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FEDERAL NEGARIT GAZETA
OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

10th Year No. 55
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PROCLAMATION NO. 410/2004.

**A PROCLAMATION TO PROTECT
COPYRIGHT AND NEIGHBORING
RIGHTS**

WHEREAS, literary, artistic and similar creative works have a major role to enhance the cultural, social, economic, scientific and technological development of a Country;

WHEREAS, it is necessary to protect works that make literary, artistic and similar creative works productive by recognizing neighboring rights by law;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

**PART ONE
GENERAL PROVISIONS**

1. Short Title

This Proclamation may be cited as "Copyright and Neighboring Rights Protection Proclamation No. 410/2004."

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2. Definition

In this Proclamation unless the context otherwise requires:

- 1/ "Audio-visual work" means a work that consists of a series of related images, which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible; by any appropriate device, and includes a cinematographic or other film.
- 2/ "Author" means the person who has intellectually created a work and includes-
 - a) in the case of a computer program, person who has created the program;
 - b) in the case of a photograph, the person responsible for its composition.
- 3/ "Broadcasting," means transmission by wireless means for public reception of sounds or of images and sounds.
- 4/ "Broadcasting organization" means a radio, television, and cable television station or satellite.
- 5/ "Collective work" means a literary and artistic work created by two or more physical persons at the initiative and under the direction of a person with the understanding that it will be disclosed in the name of the latter person without indicating the identity of the contributor;
- 6/ "Communication to the public" means the transmission by wire or without wire images or sounds or both of a work, a performance, a sound recording or a broadcast in such a way that the images or sounds can be perceived by a person outside the normal circle of a family and its closest social acquaintance at a place or places so distant from the place where the transmission originates, that without the transmission the images or sounds would not be perceivable and, further, irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places and /or times individually chosen by them;
- 7/ "computer program" means a set of instructions, expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a machine-readable medium, of causing a computer to perform or achieve a particular task or result.

- 8/ "Copyright" means an economic right subsisting in a work and where appropriate includes moral right of an author;
- 9/ "Court" means the Federal high Court.
- 10/ "Database" means an aggregate of information, articles, numerical or diagrams which is systematically constructed, so that such information can be searched for with the aid of a computer.
- 11/ "Fixation" means the embodiment of works or images or sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device prepared for the purpose;
- 12/ "Hired work" means a work created by an author hired or commissioned by a person;
- 13/ "Musical composition" means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.
- 14/ "Neighboring rights" means the rights of performers, producers of sound recordings, broadcasting organizations over their works.
- 15/ 'Office' means the Ethiopian Intellectual Property Office established by Proclamation No. 320/2003;
- 16/ "Owner of Copyright" means the author where the economic rights are vested in the author, where the economic rights are originally vested in a natural person other than the author or in a legal entity, that person or entity, where the ownership of the economic rights has been transferred to a natural person or legal entity, that person or entity;
- 17/ 'Person' means natural or juridical person;
- 18/ "Photographic work" means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;

- 19/ "Performer" means actor, singer, musician, dancer, and other person who act, sing, deliver, declaim, play in, or otherwise perform literary and artistic works;
- 20/ "Producer" means a person that undertakes the initiative and responsibility for the making of the audiovisual works;
- 21/ "Producer of sound recording" means a person that undertakes the initiative and responsibility for the making of Sound recording works;
- 22/ "Published work" means a work or a sound recording, tangible copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies, provided that, in the case of a work, the making available to the public took place with the consent of the author or other owner of copyright, and in the case of a sound recording, with the consent of the producer of the sound recording."
- 23/ "Public lending" means a temporary transfer of possession of an original work or a copy of a work or sound recording by libraries, archives or similar institutions whose service is available to the public without making profit;
- 24/ "Public performance" mean:
- Performing a work to the public by recitation, playing, dancing, acting or otherwise, either directly or using any communication media;
 - In case of an audio-visual work, showing the images in sequence and;
 - In case of sound recording making the sound recording audible to the public.
- 25/ "Reproduction" means the making of one or more copies of a work or sound recording in any manner or form, including any permanent or temporary storage of work or sound recording in electronic form;
- 26/ "Reprographic reproduction" means the making of facsimile copies of the original or a copy of a work by means other than printing such as photocopying, whether or not they are reduced or enlarged in scale;
- 27/ "Rental" means a temporary transfer of possession of a work, sound recording or fixation of performance for a profit making purposes;

