproduce, Artist's name, voice, likeness (provided, however, that Artist shall have the right to submit posed publicity stills reasonably acceptable to Company) and pre-approved biographical data in connection with the Picture and the advertising, publicizing and exploitation thereof (including, without limitation, in connection with featurettes and "behind-the-scenes" programming and interviews), "commercial tie-ups," merchandising and the exploitation, advertising and/or publicizing of any and all ancillary or subsidiary rights relating to the Picture, including all products, commodities and/or services relating to the Picture, by Company and/or its parents, affiliates or subsidiaries and/or in connection with general corporate or institutional uses (e.g., trade shows, Company promotions, financial prospectuses and/or annual reports) where the Picture is referenced or for promotion of their products; provided, however, that

- *Company may use Artist's name and/or likeness in connection with the advertising and publicizing of any such product, commodity, or service only if Company obtains Artist's prior written consent to do so and*
- *Artist shall not be represented as endorsing any product, commodity or service without Artist's prior written consent; provided further, however, that (a) Company's use of Artist's name in a billing block on any item of merchandise or other material or in connection with advertising and publicizing any product, commodity or service, or in connection with any commercial tie-in, shall constitute an acceptable use of Artist's name which shall not in any event require Artist's consent, and (b) if Artist does not provide pre-approved biographical data or posed publicity stills within a reasonable period after Company's request therefore, Company shall have the right to use any non-approved professional biographical data or photographs of Artist in its reasonable discretion".*

AUTHOR'S INCAPACITY

As the work made for hire agreement is a contract organizing the performance of services, it should include a provision considering any likelihood that the author will not be able to perform, including because of a medical condition. The parties agree that after a certain period of time, the agreement may either be suspended (therefore, the delivery date will be postponed) or terminated, the producer retaining ownership of the rights on the works previously delivered.

REPRESENTATION AND WARRANTIES

The author or the rights holder that has transferred the rights on the work shall grant to the producer with a number of warranties:

- he is the sole owner of the rights transferred and is entitled to transfer these rights;
- the work is original;
- the work has not fallen into the public domain;
- the rights transferred are free and are not subject to any kind of legal action or any other conflict;
- the work is not infringing any other rights;
- the author or the rights holder has engaged in a conduct that could harm the rights transferred.

INDEMNIFICATION

The author or the rights holder agrees to indemnify the producer for all damages of any kind, including attorney's fees and costs resulting from the breach of the agreement by the author or the rights holder.

STANDARDS TERMS AND CONDITIONS

Regarding its general conditions, the agreement is subject to an addendum entitled "*standard terms and conditions*" including the following elements:

- the right to use the authors' name or the rights holder's name, his biography, in the framework of the production and commercial use of the motion picture; for any other use, producer shall seek the author's or rights holder's prior approval;
- the automatic extension of the length of the option in case of force majeure or in case any existing legal action requires to stop the development until the action comes to an end;
- the absence of any producer's obligation to make the motion picture (having in mind that the agreement already stipulates that if the shooting has not started after a certain date, the rights will revert to the author or rights holder).

ASSIGNMENT

The producer might have to assign his agreement either to a partner or to another producer that would replace him produce the film. In that case, the parties have an option.

- They may either agree that despite the assignment, the producer remains liable vis-à-vis the author or the rights holder regarding the perfect performance of his contractual duties, except if the assignment is made to a studio or a TV network. The exception is justified by the fact that the author should always stand in front of a producer that is able to perform its duties. This is always true when the production company is creditworthy as a studio or a network.
- On the contrary, the agreement may provide that the assignment of the agreement to another producer will relieve the producer assignor from having to perform his contractual duties.

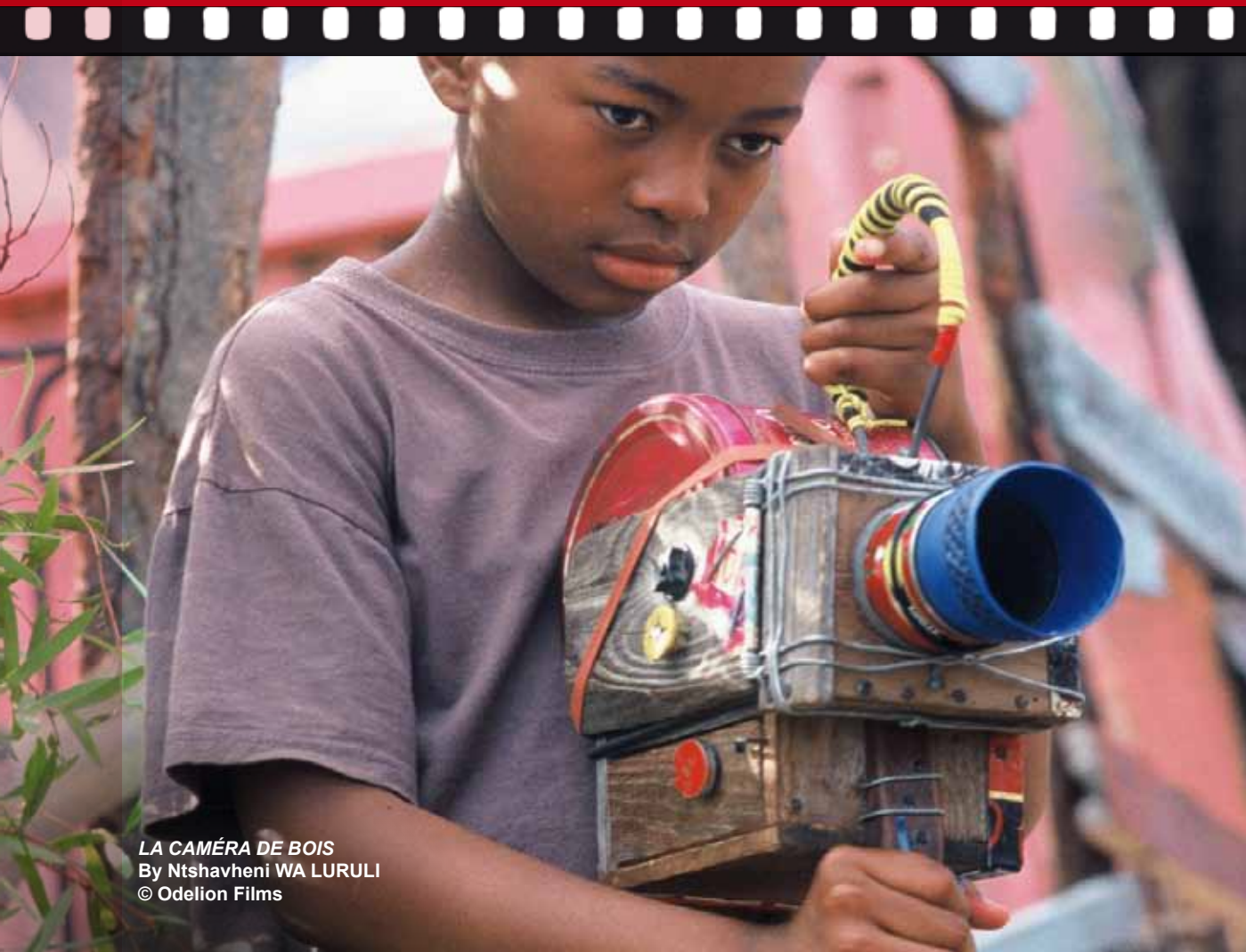
GOVERNING LAW

The final provision of the agreement indicates the law governing the agreement and which court has jurisdiction in the event of a legal action arising from the misapplication of the agreement. This is of the uttermost importance for international contracts signed between parties settled in different countries.

The parties may also agree to use alternative modes of dispute resolution, such as arbitration or mediation:

"All disputes arising out of or in connection with the validity, interpretation, performance, non-performance or termination of this Contract shall be submitted to mediation under the (mediation/ arbitration organism name's)-Rules of Mediation to which the parties undertake to adhere."

Country by country datasheets summarising copyright rules



SOUTH AFRICA

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<ul style="list-style-type: none"> Literary, musical and artistic works. Cinematographic works. Sound recordings. Broadcasts. Program-carrying signals. Published editions. Computer programs. 	<p>> General economic rights</p> <ul style="list-style-type: none"> Reproducing, publishing, performing, broadcasting the work. Causing the work to be transmitted/seen/heard in a diffusion service/in public (with exceptions). Making an adaptation of the work. Including an artistic work in a cinematograph film or a television broadcast. Letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of a film/sound recording. Making, directly or indirectly, a record embodying the sound recording. Communicating a sound recording to the public. <p>> General moral rights</p> <ul style="list-style-type: none"> Claiming the authorship of the work. Objecting any distortion, mutilation or modification of the work in case of prejudice (except for technical grounds or commercial purposes). 	<p>> Literary, musical and artistic works other than photographs</p> <p>Lifetime of the author + 50 years.</p> <p>> Cinematograph films, photographs and computer programs</p> <p>50 years from the end of the year in which the work is made available to the public with the consent of the owner of the copyright or is first published.</p> <p>> Sound recordings and published editions</p> <p>50 years from the end of the year in which the sound recording/edition is first published .</p> <p>> Broadcast</p> <p>50 years from the end of the year in which the broadcast first takes place</p> <p>> Program-carrying signals</p> <p>50 years from the end of the year in which the signals are emitted to a satellite.</p>	<ul style="list-style-type: none"> Research or private studies. Personal or private use. Purposes of criticism or review. Reporting current events. Judicial proceedings. Quotation (with mention of the name). Teaching. Reproduction by a broadcaster with its owns facilities (destruction after a certain period of time). Purposes of Information. Archives. Demonstration. Records under conditions by a manufacturer. Inclusion in background or incidentally.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> Action against infringement by the owner of the copyright or the licensee. Damages, interdict, acts of delivery. Fines and imprisonment up to 5 years. 	<ul style="list-style-type: none"> Author of the work. <p>> Joint authorship</p> <p>Co-authors of the work.</p> <p>> Contract of service or apprenticeship, realization in the course of the employment</p> <p>Proprietor of a newspaper, magazine, or similar periodical, commissioner, employer.</p>	<p>> Transfer of Copyright</p> <p>Assignment, testamentary disposition or operation of the law.</p> <p>> Specific provisions for restricting importation of copies</p> <p>Notice in writing to the Commissioner for Customs and Excise to request a survey of copies.</p> <p>> Existence of a Copyright Tribunal</p>	<ul style="list-style-type: none"> Copyright act n° 98 of 1978 as lastly amended in 2002.

