

Law No. (36) for 1994
issued on February 24, 1994
in respect of Literary & Artistic Property

Chapter (1)

General Provisions

Article (1)

Copyright shall include each innovated work, be it literary, scientific or artistic, whatever its value, the purpose for which it is prepared and the method or form used in its expression are Copyright shall also include the title of the work. A work means the created work in its original form as well as in its derived form.

Among the works concerned with copyright are the following:

- Written and printed works, among which are books, publications and others.
- Innovated works for the stage or for radio broadcasting (audio or visual), whether they are merely of a play-type, musical or dance plays, or pantomimes.
- Music accompanied or unaccompanied with words.
- Works of photography and the like which are considered by this Law similar to photography.
- Cinematic works and the like which are considered by this Law works similar to movie in visual expression.
- Oil paintings, drawings, lithography and metal engravings by nitric acid, wood engravings and similar artistic productions.
- Sculpture in all its types.

(1) Preparing works: Deliberations of the House of Representatives and its approval in its session held on February 15, 1994.

- Architectural works which include at the same time drawings, designs and illustrations as well as the method of completion.
- Adornments and embroideries produced by looms and applied arts including projects and illustrations, or the industry itself.
- Maps as well as drawings, written manuscripts, works of plastic arts and pictures of scientific or artistic nature.
- Lectures.
- Works derived from folklore.
- Information programs.
- Translations, adaptations or quotations from the above works.

Article (2)

Copyright shall be the exclusive right of the owner of the work to utilize it or to licence others to utilize it in one of the following methods:

- a- To copy the work in a material form whatever its type is, including sound, audio and visual recordings and others.

b- To present the work to the public in any method, in particular presenting it in public places such as hotels; transportation; festivals and show rooms by the following:

- Recorded works transmission equipment.
- Radio broadcasting or televising equipment.
- Satellites, cables and the like.

c- To use the works transmitted by radio or television stations by showing them to the public through receiving sets such as radio, television, loudspeakers or any other sound or image transmission equipment, if the protected work is used in a public place.

d- To translate a work or quote another work from it whatever its type is.

Article (3)

No user, other than the owner of the work himself may carry out any of the works indicated in Article (2) above except after obtaining from the right owner or his deputy a prior licence in the form of a written contract which shall provide in particular for the following:

- a) The party responsible for utilization.
- b) Utilization methods (type, language and place)
- c) Utilization period.
- d) The value of the consideration to the right owner.

Article (4)

The work owner is the one in whose name that work was announced, unless he gives evidence for otherwise.

However, if creating works was made by persons who belong to a public or private legal person within the scope of their jobs, the copyright shall belong to these persons unless otherwise is provided by a contract concluded between the two parties. An exception to this shall be the movie and audio-visual producer to whom the copyright shall pertain.

Article (5)

A work shall be considered a joint work if two or more persons share in its creation, and it was not possible to indicate the share of each of them in the project. The copyright shall be jointly owned by these persons.

A work shall be considered a multiple work if a previous work was inserted into it without the participation of the owner of the first work. The copyright shall be owned by the second author, and the right of the first work owner which was inserted in the multiple work shall be observed.

A work shall be considered a collective work if it came into being by the efforts of a legal person which took over its publications under its management and in its name, and the participation of all the authors who shared in its preparation was

integrated in its objective without being able to attribute a separate right for each of them in the whole of the completed work. The copyright shall belong to the natural or legal person which allowed its completion and took over its publication, unless otherwise is provided in a written contract.

Article (6)

The owners of translations, quotations, changes or adaptations relating to literary, scientific or artistic works shall enjoy the protection provided by this Law without infringing upon the rights of the original authors. This procedure shall include the compilers of anthologies or collections from various works, and the rights of the original authors shall be observed.

Article (7)

The folklore shall be included in the national tradition. Each writing for the purpose of material utilization of folklore requires a licence from the Ministry of Culture, and obtaining such licence necessitates a certain payment fixed by the Tunisian Institution for the Protection of Copyrights established by this Law.

Producing works derived from folklore should be licensed by the Ministry of Culture in the form of transferring all or part of a copyright of a work derived from folklore, as well as in the form of transferring a licence for utilizing such work.

As understood in this Law all artistic distinguished works inherited from past generations related to customs and traditions and the various folklore innovations such as folk stories, literature, music and dance are considered as folklore.