- 28/ "Sound recording" means an exclusively aural fixation of the sounds of a performance or other sounds or a representation thereof, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied. However, it does not include a fixation of sound and images such as the sound track of an audiovisual work;
- 29/ "A work of joint ownership" means a work to the creation of which two or more authors have contributed, provided that the work does not qualify as a 'collective work' under Sub Article (5) of this Article.
- 30/ "Work" means a production in the literary, scientific and Artistic fields. It includes in particular:
- books, booklets, articles in reviews and newspaper, computer programs;
 - speeches, lectures, addresses, sermons, and other oral works;
 - dramatic, dramatico-musical works, pantomimes, choreographic works, and other works created for stage production;
 - musical compositions;
 - audiovisual works;
 - works of architecture;
 - works of drawing, painting, sculpture, engraving, lithography, tapestry, and other works of fine arts;
 - photographic works;
 - illustrations, maps, plans, sketches, and three dimensional works related to geography, topography, architecture or science.

3. Scope of application

- 1/ The provisions of this Proclamation concerning the protection of works shall apply to:
- works of authors who are nationals of, or have their principal residence in Ethiopia;
 - works first published in Ethiopia and, works first published abroad and also published in Ethiopia within 30 days, irrespective of the nationality or residence of their authors;
 - audiovisual works, the producer of which has his headquarters or principal residence in Ethiopia; and

- d) works of architecture erected in Ethiopia and other artistic works incorporated in a building or other structure located in Ethiopia.
- 2/ The provisions of this Proclamation shall also apply to works that are eligible for protection in Ethiopia by virtue of and in accordance with any international convention or other international agreement to which Ethiopia is a party.
- 3/ the provisions of this Proclamation on the protection of performers shall apply to:
- a) performers who are nationals of Ethiopia;
 - b) performers who are not nationals of Ethiopia but whose performances:
 - i. take place in the territory of Ethiopia;
 - ii. are incorporated in sound recordings that are protected under this Proclamation; or
 - iii. have not been fixed in a sound recording but are included in broadcasts qualifying for protection under this Proclamation.
- 4/ The provisions of this Proclamation on the protection of sound recordings shall apply to:
- a) sound recordings the producers of which are national of Ethiopia;
 - b) sound recordings first fixed in Ethiopia; and
 - c) sound recordings first published in Ethiopia.
- 5/ The provisions of this Proclamation on the protection of broadcasts shall apply to:
- a) broadcasts of broadcasting organizations the headquarters of which are situated in Ethiopia; and
 - b) broadcasts transmitted from transmitters situated in Ethiopia
- 6/ The provisions of this Proclamation shall also apply to performers, producers of sound recordings and broadcasting organizations that are eligible for protection by virtue of and in accordance with any international convention or other international agreement to which Ethiopia is party.
- 7/ The provisions of this Proclamation concerning copyright or neighboring rights shall not extend to the ownership of the material object, which constitutes the work.

4. Derivative works

- 1/ The following shall be protected as works:
- a) translation, adaptations, arrangements and other transformations or modifications of works
 - b) collection of works such as encyclopaedia or anthologies or databases whether in machine readable or other form provided that such collections are original by reason of the selection or arrangement of their contents.
- 2/ The protection of any work referred to in Sub Article (1) of this Article shall be without prejudice to any protection of a preexisting work incorporated in or utilized for the making of such a work.