BOTSWANA

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<p>> Original literary or artistic works Books, pamphlet, articles, computer programs, speeches; lectures, addresses, sermons, dramatic, dramatic-musical works, choreographic works and pantomimes created for stage production, stage production of works and of expression of folklore, musical works, audiovisual works, works of architecture, works of drawing, painting, sculpture, engraving, lithography, tapestry work of fine art, photographic works, work of applied art, illustration, maps sketches, three dimensional works relative to geography, topography, architecture, science.</p> <p>> Derivative works Translation, adaptation, arrangement, transformation, modifications of works, collections.</p> <p>> Expressions of folklore</p>	<p>> General economic rights</p> <ul style="list-style-type: none"> • Reproduction of the work. • Translation. • Adaptation, arrangement or other transformation. • First public distribution. • Rental or public lending of the original or copy of an audiovisual work, a work embodied in a sound recording, a computer, a data base or a musical work in the form of notation. • Importation of copies of the works. • Public display of the original or a copy. • Public performance of the work. • Communication of the work to the public. <p>> Moral rights</p> <ul style="list-style-type: none"> • Chose to indicate his name predominantly on the copies and in connection with any public use of the work. • Object to any distortion, mutilation or other modification of, or other derogatory action in relation to his work which would be prejudicial to his honor or reputation. 	<p>> In general Lifetime of the author +50 years after his death.</p> <p>> Joint authorship Protection during the life of the last surviving author +50 fifty years after his death.</p> <p>> Collective work 50 years from the date on which the work was made available to the public or first published whichever date is the latest.</p> <p>> Work published anonymously 50 years from the date on which the work was made, first made available to the public or first published, whichever date is the latest.</p> <p>> Work of applied art 25 years from the making of the work.</p>	<ul style="list-style-type: none"> • Private reproduction for personal purposes. • Quotation. • Reproduction for teaching. • Reprographic reproduction by libraries and archives. • Reproduction and adaptation of computer programs. • Reproduction broadcasting and other communication to the public. • Temporary reproduction. • Importation for personal purposes. • Display of works.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> • Conservatory measures. • Injunctions. • Order the impounding of copies of works or sound recordings suspected, packaging, implements, documents, accounts or business papers referring to such copies. • Destruction or other reasonable disposition of infringing copies. • Fine or imprisonment up to 10 years. 	<ul style="list-style-type: none"> • The author who has created the work. <p>> Joint authorship. The co-author for the part he has created.</p> <p>> Collective work. The person at the initiative and under the direction of whom or which the work has been created.</p> <p>> Audiovisual works. The producer unless provided otherwise in a contract.</p>	<p>> Transfer of rights</p> <p>Moral rights</p> <ul style="list-style-type: none"> • Not transmissible during the life of the author, transmissible by testamentary disposition or by operation of law following the death of the author. • Possibility to waive the moral rights. <p>Economic rights Assignment and license of author's rights in whole or in part.</p> <p>> Specific disposition of Neighbouring rights</p>	<ul style="list-style-type: none"> • Copyright and neighbouring rights of 15 may 2000.

CAMEROON

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<ul style="list-style-type: none"> Literary works, including computer programs. Musical compositions with or without lyrics. Dramatic, dramatic-musical, choreographic works and pantomimes created for the stage. Audiovisual works. Drawings, paintings, lithographs, etchings or wood engravings and other works of the same genre. All kinds of sculptures, bas-reliefs and mosaics. Architectural works, including the drawings, models and the construction itself. Tapestries and objects created by the arts and applied arts, including the sketches or patterns and the works themselves. Maps as well as graphic and plastic drawings and reproductions of a scientific or technical nature. Photographic works including works expressed by a process similar to photography. Expression through which ideas are described explained and illustrated. Translations, adaptations, arrangements or other alterations of literary or artistic works. Collections of works, including those which express folklore or simple facts or data, such as encyclopedias, anthologies, compiled data, which are reproduced either on machine-readable mediums or on any other form which, by the choice or arrangement of their contents, constitute original works. Folklore-inspired works. 	<p>> Economic rights</p> <ul style="list-style-type: none"> Use and authorize the use of the work in any form whatsoever and reap the financial benefit there from. Representation, reproduction, transformation, distribution of rights and inalienable mortgagee rights. Live representation. <p>> Moral rights (perpetual, inalienable and imprescriptible)</p> <ul style="list-style-type: none"> Decide on disclosure and determine the procedures and conditions of such disclosures. Claim ownership of his work by requiring that his name or capacity be mentioned each time the work is made available to the public. Defend the integrity of his work by objecting especially to its deformation or mutilation. Put an end to the dissemination of his work and make changes thereto. 	<p>> In general</p> <p>Lifetime + 50 years. Subsist for all the successors or rightful claimants of the author during the year of the death of the last surviving co-author +50 years for joint works.</p> <p>> For audiovisual work, works of applied arts, collective works</p> <p>50 years from the year in which the work was published with the consent of the author. If such publication did not take place within fifty years starting from the date of creation, the rights shall last for fifty years with effect from the end of the year of creation.</p> <p>> For anonymous or pseudonymous works</p> <p>50 years starting from the end of the year during which publication was authorized. In case of revelation and if the publication does not take place within fifty years from the date of creation: 50 years starting from the end of the calendar year of creation.</p> <p>> For posthumous works</p> <p>50 years with effect from the end of the calendar year of authorized publication of the work.</p>	<ul style="list-style-type: none"> Private performance. Performance given free of charge for educational and academic purposes or during religious services. Analysis, press review, short quotations justified by the critical, pedagogic, scientific or informative nature of the work (with the source). Teaching illustration. Parody, pastiche, cartoon. Reproduction and transformation as evidence in administrative or legal proceedings. Braille reproduction. Temporary reproduction (conditions provided by law). Information purposes. Reproduction of Sermons, addresses, conferences, speeches, articles... Reproduction of works of arts permanently kept in a public place (no exploitation of this reproduction). Ephemerals recordings of works (destroyed within 3 months).
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> Damages. Suspension, forfeiture. Fines or imprisonment up to 10 years. 	<ul style="list-style-type: none"> Author of a work. Author of a work of joint authorship. Author's employer or the person who has commissioned the work. 	<p>> Transfer of copyright</p> <p>Licenses, Performance and publishing contracts, Audiovisual production contracts.</p> <p>> Existence of collecting management bodies</p> <p>> Specific dispositions on neighbouring rights on copyright</p>	<ul style="list-style-type: none"> Law n° 2000/011 of December 19, 2000 on Copyright and Neighbouring Rights.

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<ul style="list-style-type: none"> • Literary work. • Artistic work. • Musical work. • Sound recording. • Audiovisual work. • Choreographic work. • Derivative work. • Computer software and programs. • Expressions of folklore. 	<p>> Economic rights</p> <ul style="list-style-type: none"> • Reproduction of the work in any manner or form. • Translation, adaptation, arrangement or any other transformation of the work. • Public performance, broadcasting and communication of the work to the public. • Distribution to the public of originals or copies of the work by way of first sales or other first transfer of ownership. • Commercial rental to the public of originals or copies of the work. <p>> Moral rights</p> <ul style="list-style-type: none"> • Claim the authorship of the work and in particular to demand that the name or pseudonym of the author be mentioned. • Object or seek relief in connection with any distortion, mutilation, or other modification of the work where that act would be or is prejudicial to the reputation of the author or where the work is discredited by the act. 	<p>> Economic rights</p> <p>In general Life of the author and 70 years after his death.</p> <p>Joint authorship Life of the last surviving + 70 years after.</p> <p>Bodies corporate 70 years from the date the work was made or first published.</p> <p>Anonymous work 70 years after the work was made, first made available or first published.</p> <p>Audiovisual, sound recordings 70 years after the year of publication/ fixation/making the work available to the public.</p> <p>> Expression of folklore Perpetuity.</p> <p>> Moral rights Perpetuity.</p>	<ul style="list-style-type: none"> • Reproduction, translation, adaptation, arrangement or other transformation. • Quotation. • Teaching purposes. • Professional training or public education. • Current events or fresh informations. • Reproduction of work of art of architecture for cinema or television (under conditions). • Temporary reproduction, digitally storage (under conditions). • Archival purpose or replacement of a lawfully copy. • Reprographic reproduction by library and archive. • Accidental or incidental inclusions in the reporting of a new broadcast or information. • Ephemeral recordings.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> • Fines or imprisonment up to 3 years. • Compensation to the victim of offence and forfeiture. • Injunction. • Order requiring the Customs, Excise and Preventive Service to detain the goods, or • damages for the infringement. • Action of the Customs, Excise and Preventive Service (CEPS). 	<ul style="list-style-type: none"> • Authors, co-authors, or joint authors. • In the absence of any contract to the contrary, the economic right of a work shall vest in an employer or a person who commissions the work in the course of the employment or commission. 	<p>> Transfer of copyright Economic rights are transmissible in whole or in part, contrary to moral rights; assignment, testamentary disposition or operation of the law.</p> <p>> Specific dispositions Copies of Sound recordings, mechanical reproduction rights of composers. Protection of Performers and broadcasting organizations.</p> <p>> Specific organizations Collective administration societies, copyright monitoring team, National Folklore board, Tribunal of Copyright, Copyright office.</p>	<ul style="list-style-type: none"> • Copyright Law n° 690 of 2005.