Chapter (2)

Copyrights

Article (8)

The author's name shall be mentioned in each presentation of his work to the public as well as on each copy which includes copying the contents of the work whenever it is prepared for the public in a material form as required by sound customs.

No change may be made to a work without the written approval of its owner. No one shall have the right to present to the public a work quoted from others in a form or under circumstances in which the moral and material rights are infringed upon.

Article (9)

The moral rights of an author are represented particularly in the following:

- a- The right of relation or the right of paternity: by this right it is meant that the author shall have the right to relate the work which he produced to himself so that it will be linked to his name on each copy thereof.
- b- The right of non-relating: it is the right to completely disguise the author's

name when the work is placed under the demand of the public.

c- The right to use a pseudonym: the author shall have the right to use a pseudonym instead of his real name.

d- The right to protect the work against any change, alteration or distortion.

e- The right of publication: according to this right the author shall have the exclusive right to present his work to the public and decide the appropriate method of its publication to the public, in any method whatsoever.

f- The right of withdrawal: by this right it is meant to enable the author to withdraw his work from circulation to the public.

Article (10)

If the work becomes in circulation by the public, its owner shall have no right to the following:

a- Presenting the work to the public against no financial consideration for educational or cultural purpose, or within the family circle.

b- Copying, translating or quoting the work prepared for mere personal use. However, the party which makes the copying, translation or quotation for the purpose of making shows against no charges should notify the author, the right owners or the Tunisian Institution for the Protection of Copyrights thereof.

Article (11)

Quotations may be made from a work previously placed in the public circulation, provided they conform with the customs and as far as it is justified by a scientific, educational or informational objective. This shall include the quotations contained in press statements.

Such quotations may be used in their original or translated form.

The source of the quotation and the author's name mentioned in the source should be indicated.

Article (12)

Audio or audio-visual recording and re-recordings of literary, scientific or artistic works previously broadcast shall be allowed if these recordings or re-recordings are for educational or cultural purposes.

Article (13)

The Ministry of Culture may licence when necessary, the public libraries, non-commercial centers for the collection of documents, the scientific institutions, educational institutes, youth houses and cultural house to copy the literary, scientific or artistic works within the requirements of their activities against a certain consideration to be fixed by the Tunisian Institution for the Protection of Copyrights, unless an amicable agreement is reached by the two parties.

Article (14)

If the right of copying for the work owner is not expressly indicated in the source, the daily press articles related to policy and social and economic matters can be

transmitted by the press or the broadcasting service. However, the source from which they are taken should always be mentioned.

Article (15)

Recording, copying and broadcasting of literary, scientific or artistic works which are made on the occasion of informing about a daily event shall be allowed, whatever the methods used are, and within the intended information purpose.

Article (16)

Copying of photographic or architectural works which are continuously placed in a public place shall be allowed for movie or television requirements, provided the form of inserting them in a film or the televised part is accidental or secondary in relation to the original theme.

Article (17)

Showing the works created by the radio or television institutions operating in the Tunisian lands by their own methods and for their own shares shall be allowed according to a licence from the original authors. However, after the elapse of one year, these institutions may not use them except with a new licence from the original authors or from the Tunisian Institution for the Protection of Copyrights in case there is no contract according to which the authors assign to a broadcasting or television institution the right to utilize their work. A copy of all recordings of a cultural nature which are made by such broadcasting or television institution should be kept in the official safe earmarked for this purpose by the Ministry of Culture. The types which should be kept by the resolution of the Minister of Culture shall be organized.

Article (18)

The copyright shall be valid for the whole life period of the author and shall continue for author fifty calendar years as from the beginning of January of the year following the year in which the author died or from the date indicated in the judgement notifying his death in the case of his absence or loss.

In case the work is a joint work, calculating such period states from the date of death of the last participating author, or from the date indicated in the judgement notifying his death in the case of his absence or loss.

With respect to anonymous works or which carry a pseudonym, the copyright shall be valid for fifty years as from the date on which the work had been placed under the public demand.

In case the pseudonym does not hide the author's identity from the public, or if the author of an anonymous work or which carries a pseudonym reveals his real identity, the copyright shall be valid for the whole period provided in paragraph (1) of this article.

Article (19)

The copyright with respect to photographic works shall be valid for 25 calendar years as from the date of work completion.

Article (20)

The composers of dramatic works, musical plays and musical works shall have exclusive right in the following:

- 1- The acting and public performance of their works in all means and methods.
- 2- To act and perform their works before the public in all means.