5. Subject Matter not protected

Notwithstanding the Provisions of Articles 2,3 and 4 of this Proclamation the following matters shall not be protected;

- a) Any idea, procedures, system, method of operation, concept, formula, numerical tables and forms of general use, principle, discovery or mere date, even if expressed, described, explained, illustrated or embodied in a work; and
- b) Any official text of a legislative, administrative or of legal nature, as well as official translations thereof.

PART TWO

REQUIREMENT FOR PROTECTION, TYPE & SCOPE OF EXCLUSIVE RIGHTS

6. Requirements for protection

- 1/ The author of a work shall, irrespective of the quality of the work and the purpose for which the work may have been created, be entitled to protection, for his work without any formality and upon creation where it is:
- a) Original; and
 - b) Fixed.
- 2/ Photographic works, in addition to the requirements laid down in Sub-Article (1) of this Article, shall be protected where they:
- a) form part of a collection or are published in a book or;
 - b) bear the name and address of the author or his agent.

- 3/ The protection afforded by Sub-Article (1) of this Article to the author of a work shall not be affected by any right accruing to a sound recording producer or broadcaster or a performer under this Proclamation.

7. Economic Rights

- 1/ Subject to the provisions of Articles 9 to 19 of this Proclamation the author or owner of a work shall have the exclusive right to carry out or authorize the following acts in relation to the work:
- reproduction of the work;
 - translation of the work;
 - adaptation, arrangement or other transformation of the work;
 - distribution of the original or a copy of the work to the public by sale or rental;
 - importation of original or copies of the work;
 - public display of the original or a copy of the work;
 - performance of the work;
 - broadcasting of the work;
 - other communication of the work to the public.
- 2/ The Provisions of Sub-Article (1) (d) of this Article shall not apply to rental or public lending of computer program except where the program is an essential object of the rental or lending.
- 3/ In case of original work of art or original manuscript of a writer or a composer, the author or his heirs shall have the inalienable right to have a share of the resell price of the work subsequent to the first transfer of the work by the author. The amount of the share as well as the condition of entitlement shall be determined by the regulation that may be issued under this Proclamation

8. Moral Rights

- 1/ The author of the work shall have the following moral rights irrespective of whether or not he is owner of economic rights;
- to claim authorship of his work, except where the work is included, incidentally or accidentally, in reporting current events by means of broadcasting;
 - to remain anonymous or to use a pseudonym; and
 - to object any distortion, mutilation or other alteration of his work, where such an act is or would be prejudicial to his honor or reputation.
 - to publish his work.

- 2/ The rights enumerated in Sub-Article (1) of this Article shall not be transmissible during the lifetime of the author. The rights, however, shall be transferred in accordance with the law to heirs or legatees after the death of the author;
- 3/ The author or his heirs or legatees may waive any of the moral rights enumerated in Sub-Article (1) of this Article in the following manner:
- the waiver, shall be made in writing clearly specifying the right waived and the circumstances in which the waiver applies,
 - the waiver specifies the nature and the extent of modification or the action in respect of which the right waived.
- 4/ Moral rights shall be enjoyed by heirs or legatees of the author until the expiry of economic rights.

9. Reproduction for Personal Purposes

- 1/ Notwithstanding the provisions of Article 7 (1)(a) of this Proclamation, the owner of copyright cannot forbid private reproduction of a published work in a single copy by a physical person exclusively for his own personal purposes.
- 2/ The provisions of Sub-Article (1) of this Article shall not extend to reproduction;
- of a work of architecture in the form of a building or other construction;
 - of musical work in the form of notation; or of the original or a copy made and signed by the author of a work of fine art.
 - of the whole or a substantial part of a database in digital form;
 - of a computer program except as provided in Article 14 of this Proclamation; or
 - which would conflict with or unreasonable harm the normal exploitation of the work or the legitimate interest of the author.