KENYA

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<ul style="list-style-type: none"> Literary works. Musical works. Artistic works. Audiovisual works. Sound recordings. Broadcasts. 	<p>> Economic rights</p> <ul style="list-style-type: none"> Reproduction, translation or adaptation. Distribution to the public of the work by way of sale, lease, hire, loan, importation or similar arrangement. Communication to the public and the broadcasting of the whole work or a substantial part. Importation into Kenya for sound recording works. Recording and rebroadcasting of the whole or a substantial part. <p>> Moral rights</p> <ul style="list-style-type: none"> Claim the authorship of the work. Object to any distortion, mutilation or other modification of, or other derogatory action in relation to his work which would be prejudicial to his honor or reputation. 	<p>> Literary, musical or artistic Works other than photograph: 50 years after the end of the year in which the author dies.</p> <p>> Audio Visual works and photographs 50 years in which the work was first made lawfully accessible to the public.</p> <p>> Sound recordings 50 years after the end of the year in which the recording was made.</p> <p>> Broadcasts 50 years after the end of the year in which the broadcasts took place.</p> <p>> Anonymous work 50 years after the first publication.</p> <p>> Joint authorship 50 years after the death of the last author.</p> <p>> National Museum Perpetuity.</p>	<ul style="list-style-type: none"> Scientific research. Private use. Criticism or review. Reporting of current events. Reproduction and distribution of copies, or inclusion in a film or a broadcast of an artistic work situated in a place where it can be viewed by the public. Incidental inclusion. Purpose of systematic instructional activities. Reading of recitation in public of any reasonable extract of a published book. Reproduction under the control of the government or by library, non commercial center of documentation, scientific institutions. Broadcasting of a literary, musical or artistic work or audiovisual works already lawfully made accessible to the public. Test of the product (computer programs).
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> Damages. Injunction. Fines. Imprisonment. Destroy the copies. Deliver up the copies to the owner of the copyright. <p>Expiration: 3 years after the date of the alleged offence with exceptions.</p>	<ul style="list-style-type: none"> The author. The commissioner or the employer. Government or corporate bodies. The performer. The broadcasting organization. Producers of Sound and Audiovisual Recordings. 	<p>> Transfer of copyright Copyright on economic rights shall be transmissible by assignment, by testamentary disposition, or by operation of law, as movable property. Moral rights are not transmissible during the life of the author.</p> <p>> Existing organization Board to authenticate copyright on works, collective administration of copyright.</p>	<ul style="list-style-type: none"> Copyright Act, chapter 130, 31st December 2001 (in force in 2003). Implementing regulations, 2004.

LESOTHO

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<ul style="list-style-type: none"> Literary, scientific and artistic works. Translation, adaptation, arrangements and other transformations. Collection of work such as encyclopedias and anthologies constituting intellectual creation. Work inspired by expressions of folklore. 	<p>> Economic rights (under government control)</p> <ul style="list-style-type: none"> Reproduce the work. Communicate the work to the public by performance, broadcasting, distribution by cable or any other means. Make an adaptation, translation, arrangement or other transformation of the work. <p>> Moral rights</p> <ul style="list-style-type: none"> Claim authorship of the work (with exceptions). Object and seek relief in connection with, any distortion, mutilation, or other modification of, and any other derogatory action in relation to, the work, where such an act is, or would be prejudicial to the honor or reputation of the author. 	<p>> Economic rights</p> <p>In general Lifetime of the author and 50 years thereafter.</p> <p>Joint authorship Lifetime of the last surviving author + 50 years thereafter.</p> <p>Economics rights are owned by a corporation or other body 50 years from the date of first publication of the work.</p> <p>Anonymous work or under a pseudonym 50 years from the date on which the work was first published.</p> <p>Audiovisual work, sound recording, broadcast 50 years from the date of making the work or from the date the work is made available to the public with the consent of the author.</p> <p>Photographic work 50 years from the date of making the work.</p> <p>> Moral rights Still after the death of the author, exercisable by the heirs.</p>	<ul style="list-style-type: none"> Reproduction, translation, adaptation, arrangement or other transformation of the work for a private or personal use only. Quotation (mention of the source). Illustration for teaching purposes. Distribution by cable of any work broadcast where the beneficiaries live in one and same building or group of buildings. Publication in newspapers or periodicals on current economic, political or religious topics (under conditions). Reporting a current event. Reproduction of works of arts and of architecture in audiovisual work or video-recording (conditions). Reproduction by public libraries, archives, museums, non commercial documentation center, scientific institutions and educational establishments (copies limited to the needs of the regular activities). Reproduction of political speech, lecture, address, sermons (current informations). Ephemeral recording. Translation in English or Sesotho (publication with the Minister agreement, translation licenses, modalities provided by the law). Reproduction and publication of a particular edition.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<p>> Civil remedies</p> <ul style="list-style-type: none"> Interdiction. Damages. Exemplary damages. Forfeiture. <p>> Penalties Fines and/or imprisonment up to 5 years.</p>	<ul style="list-style-type: none"> Author of a work. Author's employer or the person who has commissioned the work. Government or International bodies. Author of a work of joint authorship. 	<p>> Transfer of copyright Testamentary disposition, assignment of economic rights, license.</p> <p>> Specific disposition about works in the public domain and neighbouring rights</p> <p>> Society of Authors and Artists Promotion and protection of the interests of authors, collection and distribution of royalties or other remuneration accruing to its members in respect of their rights.</p>	<ul style="list-style-type: none"> Copyright Order 1989 n° 13.

LIBERIA

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<p>> Literary, dramatic-musical and artistic works</p> <p>Books, pamphlet, articles, computer programs, lectures, addresses, sermons, dramatic, dramatic-musical works, choreographic works and pantomimes, audiovisual works, works of drawing, painting, architecture, sculpture, engraving, lithography, tapestry, photographic works, work of applied art, illustration, maps, plans sketches, three dimensional works relative to geography, topography, architecture, science, works inspired by expression of folklore, translation, adaptation, arrangements and other transformations, compilations.</p> <p>> Compilation and derivative works</p> <p>> Expression of folklore</p> <p>Folk tales, poetry, riddles, songs, dances, traditional musical instruments...</p>	<p>> Economic rights</p> <ul style="list-style-type: none"> • Reproduce the copyrighted work in copies or sound recordings. • Prepare derivative works based upon the copyright work. • Distribute copies or sound recordings of the copyrighted work to the public including by way of importation, by sale or other transfer of ownership, or by rental, lease or lending. • Communicate the copyrighted work to the public by display, performance, broadcasting, and distribution by cable, motion picture, images, audiovisual work or any other means. <p>> Moral rights</p> <ul style="list-style-type: none"> • Claim authorship of his work • Object, and to seek relief in connection with, any distribution, mutilation, or other modification of the work where such act would be or is prejudicial to his honor or reputation. 	<p>> In general</p> <p>Lifetime of the author and 50 years after his death.</p> <p>> Joint authorship</p> <p>Lifetime of the last surviving author + 50 years after.</p> <p>> Anonymous or pseudonymous work</p> <p>50 years after the first publication.</p> <p>> Cinematographic or other audiovisual work</p> <p>50 years after the publication of the work or its making.</p> <p>> Presumption of death of the author</p> <p>After 75 years after the first publication or 100 years after its creation.</p> <p>> Posthumous work, photographs, records, government works, public undertakings, international organizations</p> <p>50 years from the year next following the year in which the work is first published.</p>	<ul style="list-style-type: none"> • Works of the government or works of public benefit (laws and decisions, report of commissions). • Purpose of criticism, comment, news reporting; teaching, scholarship or research. • Compulsory licenses for recording musical works. • Reproduction by libraries and archives (with limitations). • Certain performance and displays (teaching activities...). • In case of transfer of a particular copy or sound recording. • Secondary transmission under conditions. • Ephemeral recordings. • Copy of a computer program for archival purpose.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> • Damages and profits, statutory damages. • Impounding and disposition of infringing. • An infringer of copyright is liable for either the copyright's owner actual damages and any additional profits, and statutory damages. • Forfeiture and destruction. • Fines and imprisonment. 	<ul style="list-style-type: none"> • Author or authors of the work or co-authors in case of a joint work. • Employer or commissioner (except if otherwise is written in the contract). • Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. 	<p>> Transfer of copyright</p> <p>On an existing work or a future work in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property (right of the author to relinquish copyright)</p> <p>> The Liberia Copyright Office</p> <p>> Specific dispositions about the protection of performers and producers of sound recordings</p>	<ul style="list-style-type: none"> • Copyright law, 23/07/1997.