The composers of dramatic works or musical plays during the whole validity period of their rights in the original work shall enjoy the same rights in relation to the translation of their works.

Article (21)

The authors of literary and artistic works shall have the exclusive right of public performance of their works in all means and methods and covering their performance to the public in all means, as well as in relation to their translation.

Chapter (3)**Assignment of Copyright****Article (22)**

Copyright, as defined in this Law shall be assignable by sale, wholly or partially.

Article (23)

The assignment of the right of presenting a work to the public shall not include the right of copying it in a material form such as the right of recording it on a tape as an example. The same shall apply to a work which is in a material form which cannot be presented to the public except with the approval of the original owner of the right in the material work.-

Assignment by sale of one copy or more of a work does not necessarily require the assignment of copyright.

Article (24)

The assignment of works which have not yet been completed shall be considered as cancelled, unless such assignment is to the benefit of the Tunisian Institution for the Protection of Copyrights.

If the copyright is assigned to the benefit of the State by way of inheritance, it shall be considered assigned to the said institution, and its proceeds shall be allocated to its social fund.

Article (25)

The owners of manuscript and works of plastic arts shall have the right to share in the sale proceeds of their works through public auction or by a merchant irrespective of any assignment of the original work.

After the death of the author, such right shall continue to exist for his heirs during the current calendar year and the next fifty years.

5% of the sale proceeds shall be allocated to the author or to his heirs.

Article (26)

Licensing the transmission of the work by radio television shall include all related broadcasting or television shares decided by a broadcasting or television corporation operating in the Tunisian lands in its own methods and under its responsibility, unless the contract concluded by the author and the institution's management provides otherwise.

As for the rights pertaining to the writers of promotion advertisement which are utilized by a radio or television corporation, a special contract shall be concluded for them which shall provide for the utilization conditions and the percentage of the proceeds pertaining to the rights' owners.

Chapter (4)

Publication of Written Works

Article (27)

The publication contract for written works is the contract under which the author or his deputy assigns, according to certain conditions, the right to the publisher to make for himself or through others a certain number of copies of the work, provided the publisher shall carry out the publication and distribution processes. Such contract should be in writing.

Article (28)

The publisher shall grant the author or his deputy a remuneration which shall be a percentage of the utilization proceeds, and a certain agreed amount to be granted upon signing the contract if the publication contract does not provide otherwise.

Article (29)

The publisher shall provide the author with all the supporting evidence of the correctness of his accounts.

It shall be the author's right to ask the publisher at least once a year to submit a list containing the following:

- a) The number of copies produced during the year together with an explanation of the size of the issues and their dates. All copies agreed in the contract to be printed and published shall be considered illegally produced, and it shall be the author's right to claim his right thereto as well as to claim damages.
- b) The number of stored copies.
- c) The number of copies sold by the publisher, the number of copies not used or which were damaged accidentally or due to force majeure.
- d) A statement of the amounts pertaining to the author and what was paid to him

therefrom when necessary. Any condition contrary to the provisions of this article shall not be valid, even if provided for.

Article (30)

The author or his representative may rescind the publication contract if the publisher does not publish the work on the dates specified in the contract.

The author may also rescind the publication contract by not re-publishing the work whose copies were sold out.

An issue shall be considered sold out if the author or the party licensed by him submits a request to the publisher to obtain copies therefrom and he couldn't respond to it within three months.

Article (31)

The publisher may not publish a work which has not become the public right without a written contract with the right's owners. In case of violation, the publisher shall be obligated to pay damages to their benefit, and in addition to paying the rights resulting from utilization, according to customs.

In case there is an executional contract which connects the author with a publisher in respect of a certain work and for a limited period, the author may not conclude a contract with another publisher for the same work except with a licence from the first publisher and according to the conditions of the contract concluded with him.

In case of violation, the author shall be obligated to pay damages to the publisher.

Chapter (5)

Making Recorded Copies

Article (32)

No user may himself or through others make, for commercial purposes, a certain number of copies of a protected work through mechanical recording on records, on audio magnetic tapes (phonogram) or on audio visual tapes (videogram) or in any other means of recording, except according to a written contract to be concluded with the owner of the work or the party licensed therefore by him.

Article (33)

The contract mentioned in article (32) of this Law shall in particular provide for the following:

- a) Prior licensing provided for in article (3) of this Law, together with indicating the period of the licence validity.
- b) Conditions of utilization according to the agreed standards.
- c) Determining the consideration to be paid for each work and the percentages due to the entitled parties of the utilization proceeds.
- d) Terms and method of payment.

e) Methods of control and all that ensures that the authors and musicians will obtain their entitlements.