10. Quotation

- 1/ Notwithstanding the Provisions of Article 7 (1)(a) of this Proclamation, the owner of copyright cannot forbid the reproduction of a quotation of a published work.
- 2/ The quotation shall be compatible with fair practice and does not exceed the extent justified by the purpose.
- 3/ Where the quotation is taken from a source which contains the name of the author, it shall indicate the source and the name of the author.

11. Reproduction for Teaching

- 1) Notwithstanding the provision of Article 7 (1) (a) of this Proclamation the owner of copyright cannot forbid, without exceeding fair practice and the extent justified by the purpose, a reproduction of a published work or sound recording for the purpose of teaching.
- 2) A copy made in accordance with the preceding Sub-Article shall indicate, as far as practicable, the sources of the work or sound recording reproduced and the name of the author

12. Reproduction by Libraries, Archives and Similar Institutions

- 1) Notwithstanding the provision of Article 7 (1) (a) of this Proclamation, the owner of copyright cannot forbid a reproduction of a work by a library, archive, memorial hall, museum or similar institutions whose activity directly or indirectly is not for gain
- 2) A library or archive can make a reproduction of a published Article, short work or short extract of a work to satisfy the request of a physical person, provided that:
 - a) the library or archive is satisfied that the copy will be used solely for the purpose of study, scholarship or private research,
 - b) the act or reproduction is an isolated case occurring, if repeated, on separate and unrelated occasion, and
 - c) there is no available administrative organization which the educational institution is aware of, which can afford a collective license of reproduction
- 3/ A copy of work, under Sub-Article (1) of this article shall be made:
 - a) to preserve and, if necessary to replace a copy or a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive,
 - b) where it is impossible to obtain a copy under reasonable conditions, and
 - c) the act or reproduction is an isolated one occurring and if repeated on separate and unrelated occasions.

13. Reproduction, Broadcasting and other Communication to the Public for informatory purpose

Notwithstanding the provisions of Article 7 (1) (a), (h) and (i) of this Proclamation, subject to the obligation to indicate the source and the name of the author as far as practicable; the owner of copyright cannot forbid:

- 1/ the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of an Article published in a newspaper or periodical on current economic, political, social or religious or similar topics unless the right or authorize reproduction or broadcasting or the communication to the public is expressly reserved on the copies by the author or owner of copyright or in connection with broadcasting or other communication to the public of the work;
- 2/ reproduction and broadcasting or other communication to the public of short excerpts of a work seen or heard for the purpose of reporting current events.
- 3/ the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a political speech, lecture, address, sermon or other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent justified by the purpose of providing current information.

14. Reproduction and Adaptation of computer program

- 1/ Notwithstanding the provisions of Article 7 (1) (a) and (c) of this proclamation, the owner or copyright can not forbid a single copy reproduction, or adaptation of a computer program.
- 2/ The reproduction or adaptation of a computer program, under the preceding Sub Article, is permissible when it is found necessary to make;
 - a) use of a computer program with a computer for the purpose and extent for which the computer program has been obtained,
 - b) a back up copy by a person having a right to use the computer program in so far as it is necessary to ensure future use, or
 - c) adaptation that is indispensable for using the computer program in conjunction with a machine for the purpose, and to the extent of use, for which the program has been lawfully obtained.

15. Importation for personal purposes

Notwithstanding the provisions of Article 7 (1) (e) of this proclamation, the owner of copyright cannot forbid importation of a copy of a work by a physical person for his own personal purposes.

16. Private performance free of charge

Notwithstanding the provisions of Article 7 (1) (g), the owner of copyright cannot forbid private performance of his work given free of charge at a family gathering or in a school.

17. Issuance of non-voluntary license

- 1/ The Office may grant, notwithstanding the copyright, heirs or legatees opposition, a license to authorize the reproduction or translation or broadcasting of a published work.
- 2/ The conditions, forms of such authorization and in particular the fair compensation to be made to the owner of copyright shall be determined by the regulations.
- 3/ In no circumstances may the Office authorize the alteration of a work.