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<ul style="list-style-type: none"> Literary, dramatic, musical and artistic works. Expression of folklore developed and maintain in Malawi. Performance. Audiovisual works. Sound recordings and broadcasts. Typographical arrangements. Derivative works: translation, adaptation, arrangements, collection). 	<p>> Economic rights</p> <ul style="list-style-type: none"> Reproduction. Distribution to the public. Translation, adaption, arrangement the work or any other transformation. Communication the work to the public. Certain uses of expressions of folklore subject to a Minister authorization. <p>> Moral rights</p> <ul style="list-style-type: none"> Claim authorship of his work except when the work is included when reporting current events by means of photography, audio-visual work, sound recording and broadcasting. Object and seek relief in connection with any distortion, mutilation or other modification would be or is prejudicial to his honor or reputation or where the work is discredited thereby. Alter the work at any time. 	<p>> In general Lifetime of the author + 50 years after his death.</p> <p>> Joint authorship Life of the last surviving + 50 years after his death.</p> <p>> Anonymous or pseudonym work 50 years from the date on which such work was first lawfully published.</p> <p>> Audiovisual work 50 years from the date the work is created or communicated to the public.</p> <p>> Work owned by the Government or any corporate body 50 years from which the work was first made available to the public.</p> <p>> Computer programs 10 years from either the first use or when the computer software is first sold, leased or licensed.</p> <p>> Photographic work or applied art 25 years from the first publication or making.</p> <p>> Expression of folklore In perpetuity in the government.</p>	<ul style="list-style-type: none"> Personal or private use. Quotation. Illustration for teaching purposes. Distribution by cable live in one and the same buildings or group of buildings. Current economic, political, social or religious topics. Reporting current events. Storage purposes by libraries, non-commercial documentation centers... Communication in the public of political speech, lecture, address, sermons or other work for the purpose of current information. Recording by a broadcasting organization for the purpose of its owns broadcast and by means of its own facilities. Certain use of expressions of folklore.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> Fines or imprisonment up to one year. Damages, injunction, account of profits or otherwise. 	<ul style="list-style-type: none"> The author of the work. Joint-ownership: the co-authors jointly. The Government. A body corporate. Other person who employed the author or commissioned the work. 	<p>> Transfer of copyright</p> <ul style="list-style-type: none"> Economic rights (for future or existing work): assignment, testamentary disposition or by operation of law. For joint authorship: authorization of the joint authors. Compulsory reproduction licenses and compulsory translation licenses. <p>> The copyright Society of Malawi Promote and protect the interests of authors, collect, distribute royalties or other remuneration, maintain registers publicize the rights of owners, print and publish documentations, advise the minister of all matters.</p> <p>> Specific disposition for broadcasters, performers and producers of sound recordings</p>	<ul style="list-style-type: none"> Copyright n° 9, Law, 1989.

MAURITIUS

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<ul style="list-style-type: none"> • Artistic, literary or scientific works. • Derivative works. 	<p>> Economic rights</p> <ul style="list-style-type: none"> • Reproduction of the work. • Distribution to the public of originals or copies of the work by sales, rental or otherwise. • Public performance of the work. • Communication of the work to the public. • Broadcasting of the work. • Importation of copies of the work, even where the imported copies were made with the authorization of the author or other owner of the copyright. • Translation of the work. • Adaptation, arrangement or any other transformation of the work. <p>> Moral rights (non assignable)</p> <ul style="list-style-type: none"> • Claim the authorship of the work, except where the work is included, incidentally or accidentally, in reporting current events by means of broadcasting. • Remain anonymous or use a pseudonym. • Object to any distortion, mutilation, or other alteration of the work, where such an act is, or would be prejudicial to the honor or reputation of the author. 	<p>> Economic rights</p> <p>In general Lifetime of the author and 50 years thereafter.</p> <p>Joint authorship</p> <ul style="list-style-type: none"> • Lifetime of the last surviving author + 50 years thereafter. • Anonymous work or under a pseudonym: 50 years, from the date on which the work was first published. <p>Work made in the course of the author's employment or commissioned by another person 50 years from the date on which the work was created or first published.</p> <p>Audiovisual work</p> <ul style="list-style-type: none"> • 50 years from the making of the work; where the work is broadcasted or communicated to the public: 50 years from the end of the year during which the authorization was granted. <p>Photographic work or a work of applied art 25 years from the making of the work.</p> <p>> Moral rights</p> <p>Until the expiry of the period specified for the protection of the economic rights relating to the work.</p>	<ul style="list-style-type: none"> • Private reproduction for personal purposes. • Quotation (to be indicated the source and name of the author if the name appears in the work from which the quotation is taken). • Reproduction for teaching (to be indicated the source and the name of the author). • Reprographic reproduction by libraries and archives (for the purposes of study, scholarship or private research, purposes of preservation). • Reproduction, broadcasting and other communication to the public for informative purposes. • Reproduction and adaptation of computer programs. • Importation for personal purposes. • Public lending by a library or archive (equitable remuneration to the Society).
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<p>> Civil remedies</p> <ul style="list-style-type: none"> • Plaints with summons. • Injunction, damages. • Forfeiture, Order. <p>> Penalties Provided by the law (not accessible).</p>	<ul style="list-style-type: none"> • Author of a work. • Author of a work of joint authorship. • Author of an independent part of a work of joint authorship. • Author's employer or the person who has commissioned the work. • Producer of an audiovisual work. 	<p>> Transfer of copyright Assignment of economic rights, licenses, whether exclusive or not (Right to revoke an assignment or a license).</p> <p>> Mauritius Society of Author Represent and defend the interest of its members, promotion of national creativity, administer the economic rights of its members, negotiate and distribute equitable remuneration, fees.</p> <p>> Specific dispositions on broadcasting organizations, performers and producers</p>	<ul style="list-style-type: none"> • Copyright, Act 1997, Act n° 12 of 1997 (July 28, 1997).

NAMIBIA

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<ul style="list-style-type: none"> • Literary works. • Musical works. • Artistic works. • Cinematograph films. • Sound recordings. • Broadcasts. • Program-carrying signals. • Published editions. • Computer programs. 	<p>> Economic rights (specificities for each work)</p> <ul style="list-style-type: none"> • Reproducing or publishing the work. • Performing the work. • Broadcasting the work. • Causing the work to be transmitted in a diffusion service/ to be shown in public, to be heard. • Making an adaptation of the work. Including the work in a cinematograph film or television broadcast. • Letting or offering or exposing for hire by way of trade, directly or indirectly, a copy of the film. • Rebroadcasting the broadcast. • Undertaking or authorizing the direct or indirect distribution of program carrying signals. <p>> Moral rights</p> <ul style="list-style-type: none"> • Claim the authorship of the work, except where the work is included, incidentally or accidentally, in reporting current events by means of broadcasting. • Object to, and seek relief in connection with, any distortion, mutilation, or other modification of, and any other derogatory action in relation to, the work, where such an act is, or would be prejudicial to the honor or reputation of the author. 	<p>> In general</p> <p>Lifetime of the author and 50 years thereafter.</p> <p>> Literary or musical work</p> <p>50 years after the work is so first made available to the public after the author's death.</p> <p>> Cinematograph film, photograph or computer program</p> <p>50 years from the end of the year the work is made available to the public or made.</p> <p>> Sound recording or published edition</p> <p>50 years from the end of the year in which it is first published.</p> <p>> Broadcast</p> <p>50 years from the year of making.</p> <p>> Program carrying signal</p> <p>50 years from the end of the year in which the signal is emitted to a satellite.</p> <p>> Anonymous or pseudonymous works</p> <p>50 years from the end of the year in which the work is first made available to the public with the consent of the owner or the end of the year in which it is reasonable to presume that the author died, whichever term first expires (except if the identity is revealed).</p> <p>> Joint authorship</p> <p>50 years in reference to the author who dies last.</p>	<ul style="list-style-type: none"> • Research or private study. • Criticism or review. • Reporting a current event. • Judicial proceedings. • Quotation. • Teaching purposes. • Illustrations in a publication broadcast or sound visual recording for teaching purposes. • Reproduction of broadcasting companies by the means of its own facilities (6 months). • Informatory purposes. • Article of magazine on current economic, political or communication. • Official text of a legislative, administrative or legal nature. • Judicial or political speeches. • News of the day. • Demonstration by dealers (bona fide). • Record of a work (conditions provided by law). • Inclusion in a cinematograph film or television broadcast, transmission in a diffusion service. • Utilitarian purpose. • Short excerpts of the program. • Back up purposes.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> • Damages. • Fines and/or imprisonment up to 5 years. 	<ul style="list-style-type: none"> • Author of a work. • Author of a work of joint authorship. • Commissioner or the employer. • State or international organization. 	<p>> Transfer of copyright (limited to the use, period and country)</p> <p>Testamentary disposition, operation of law, Assignment, License.</p> <p>> Copyright owners' collecting societies</p> <ul style="list-style-type: none"> • Promoting and protecting the interest of owners of copyright, licensees or performers. • Recognized by the Minister. <p>> Specific dispositions on performers rights</p>	<ul style="list-style-type: none"> • Copyright and neighboring rights protection act 6 of 1994.