A contract in violation of the provisions of this article shall be considered null and void.

Article (34)

The maker of recorded copies, whether audio or visual and the other recorded copies shall submit to the author or the party licensed by him the supporting evidence substantiating the correctness of his accounts, and shall submit to the parties mentioned in article (54) of this Law all documents relating to utilization, whenever requested.

Article (35)

It shall be prohibited to make recorded copies in the form of phonogram, videogram or any other recorded copies which are copied from protected works for the purpose of trading in them without concluding a contract for this purpose with the Tunisian Institution for the Protection of Copyrights.

It shall also be prohibited to make intentional mis-statements of the accounts of the recordings' proceeds submitted by the makers who obtained utilization licences.

Article (36)

Each recorded copy shall carry the following:

- a) The mark of the maker who is legally responsible and his full address.
- b) The licensing mark of the Tunisian Institution for the Protection of Copyrights.
- c) The title of the work and its distinguishing number.
- d) The names of the authors.

Article (37)

The makers and suppliers of un-recorded magnetic tapes which are prepared for private use shall pay to the Tunisian Institution for the Protection of Copyrights 2% of the sale value of all tapes whether made or imported. The total of this amount shall be equally transferred to the Social Fund of the said Institution and to the member authors.

However, these amounts shall be recovered in case it is proved that the proceeds related to recorded tapes are paid by the companies which use these tapes for a commercial purpose.

Chapter (6)

Cinematic & Audio-Visual Works

Article (38)

The copyright of cinematic and audio-visual works shall be that of the producer.

The producer of a cinematic or an audio-visual work is the natural person or legal person to whom the work completion is attributed and who assumes responsibility for its utilization.

Article (39)

Before the producer starts producing the cinematic or audio-visual tape, he should conclude contracts with all the parties whose works he approves for the completion of the production he intends.

Such contracts require assigning the right of utilization to the producer, unless there is a provision to the contrary, with the exception of musical works accompanied or unaccompanied by words which cannot be assigned and which pertain to their original owners.

In all cases, the participants in the work shall maintain their moral rights.

Article (40)

The cinematic or audio-visual work shall be considered complete when the copy which the producer and director agree that it is the "reference copy" is completed.

The director of a cinematic work shall be the person who takes charge of converting the work and its direction from the phase of conception and intentions to the phase of execution, and embodying these conceptions and intentions in images, shots and scenes which are assembled according to his vision.

Article (41)

If one of the participants in a cinematic production refuses to complete his participation or fails to do so because of force majeure, he shall have no right to object to using the part in which he participated, for the purpose of completing the production.

If the producer refuses to complete the contracted cinematic or audio-visual work or fails to finalize or complete it because of force majeure, the participants in the work shall have the right to request the competent court to cancel the contracts which connect them with the producer, together with maintaining the contracted financial rights.

The participants in a cinematic or audio-visual project may freely dispose of what they have personally contributed for the purpose of using it in a field other than the one for which the agreement was previously signed, unless otherwise was provided on condition that it will not harm the utilization of the work in which they participated.

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Article (42)

All users of cinematic and audio-visual works, including promoters of cinematic and videogram through sale, lending or permission and owners of movies and audio-visual exhibition halls shall make contracts with the rights owners

themselves or their deputies for the purpose of settling the legal utilization of copyrights.

Chapter (7) **Information Programs**

Article (43)

The ownership of information programs produced by a hired person or a group of hired persons after the completion of their work shall pertain to the employer who shall enjoy all the rights authorized to the authors, unless otherwise is provided.

Such provisions shall apply to the employees of the State, to public and local bodies and to public institutions.

All disputes that may arise from the application of the provisions of this article shall be tried by the competent courts within whose circle the social quarter of the employing institution, its representative office, branch or management is located and to which the hired person reports.

Article (44)

The ownership of the information programs which are completed upon request as well as the related documents shall pertain to the producer, unless otherwise is provided.

Article (45)

The author may not object to the amendment of information programs provided by a third party within the limits of the right he assigned to them, unless otherwise is provided.

Article (46)

Any work not related to the completion of a copy for the storage of information programs by the user shall be stopped, and each use of information programs which is not expressly licensed by the author or his deputy shall also be stopped, unless otherwise is provided.