NIGERIA

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<ul style="list-style-type: none"> • Literary works. • Musical works. • Artistic works. • Cinematograph films. • Sound recordings. • Broadcast. • Folklore. 	<p>> In general for artistic and musical work</p> <ul style="list-style-type: none"> • Reproduction, publication, public performance. • Make any cinematograph work or record. • Distribution to the public for commercial purposes, copies of the work by way of rental, lease, hire, loan or similar arrangement. • Broadcasting or communication the work to the public by a loudspeaker or any other similar device. • Work's adaptation. <p>> Specific protection for expression of Folklore</p> <p>> Moral rights</p> <ul style="list-style-type: none"> • Claim authorship of his work. • Object and seek relief in connection with any distortion, mutilation or other modification of, and any other derogatory action in relation to his work. 	<p>> Economic rights</p> <p>Literary, musical or artistic works other than photographs</p> <ul style="list-style-type: none"> • 70 years after the end of the year in which the author dies. • In case of governments or a body corporate, 70 years after the end of the year in which the work was first published. <p>Cinematograph films and photographs 50 years after the end of the year in which the work was first published.</p> <p>Sound recordings 50 years after the end of the end of the year in which the recording was first made.</p> <p>Broadcast 50 years after the end of the year in which the broadcast first took place.</p> <p>Performer's right 50 years after the end of the year in which the performance first took place.</p> <p>> Moral rights Perpetuity.</p>	<ul style="list-style-type: none"> • Research, private use, critics, or review or reporting of current events. • Parody, pastiche, caricature. • Inclusion in a film or a broadcast of an artistic work situated in a place where it can be viewed by the public. • Incidental inclusion in a film or a broadcast. • Inclusion in a collection. • Educational purpose. • Reading and recitation of a reasonable extract from a published work. • Any use under the Government control or by public libraries, non commercial documentation center... • Archive purpose. • Reproduction under the control of a broadcasting authorities (with conditions). • Judicial proceedings. • News of the day. • Reproduction of published book for blind person. • Special exceptions for sound recordings of a musical work.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> • In front of the Federal High Court: damages, injunction, accounts. • Imprisonment up to 5 years. • Fines. • Order for Inspection and seizure. 	<ul style="list-style-type: none"> • Authors. • The commissioner or the employer. • Proprietor of news papers, periodicals, magazines. • Government. • Performers. • Broadcasting organization. • Producers of Sound and Audiovisual Recordings. 	<p>> Transfer of copyright</p> <ul style="list-style-type: none"> • Transmissible by assignment, by testamentary disposition or by operation of law, as movable property. • License to publish and produce translations/works for certain purposes/ for domestic broadcasting organization. <p>> Nigerian Copyright Commission</p> <p>> Specific disposition on Neighbouring rights</p>	<ul style="list-style-type: none"> • Copyright Act n° 47, 19th December 1988.

UGANDA

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<p>> Literary, scientific and artistic works</p> <ul style="list-style-type: none"> • Article, books, pamphlets, lectures, addresses, sermons and other works of a similar nature, Dramatic, dramatic-musical works. • Audiovisual works and sound recording, including cinematographic works. • Choreographic works and pantomimes. • Works of drawing, painting photography, typography, mosaic, architecture, sculpture, engraving, lithography and tapestry. • Work of applied art and work of all types of designing. • Illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science, any other works in the field of literature; traditional folklore and knowledge, science and art in whatever manner delivered, known or to be known in the future). <p>> Derivative works</p> <ul style="list-style-type: none"> • Translations, adaptations and other transformations of pre existing works • Collections of preexisting works like encyclopedia and anthologies. 	<p>> Economic rights</p> <ul style="list-style-type: none"> • Publish, produce or reproduce the work. • Distribute or make available to the public the original or copies of the work through sale or other means of transfer of ownership. • Public performance of the work. • Communication of the work to the public (including through the internet). • Make a derivative work. • Commercially rent or sell the original or copies of the work. • Doing in relation to that work any act known or to be known in the future. • Reproduce transcription into braille which is accessible to blind persons. <p>> Moral rights</p> <ul style="list-style-type: none"> • Claiming the authorship of the work, except where the work is included, incidentally or accidentally, in reporting currents events by means of broadcasting. • Have the author's name or pseudonym mentioned or acknowledge each time the work is used. • Object to any distortion, mutilation, or other alteration of the work, where such an act is, or would be prejudicial to the honor or reputation of the author. • Withdraw the work from circulation if it no longer reflects the author's convictions or intellectual concepts. 	<p>> Economic rights</p> <p>In general Lifetime of the author and 50 years thereafter.</p> <p>Joint authorship Lifetime of the last surviving author + 50 years thereafter.</p> <p>Corporation or other body 50 years from the date of first publication of the work.</p> <p>Anonymously or pseudonym work 50 years from the date on which the work was first published.</p> <p>Audiovisual work, sound recording, broadcast 50 years from the date of making the work or from the date the work is made available to the public.</p> <p>Computer program 50 years from the date of making the program available to the public.</p> <p>Photographic work 50 years from the date of making the work.</p> <p>> Moral rights Perpetuity.</p>	<ul style="list-style-type: none"> • Production, translation, adaptation, arrangement or other transformation of the work for a private personal use only. • Quotation. • Reproduction for teaching. • Reproduction, broadcasting and other communication to the public for informative purposes or for the purpose of judicial proceedings. • Reproduction by a public library, a non commercial documentation centre, a scientific institution or an educational institute. • Translation into braille or sign language for educational purpose of persons with disabilities. • Ephemeral recording by a broadcasting company.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<p>> Civil remedies</p> <ul style="list-style-type: none"> • Before the Commercial Court: injunction to prevent the infringement or to prohibit the continuation of the infringement. • Inspection or removal of the copyright infringing materials. • Damages. <p>> Penalties</p> <ul style="list-style-type: none"> • Fines and/or imprisonment up to 4 years, forfeiture of the apparatus, articles or thing which are the subject matter of the offence or which are used in connection with the commission of the offence. • Suspension of release by Customs authorities. 	<ul style="list-style-type: none"> • Author of a work. • Author's employer or the person who has commissioned the work. • Government or International body. • Author of a joint authorship work. 	<p>> Transfer of copyright</p> <ul style="list-style-type: none"> • Assignment of economic rights, license. • Transfer to another person or bequeath in whole or in parts. • Transfer to any braille production unit in Uganda. • Publishing contracts, public performance contract, broadcasting contracts, voidable contracts. <p>> Non exclusive license</p> <ul style="list-style-type: none"> • Application to the Minister by a citizen of Uganda or an ordinarily resident to make and publish a translation of a work in English, Swahili and any Uganda language (Restriction provided by law). • Application by a broadcasting company to translate published work or text of an audiovisual fixation. <p>> Administration of Copyright</p> <ul style="list-style-type: none"> • Designation by the Minister of a Registrar of Copyright. • Uganda Registration Service Bureau appoints assistant registrars, copyright inspectors and other officers. <p>> Collecting societies</p>	<ul style="list-style-type: none"> • Copyright and neighbouring rights act, 2006

RWANDA

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<p>> Literary and artistic work</p> <ul style="list-style-type: none"> • Works expressed by writing (books, pamphlets, and other writings) including computer programs. • Conferences, speeches, lectures, addresses, sermons and other oral works. • Musical works with or without accompanying words. • Dramatic, dramatic-musical works. • Choreographic works and pantomimes. • Audiovisual works. • Works of drawing, painting, sculpture, engraving, lithography, tapestry and other work of fine art. • Work of applied art like as handicraft works or works produced by industrial process. • Illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science. • Works deriving from Rwanda national folklore. <p>> Derivative works and collection of works</p>	<p>> Economic rights</p> <ul style="list-style-type: none"> • Reproduction or translation of the work • Adaptation, arrangement. • Rental of the original or a copy of an audiovisual work, a work embodied in a phonogram or a computer program. • Communication to the public. • Public performance of the work. <p>> Moral rights</p> <ul style="list-style-type: none"> • Claim the authorship, in particular to have his or her name indicated prominently on the copies and in connection with any public use of his work, as far as practicable. • Object to any distortion, mutilation or other modification of or other derogatory action in relation to his work this could be prejudicial to his /her honor or reputation. • Not having or her name indicated on the copies or the right to use a pseudonym. 	<p>> In general Lifetime of the author and fifty years after his death.</p> <p>> Joint authorship Lifetime of the last surviving + 50 years.</p> <p>> Anonymous or pseudonym work 50 years from the publication, the making.</p> <p>> Collective work ,audiovisual work, work published after the death of the author 50 years from the publication, the making.</p> <p>> Work of applied art 25 years from the year of making.</p>	<ul style="list-style-type: none"> • Private reproduction for personal purposes. • Temporary reproduction. • Free reproduction in form of quotation. • Teaching purposes. • Reproduction by libraries and archives. • Judicial and administrative purposes. • Informatory purposes. • Free use of picture of works permanently located on public places. • Free adaptation and reproduction of computer program. • Ephemeral recordings by broadcasting organization. • Free public performance. • Importation for personal purposes. • Free reproduction of the work for visually impaired persons.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<p>> Conservatory and provisional measures Measures of prevention, damages and any other compensation.</p> <p>> Corrective measures</p> <ul style="list-style-type: none"> • Order of cessation of infringement and any infringing act to right protected, detention, impoundment or destruction of copies of the work, disposal of copies. • Fines and imprisonment up to 5 years. 	<ul style="list-style-type: none"> • The author. • The co-authors. • The initiator of the work. • The employer or commissioner. • The co-authors of an audiovisual works. 	<p>> Transfer of the rights</p> <ul style="list-style-type: none"> • Moral rights: not transmissible during the lifetime. • Economic rights: testamentary disposition or operation of law on succession, licenses. • Translation licenses, publishing contracts, reproduction licenses. <p>> Companies of collective management of copyright and related rights</p> <p>> Specific dispositions on related rights</p>	<ul style="list-style-type: none"> • Law n° 31/2009 of 66/10/2009 on the protection of intellectual property.

SEYCHELLES

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<ul style="list-style-type: none"> • Literary works. • Musical works. • Artistic works. • Performance of literary or musical works. • Films. • Sound recordings. • Broadcasts. • Seychelles folklore. 	<p>> Economic rights (in general)</p> <ul style="list-style-type: none"> • Reproduction or adaptation in any material form. • Communication to the public. • Broadcasting. • Right to control the erection of any building reproducing the whole or a substantial part of the work of architecture. • Control the making of a film or recording, the use of a record for the purpose of giving a public performance. 	<p>> Economic rights</p> <p>25 years after the death of the author/ first publication in case of anonymous or pseudonymous work/ first performance/ making of recording/first broadcast.</p> <p>> Specific disposition of Seychelles folklore</p> <p>Perpetuity.</p>	<ul style="list-style-type: none"> • Private use. • Research. • Review, criticism. • Reporting current events. • Parody, caricature or pastiche. • Judicial proceeding. • Incidental inclusion of an artistic work in a film or a broadcast. • Reproduction distribution of copies or inclusion in a film or a broadcast of an artistic work permanently on view to the public. • Inclusion in a collection of literary or musical works of not more than two short passages from the work in question if the collection is designed for use in educational institutions and includes an acknowledgment of the title and authorship of the work. • The making or importing of a sound recording of a literary or musical work and the reproduction of that sound recording if intended for sale in Seychelles a fair compensation is paid to the owner of the relevant part of the copyright. • Reading or recitation in public of any reasonable extract from a published literary work. • Communication to the public by or under the direction or control of the Government if it is in the public interest; no revenue is derived from it and no admission fees is charged. • Broadcasting of a work already lawfully made accessible to the public if fair compensation is paid to the owner of the relevant part of the copyright.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> • Fine or imprisonment up to 5 years. • Destruction of copies, delivery, and other treatment fitting. 	<ul style="list-style-type: none"> • Author of a work. • Body corporate incorporated under the laws of Seychelles. • Author of a work of joint authorship. • Commissioner or employer. • Government, international body or other governmental organization. 	<p>> Transfer of copyright</p> <ul style="list-style-type: none"> • Assignment, will, operation of law • Licenses (existence of a Copyright License Authority). <p>> Copyright investigation</p> <p>Minister may authorize copyright inspectors.</p> <p>> Copyright registration</p> <p>Appointment in a Registrar of Copyrights established and maintained by a Copyright Register.</p>	<ul style="list-style-type: none"> • Law of Seychelles, Copyright Act chapter 51, revised edition 1991 + Subsidiary decision 1991.

SUDAN

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<p>> Works in the field of literature, science and arts</p> <ul style="list-style-type: none"> • Written works such as books, magazines, periodicals, articles and work of like nature. • Works of fine art whether sculpture, drawing, painting, decoration, works of applied art, works of artistic craftsmanship and works of like nature. • Dramatic and dramatic-musical works, musical works with or without lyrics, musical and dancing plays, and shows which are performed by movements or steps. • Audiovisual works. • Photographic works. • Works of architecture. • Computer programs. • Electronic data banks. • All kinds of maps and sketches relative to geography, topography or science. • Other works known or unknown. <p>> Derivative works</p> <ul style="list-style-type: none"> • Translations, adaptations, arrangements and transformations of original works. • Collections of protected works or of non-protected materials provided that by reason of the selection and arrangement of their content they constitute the result of original intellectual effort. 	<p>> Economic rights</p> <ul style="list-style-type: none"> • Publication and reproduction of his work, distribution to the public by sale, lease or lending on a commercial basis • Public performance of the work. • Broadcasting of the work, including through the communication and direct broadcasting satellites. • Communication of the work to the public by wire including cable, optical fiber and other material carriers. • Translation of the work into other languages. • Adaptation, arrangement or transformation of the work. • Exhibition or display of the work in public, and authorizing any other acts of commercial exploitation of the work by existing means to be developed. <p>> Moral rights</p> <ul style="list-style-type: none"> • Disclose the work to the public. • Claim authorship of his work and attribution of his name each time the work is used. • Publish under his true name, pseudonym or anonymously. • Object to any distortion or mutilation of his work or its derivative. • Withdraw the work from circulation. 	<p>> Economic rights</p> <p>In general Lifetime of the author + 50 years after his death.</p> <p>Photographic pictures and cinematographic films and other audiovisual works, works which are published for the first time after the author's death, work published under unknown pseudonym or anonymously 25 years from the date of publication.</p> <p>Joint work 50 years from the date of death of the last surviving author.</p> <p>> Moral right Lifetime of the author.</p>	<ul style="list-style-type: none"> • For newspaper, magazine, television, radio: <ul style="list-style-type: none"> – quotation, summary or brief announcement; – publication of photography for public event concerning an official or a famous person. • For school book, teaching purpose: <ul style="list-style-type: none"> – quotation; – illustration. • For published work: personal and private use. • Restoration, storage by libraries and archives. • Teaching process. • Judicial proceedings. • Ephemeral broadcasts by broadcasting organization. • Safeguarding computer program.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> • Damages. • Imprisonment. • Fine. • Injunction to stop the infringing act. • Attachment of duplicates or photographic copies extracted. • Confiscation or destruction of all copies, materials devised for. • Doubling of the amount of fine or the term of imprisonment. • Publication of the judgment. 	<ul style="list-style-type: none"> • Authors. • Co-authors. • Initiator of a collective work. • Directors, Authors of scenario, Authors of the musical work and the artistic work. 	<p>> Transfer of moral and financial rights</p> <ul style="list-style-type: none"> • Moral and financial rights may be transferred to any person (under conditions and registration to the Register's Office) and are imprescriptible. • Publishing contract, Public performing contract. <p>> Registrar office</p>	<ul style="list-style-type: none"> • Copyright and neighbouring rights protection Act December, 12th 1996.

ZAMBIA

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<ul style="list-style-type: none"> • Original literary works, musical works, artistic works, computer program. • Compilations. • Audiovisual works. • Sound recordings. • Broadcast. • Cable programs. • Typographical arrangement of published editions of literary works. 	<p>> General economic rights</p> <ul style="list-style-type: none"> • Publication. • Reproduction in any material form. • Broadcasting or inclusion in a cable program service. • Communication to the public by any other means. • Importation into Zambia of copies. • Adaptation of the work. • Reproduction. • Re-broadcasting or inclusion in a cable program (or another one). 	<p>> Economic rights</p> <p>General Lifetime of the author and 50 years thereafter.</p> <p>Work is produced by a public officer or employee of the government or a convention country 50 years from the end of the calendar year in which the work is made.</p> <p>Anonymously or pseudonym work 50 years from the date on which the work was first published.</p> <p>Audiovisual work, sound recording, broadcast 50 years from the date of making the work or from the date the work is made available to the public with the consent of the author.</p> <p>Joint authorship 50 years after the death of the last author whose identity is known.</p> <p>Audiovisual work and sound recording 50 years from the end of the year in which it is made/ first published.</p> <p>Broadcast or cable program 50 years from the end of the year in which the program was first published.</p> <p>Typographical arrangement of a published edition 50 years from the first publication.</p> <p>> Moral rights Lifetime.</p>	<ul style="list-style-type: none"> • Private study or researches for personal purposes. • Criticism or review. • Reporting current events. • Purposes of judicial proceedings. • Reading or recitation in public of any reasonable extract from a published literary work. • Reproduction for the purpose of the education system of Zambia. • Performance of a dramatic work by staff or student (conditions). • Copy by a library or archive. • Protect from the loss, destruction or corruption of a computer program. • Recording a broadcast or a cable program by an individual for the purpose of allowing the individual to listen to or view the broadcast or program at a time more convenient to him.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> • Injunction to prevent the infringement or to prohibit the continuation of the infringement. • Inspection or removal of the copyright infringing materials. • Damages. • Fines and/or imprisonment up to 5 years. 	<ul style="list-style-type: none"> • Author of a work (with conditions of nationality or residence). • Director of an audiovisual work. • Author's employer or the person who has commissioned the work. • Author of a work of joint authorship (under certain requirement). 	<p>> Transfer of copyright (limited to the use, period and country) Assignment, testamentary disposition or by operation of Law, Licenses.</p> <p>> Collecting Societies</p> <ul style="list-style-type: none"> • Application to the Registrar. • Administer and negotiate collective copyright license agreements on behalf of the owner and other copyright owners. <p>> Registrar of Copyright</p> <ul style="list-style-type: none"> • Monitor the activities of collecting societies. • Encourage and facilitate the development of collecting societies. • Examine the case of alleged copyright infringement and where appropriate advise the Director of Public Prosecutions. • Provide information and advice on copyright matters to the Minister. • Grant licenses to translate or reproduce certain works. 	<ul style="list-style-type: none"> • The Copyright and performance rights act, 1994.