The author of information programs may not object to the recording of a copy or copies of his work for use by scientific and cultural institutions, as well as non-commercial educational and scientific research institutions concerned with the collection of documents within their functions, according to the provisions of article (13) of this Law.

Article (47)

All rights provided in this chapter shall expire after the elapse of 25 years as from the date of preparing the information programs.

Chapter (8)

The Tunisian Institution for the Protection of Copyrights

Article (48)

A public institution of industrial and commercial nature of a legal personality and financially independent shall be established according to this law, and shall be called the Tunisian Institution for the Protection of Copyrights.

The Institution shall be placed under the supervision of the Ministry of Culture, and shall be subject to the rules of commercial accounting where no exemptions are made under this Law.

The headquarters of the Tunisian Institution for the Protection of Copyrights shall be in Tunis.

Article (49)

The Tunisian Institution for the Protection of Copyrights shall have the following functions:

- a- To protect copyrights and defend the author's material and moral interests.
- b- To represent its members and foreign authors societies or their members before the users of these works, whether this representation is according to an authorization and or exchange agreement.
- c- To determine the remunerations for each type of writing.

The function methods of this institution and its administrative and financial organization shall be regulated according to an order.

Chapter (9)

Procedures & Penalties

Article (50)

The import of copies of any work to the Tunisian lands shall be stopped if such import violates the copyrights as defined by this law and the undertakings of the State of Tunisia according to the international conventions for copyrights.

Article (51)

Any party which does not respect copyright as defined in article (2) of this Law shall be obligated to pay damages to the owner of this right, and the competent court shall determine the amount of damages.

Non-respect of copyright shall in particular be confirmed if the licence user does not obtain the licence in advance as provided for in article (2) of this Law.

Article (52)

A person who commits a violation to the provisions of articles 29, 31, 32, 34, 35, 36, 37, 39, 44, 46 & 50 of this Law shall be punished by a fine ranging from Dinar 500-5000.

In case a violation is re-committed, the fine will be increased to Dinar 10,000 with imprisonment ranging from one month to six months, or by one of these fines.

Article (53)

The owner of the public place in which a violation of the provisions of this Law is committed, whether by exhibiting the protected works to the public or selling or purchasing copies of this work shall be jointly responsible with the original violator for the remedy of material and moral damages resulting from the utilization of these works if it is proved that the said owner was aware thereof.

Article (54)

Investigation to this Law and making reports thereon shall be carried out by the judicial police officers and the employees authorized by the Minister of Culture from among the staff of the Ministry of Culture in category (a) and those assigned for this purpose.

Article (55)

The competent court may of itself, or at the request of the author, or The Tunisian Institution for the Protection of Copyrights order the attachment, confiscation, destroying of the copies or the temporary or final closing of the stop against which the violation was made.

Chapter (10)

Miscellaneous Provisions

Article (56)

This Law shall apply in particular to the following:

- a) All the works whose original copyrights owner is a Tunisian, his domicile is in the Republic of Tunisia, has no nationality or a refugee who has his domicile in it if the matter is related to a natural person or falls within the Tunisian jurisdiction, and if the matter is related to a legal person.
- b) All the publications published for the first time in the Republic of Tunisia or published in the Republic of Tunisia during the thirty days following publication in a foreign country.
- c) All architectural works constructed in the Republic of Tunisia and each artistic work included in a building constructed on the soil of the Republic of Tunisia.
- d) All works which did not become public property when this Law came into force.

If the matter is related to a collective work, it would be sufficient for the application of this Law that one of the participants in the work has fulfilled the condition provided for in paragraph (1) of this article.

Article (57)

The work referred to in article (56) of this Law may be protected, provided a similar protection is granted to the works of the authors who are within the

jurisdiction of Tunisia.

The Ministry of Culture shall determine the countries which fulfill this condition.

Article (58)

The Tunisian Institution for the Protection of Copyrights shall be entrusted with making communications with the foreign institutions and societies concerned with copyrights for the following:

- a) Maintaining the rights and privileges which the authors obtained from the said institution and societies.
- b) Concluding agreements for exchange of representation with them.

Article (59)

All the previous provisions which are in conflict with the provisions of this Law, in particular Law No. 12 for 1966 dated February 14, 1966 related to literary and artistic property have been repealed.

This Law shall be published in the Official Gazette of the Republic of Tunisia and shall be implemented as one of the State's laws.

Tunis, February 24, 1994

Zein Al-Abideen Bin Ali