ZIMBABWE

WORKS PROTECTED	RIGHTS PROTECTED	DURATION OF COPYRIGHT	EXCEPTIONS TO EXCLUSIVE RIGHTS TO COPYRIGHT
<ul style="list-style-type: none"> Literary works, musical works, artistic works. Audiovisual works. Sound recordings. Broadcasts. Program-carrying signals. Published editions. Work of folklore (specific dispositions). 	<p>> General economic rights</p> <ul style="list-style-type: none"> Reproducing the work. Publishing the work. Importing or exporting the work from Zimbabwe, otherwise than for the personal and private use of the person importing or exporting it. Performing the work in public. Broadcasting the work. Causing the work to be transmitted in a cable program service Making an adaptation of the work (except for computer program) Publishing an adaptation of the computer program. By way of business, directly or indirectly selling or letting for hire a copy of the program or offering or exposing a copy of the program for sale or hire. <p>> Moral rights</p> <ul style="list-style-type: none"> Right to be identified as author or director (with exception for certain types of work). Right not to be identified. Right to object to derogatory treatment of work. Right to privacy in regard to certain photograph and audiovisual works. 	<p>> Audiovisual work, collective work, photograph or computer program</p> <p>50 years from the date the work is available to the public, the making of the work.</p> <p>> Sound recording</p> <p>50 years from the first publication.</p> <p>> Broadcast</p> <p>50 years from the end of the years the broadcast first takes places.</p> <p>> Program-carrying signal</p> <p>50 years from the end in which the signal is first emitted.</p> <p>> Published edition</p> <p>50 years from the year the edition is first published.</p> <p>> Other literary, musical, artistic work</p> <p>Life of the author + 50 years from the end of the death.</p> <p>> Anonymous or pseudonymous literary work</p> <p>50 years from the year the work is available to the public or from the year is reasonable to presume that the author died.</p>	<ul style="list-style-type: none"> Purpose of research or private study. Educational use. Copies to replace or conserve library or archival copies of works. Use of anonymous or pseudonymous work after a certain period of time. Use of work for Parliamentary or judicial proceedings or inquiries. Publication of public speeches and article of topical interest. Quotation. Public readings and recitations. Records made from sound tracks. Reconstruction of architectural works. Reproduction of artistic works in public places. Incidental inclusion. Ephemeral recordings. Reproducing artistic work for the purpose of advertising its sale. Use of work for demonstration purposes Computer programs: backup copies, decompilation, etc. Recording of programs and broadcasts for purpose of subsequent viewing or listening. Private recording of musical works and sound broadcasts. Acts done under statutory authority.
ENFORCEMENT	OWNERSHIP OF COPYRIGHTS	SPECIFIC DISPOSITIONS	NATIONAL LAW
<ul style="list-style-type: none"> Damages. Fine. Imprisonment up to 2 years. 	<ul style="list-style-type: none"> Author of the work. Joint authorship: co-authors of the work. Collective work: the person at whose instance and under whose direction the work was created. Employer or commissioner. 	<p>> Transfer of copyright</p> <ul style="list-style-type: none"> By assignment, testamentary, dispositions of operations of law, licenses. Moral rights: not transmissible during the author's life. <p>> Copyright office, copyright register, controller of copyright, registrar of copyrights</p> <p>> Collecting societies, Copyright and Neighbouring rights collecting society of Zimbabwe</p>	<ul style="list-style-type: none"> Copyright and neighbouring rights act, 2000.

Other countries of Africa for which no documentation was found

- Gambia: Copyright act of 2004 of Gambia
- Eritrea
- Saint Helene
- Swaziland: Copyright act of 1912 , amended by a new Copyright act of 2010 but not available on line
- Sierra Leone: Copyright act n° 28 of 1965

Country by country datasheets summarising the rules governing other contributors' rights



SOUTH AFRICA

DATAS

Department of Trade and Industry Companies and Intellectual Property Registration Office (CIPRO)

<http://www.cipro.gov.za/>

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Senior Manager (Registrar): Patents & Designs: Ms. Elena Zdravkova
Senior Manager (Registrar): Trademarks: Ms. Fleurette Coetzee

BOTSWANA

Registrar of Companies and Intellectual Property Ministry of Trade and Industry

http://www.mti.gov.bw/index.php?option=com_content&view=article&id=91&Itemid=22

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Principal Registrar of Copyright: Mrs. Staffnurse B. Lesetedi

DATAS

CAMEROON

**WIPOnet Coordinator
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APPENDIX 4

INTERNATIONAL LAW

WIPO ADMINSTERED TREATIES	COUNTRY	ENTRY INTO FORCE
<i>Berne Convention</i>	BOTSWANA CAMEROON GHANA KENYA LESOTHO LIBERIA MALAWI MAURITIUS NAMIBIA NIGERIA RWANDA SUDAN ZAMBIA SOUTH AFRICA ZIMBABWE GAMBIA SWAZILAND	15 April 1998 21 September 1964 11 October 1991 11 June 1993 28 September 1989 8 March 1989 12 October 1991 10 May 1989 21 March 1990 14 May 1993 1 March 1984 28 December 2000 2 January 1992 3 October 1928 18 April 1980 7 March 1993 14 December 1998
<i>WIPO Convention</i>	BOTSWANA CAMEROON GHANA KENYA LESOTHO LIBERIA MALAWI MAURITIUS NAMIBIA NIGERIA UGANDA RWANDA SUDAN ZAMBIA SOUTH AFRICA ZIMBABWE GAMBIA ERITREA SWAZILAND SIERRA LEONE	15 April 1998 3 November 1963 12 June 1976 5 October 1971 18 November 1986 8 March 1989 11 June 1970 21 September 1976 23 December 1991 9 April 1995 18 October 1973 3 February 1984 15 February 1974 14 May 1977 23 March 1975 29 December 1981 10 December 1980 20 February 1997 18 August 1988 18 May 1986
<i>WIPO Copyright Treaty</i>	BOTSWANA GHANA KENYA NAMIBIA NIGERIA SOUTH AFRICA	27 January 2005 18 November 2006 – – – –

<i>WIPO Performance and Phonogram Treaty</i>	BOTSWANA GHANA KENYA NAMIBIA NIGERIA SOUTH AFRICA	27 January 2005 – – – – –
<i>Brussels Convention</i>	KENYA RWANDA	25 August 1979 25 July 2001
<i>Phonogram Convention</i>	KENYA LIBERIA	21 April 1976 16 December 2005
<i>Rome Convention</i>	LESOTHO LIBERIA NIGERIA	26 January 1990 16 December 2005 29 October 1993
INTELLECTUAL PROPERTY REGIONAL TREATIES		
<i>OAPI</i>	CAMEROON	8 February 1982
<i>Cultural Charter for Africa</i>	CAMEROON GHANA KENYA MALAWI MAURITIUS NIGERIA UGANDA RWANDA SEYCHELLES SUDAN ZAMBIA ZIMBABWE GAMBIA	19 September 1990 19 September 1990 19 September 1990 19 September 1990 19 September 1990 19 September 1990 19 September 1990 19 September 1990 19 September 1990 19 September 1990 19 September 1990 19 September 1990 –
<i>Charter for African Cultural Reconnaissance</i>	GHANA LIBERIA NIGERIA ZAMBIA SIERRA LEONE	– – – – –
INTELLECTUAL PROPERTY RELATED MULTILATERAL		
<i>Agreement establishing the World Trade Organization</i>	BOTSWANA CAMEROON GHANA KENYA LESOTHO MALAWI MAURITIUS	31 May 1995 13 December 1995 1 January 1995 1 January 1995 31 May 1995 31 May 1995 1 January 1995

WIPO ADMINSTERED TREATIES	COUNTRY	ENTRY INTO FORCE
<i>Agreement establishing the World Trade Organization</i>	NAMIBIA NIGERIA UGANDA RWANDA ZAMBIA SOUTH AFRICA ZIMBABWE GAMBIA SWAZILAND SIERRA LEONE	1 January 1995 1 January 1995 1 January 1995 22 May 1996 1 January 1995 1 January 1995 5 March 1995 23 September 1996 1 January 1995 23 July 1995
<i>TRIPS Agreement</i>	BOSTWANA CAMEROON GHANA KENYA LESOTHO MALAWI MAURITIUS NAMIBIA NIGERIA UGANDA RWANDA ZAMBIA SOUTH AFRICA ZIMBABWE GAMBIA SWAZILAND SIERRA LEONE	31 May 1995 13 December 1995 1 January 1995 1 January 1995 31 May 1995 31 May 1995 1 January 1995 1 January 1995 1 January 1995 22 May 1996 1 January 1995 1 January 1995 5 March 1995 23 October 1996 1 January 1995 23 July 1995
<i>Convention concerning the Protection of the World Cultural and Natural Heritage</i>	BOSTWANA CAMEROON GHANA KENYA LESOTHO LIBERIA MALAWI MAURITIUS NAMIBIA NIGERIA UGANDA RWANDA SEYCHELLES SUDAN ZAMBIA SOUTH AFRICA ZIMBABWE GAMBIA ERITREA SWAZILAND SIERRA LEONE	23 February 1999 7 March 1983 17 December 1975 5 September 1991 25 February 2004 28 June 2002 5 April 1982 19 December 1995 6 July 2000 17 December 1975 10 February 1988 28 May 2001 9 July 1980 17 December 1975 4 September 1984 10 October 1997 16 November 1982 1 October 1987 24 January 2002 28 February 2006 7 April 2005

<i>Convention relating to the status of stateless persons</i>	BOTSWANA LESOTHO LIBERIA MALAWI UGANDA RWANDA ZAMBIA ZIMBABWE SWAZILAND	30 September 1966 4 November 1974 10 December 1967 5 January 2010 14 July 1965 2 January 2007 1 November 1974 18 April 1980 14 February 2000
<i>Multilateral convention for the avoidance of double taxation of Copyright</i>	CAMEROON LIBERIA	– –
<i>Agreement on the importation of Educational, scientific and Cultural Material</i>	CAMEROON GHANA KENYA LIBERIA MALAWI MAURITIUS NIGERIA UGANDA RWANDA ZAMBIA ZIMBABWE SIERRA LEONE	15 August 1964 6 March 1957 15 June 1967 16 September 2005 17 November 1965 12 March 1968 1 October 1960 15 June 1965 1 July 1962 24 October 1964 18 April 1980 27 April 1961
<i>Convention on the protection and promotion of the diversity of cultural expressions</i>	CAMEROON KENYA LESOTHO MALAWI MAURITIUS NAMIBIA NIGERIA SEYCHELLES SUDAN SOUTH AFRICA ZIMBABWE	18 march 2007 24 January 2008 18 May 2010 16 June 2010 18 May 2007 18 March 2007 21 April 2008 20 September 2008 19 September 2008 21 march 207 15 August 2008
<i>Convention on the Rights of persons with disabilities</i>	CAMEROON GHANA KENYA LESOTHO LIBERIA MALAWI MAURITIUS NAMIBIA NIGERIA UGANDA RWANDA SEYCHELLES	– – 18 June 2008 1 January 2009 – 26 September 2009 7 February 2010 3 May 2008 24 October 2010 25 October 2008 14 January 2009 1 November 2009

WIPO ADMINSTERED TREATIES	COUNTRY	ENTRY INTO FORCE
<i>Convention on the Rights of persons with disabilities</i>	SUDAN ZAMBIA SOUTH AFRICA SWAZILAND SIERRA LEONE	24 May 2009 3 March 2010 3 March 2008 – 3 November 2010
<i>Convention on Transit Trade of Land-Locked States</i>	CAMEROON LESOTHO MALAWI NIGERIA UGANDA RWANDA SUDAN ZAMBIA SWAZILAND	– 27 June 1969 9 June 1967 9 June 1967 – 12 September 1968 – 9 June 1967 25 June 1969
<i>Universal Copyright Convention 1952</i>	CAMEROON GHANA KENYA LIBERIA MALAWI MAURITIUS NIGERIA RWANDA	1 May 1973 22 August 1962 7 June 1966 27 July 1956 25 October 1965 12 March 1968 14 February 1962 10 November 1989
<i>Universal Copyright Convention 1971</i>	CAMEROON KENYA RWANDA	10 July 1974 10 July 1974 10 November 1989
<i>United Nation Convention on Contracts for the International Sales of Goods</i>	GHANA LESOTHO LIBERIA UGANDA ZAMBIA	– 1 June 1988 1 October 2006 1 March 1993 1 June 1988
<i>Convention and Statute on Freedom of Transit</i>	LESOTHO LIBERIA MALAWI MAURITIUS NIGERIA RWANDA ZIMBABWE SWAZILAND	4 October 1966 15 December 2005 – 12 March 1968 1 February 1968 1 July 1962 18 April 1980 22 February 1970
<i>International Convention on The Harmonization of Frontier Controls of Goods</i>	LESOTHO LIBERIA SOUTH AFRICA	30 June 1988 16 December 2005 24 May 1987

<i>United Nations Convention on Jurisdictional Immunities of States and their Properties</i>	SIERRA LEONE	–
<i>United Nations Convention on the Use of Electronic Communications in International Contracts</i>	SIERRA LEONE	–
REGIONAL INTEGRATION TREATIES		
<i>Abuja Treaty</i>	BOTSWANA CAMEROON GHANA KENYA LESOTHO LIBERIA MALAWI MAURITIUS NAMIBIA NIGERIA UGANDA RWANDA SEYCHELLES SUDAN ZAMBIA SOUTH AFRICA ZIMBABWE GAMBIA ERITREA SWAZILAND SIERRA LEONE	27 July 1966 19 January 1966 12 May 1994 12 May 1994 11 September 1997 12 May 1994 12 May 1994 12 May 1994 12 May 1994 12 May 1994 12 May 1994 12 May 1994 12 May 1994 12 May 1994 12 May 1994 12 May 1994 30 June 2001 12 May 1994 12 May 1994 – 6 July 2001 12 May 1994
<i>Treaty for the Establishment of the East African Community</i>	KENYA UGANDA RWANDA	1 July 2000 7 July 2000 1 July 2007

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Translation

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Graphics

Photographic Credits

With the support of the French Institute.

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Design and Production

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Printing: imprimerie Chiffolleau

Acknowledgments

The authors wish to thank the EuroMed Audiovisuel II - Imed Programme for authorising them to use the technical data file template, created by Michel Gyory and published in the legal database on the website at www.euromedaudiovisuel.net, in Chapter 4 of this Guide.

BIBLIOGRAPHY

- *Technique contractuelle*, by Jean-Marc Mousseron
Éditions Francis Lefèvre
3^e édition by Pierre Mousseron, Jacques Raynard and Jean-Baptiste Seube
- *Propriété littéraire et artistique*, by Pierre-Yves Gautier
Éditions PUF droit
- *Le droit d'auteur*, by Frédéric Pollaud-Dullian
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WEBSITES

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GLOSSARY AND ACRONYMS

ADPIC	TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights <i>Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce</i>
APC	Cinema Producers' Association <i>Association des producteurs de cinéma</i>
API	Application Programming Interface <i>Interface de programmation</i>
	Catch up TV <i>Télévision de rattrapage</i>
ARP	Writers', Directors' and Producers' Society <i>Société civile des auteurs-réalisateurs-producteurs</i>
CA Net HT	Net Turnover, excluding VAT <i>Chiffre d'affaires net hors taxes</i>
CIC	Film Industry Code <i>Code de l'industrie cinématographique</i>
CMAP	Paris Mediation and Arbitration Centre <i>Centre de médiation et d'arbitrage de Paris</i>
CNC	National Film Centre <i>Centre national de la cinématographie</i>
CPI	Intellectual Property Code <i>Code la propriété intellectuelle</i>
DTS	Digital Theatre System <i>Système de codage audiophonique</i>
Euribor	Euro Interbank Offered Rate <i>Taux de référence du marché monétaire de la zone euro</i>
GM MG	Guaranteed minimum <i>Minimum garanti</i>
GUILDE	French Scriptwriters' Guild <i>Guilde française des scénaristes</i>
KDM	Key Delivery Message <i>Clef de lecture</i>
OAPI	African Intellectual Property Organisation <i>Organisation africaine de la propriété intellectuelle</i>
PPD	Published Price to Dealers <i>Prix hors taxes le plus élevé applicable à l'exemplaire considéré</i>
PPHT	Retail price, excluding taxes <i>Prix public hors taxes</i>
PPV	Pay per view <i>Paiement a la séance</i>

SACD	Dramatic Authors' and Composers' Society <i>Société des auteurs compositeurs dramatiques</i>
SCAM	Multimedia Authors' Society <i>Société civile des auteurs de multimédia</i>
SCELF	French Literary Publishers' Society <i>Société civile de l'édition littéraire française</i>
SDRM	Mechanical Rights Society <i>Société pour l'administration du droit de reproduction mécanique</i>
SFAAL	French Artistic and Literary Agents' Union <i>Syndicat français des agents artistiques et littéraires</i>
SOFICA	Society for the Financing of the Film and Television Industry <i>Société pour le financement de l'industrie cinématographique et audiovisuelle</i>
SORECOP	Private Sound Copy Royalty Collection Society <i>Société de perception de la rémunération pour la copie privée sonore</i>
SPI	Independent Producers' Union <i>Syndicat des producteurs indépendants</i>
SRD	Deferred Payment Service <i>Service de Règlement Différé</i>
SRF	Film Directors' Society <i>Société des réalisateurs de films</i>
RCA	Film and Animated Pictures Register <i>Registre de la cinématographie et de l'image animée</i>
RNPP	Producer's Net Receipts <i>Recettes nettes part producteur</i>
RPCA	Public Register of Films and Audiovisual Works <i>Registre public de la cinématographie et de l'audiovisuel</i>
USPA	Television Production Union <i>Union syndicale de la production audiovisuelle</i>
VOD VàD	Video on demand <i>Vidéo à la demande</i>
WIPO OMPI	World Intellectual Property Organisation <i>Organisation mondiale de la propriété intellectuelle</i>