18. Display of works

The public display of originals or copies of works, without the authorization of the author or owner of copyright shall be permitted, where the display is made other than by means of a film slide, television image or otherwise on screen or by means of any other device or process and the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor.

19. Distribution of copies of works

Where a copy of a published work has been sold to the public such a copy may, without authorization and payment of remuneration, be redistributed by means of sale.

20. Duration of economic rights

- 1/ Economic rights shall belong to the author during his lifetime and to the heirs or legatees for fifty years from the date of death of the author.

2/ In case of a work of joint authorship, the term of fifty years shall commence to run from the death of the last surviving author.

3/ The term of 50 years of a posthumous work shall commence to run from the date of publication of the work.

4/ Where the work is a work of collective work, other than an audiovisual work, the economic rights shall be protected for fifty years from the date on which the work was either made or first made available to the public, or first published, whichever date is the latest.

5/ Where the work is a work published anonymously or under a pseudonym, the economic rights shall be protected for fifty years from the date on which the work was either made or first made available to the public or first published, whichever date is the latest.

6/ Where the author's identity is revealed or is no longer in doubt, prior to the period indicated in Sub-Article (5) of this article, the provisions of Sub-Article (1) or (2) of this Article shall apply, as the case may be.

7/ The economic rights relating to a photographic work shall be protected for twenty-five years from the making of the work.

8/ The economic rights relating to an audiovisual work shall be protected for fifty years beginning from the date of making of the work or communication of the work to the public, whichever date is the latest.

PART THREE
OWNERS OF RIGHT AND PRESUMPTIONS

21. Original Ownership of Economic Right

- 1/ Without prejudice to Sub-Article (2) to (6) of this Article, the original owner of the economic rights shall be the author who has created the work.
- 2/ Where the work is a work of several authors, the co-authors shall be the original joint owners of the economic rights.

- 3/ Where the work is a collective work, the person at whose initiative and under whose direction the work has been created shall be the original owner of the rights:
- 4/ Where the work is a work created by an author employed or Commissioned by a person in the course of his employment or contract of service, unless agreed otherwise, the original owner of the rights shall be the employer or the person who commissioned the work.
- 5/ Where the work is an audiovisual work:
- a) the producer shall be the owner of the economic rights. However, the script writer, Director, Cameraman, lyricist, composer and other authors thereof shall enjoy the right of authorship in the work, and have the right to receive remuneration pursuant to contract concluded with the producer.
 - b) the authors of the screen play, musical works and other works that are incorporated in an audiovisual work and can be exploited separately shall be entitled to exercise their copyright independently.
- 6/ Notwithstanding the provisions of Sub-Article (5) of this Article, the co-authors of the audiovisual work and the authors of the pre-existing works included in, or adapted for the making of the audiovisual work shall maintain their rights in their contributions or pre-existing works, respectively, to the extent those contributions or pre-existing work can be subject of acts covered by their economic rights separately from the audiovisual work.

22. Presumption of Authorship and Representation the Author

- 1/ Without prejudice to any proof to the contrary, the person in whose name the work was published shall be deemed to be the author thereof.
- 2/ The author may claim the benefit of the presumption of the preceding Sub Article notwithstanding that he used a pseudonym, provided that there is no doubt as to his identity.
- 3/ Without prejudice to Sub-Articles (1) and (2) of this Article, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the moral and economic rights of the author. This presumption shall cease to apply when the author reveals his identity.

PART FOUR ASSIGNMENT AND LICENSING OF ECONOMIC RIGHT

23. Assignment and License of rights

- 1/ Economic rights may be assigned or licensed in whole or in part.
- 2/ Any assignment of an economic right, and any license to do an act subject to authorization by the author or other owner of copyright, shall be made in writing.
- 3/ Any assignment or licensing of economic rights shall not be deemed to include assignment or license of any other right not explicitly referred therein.

24. Scope of assignment or license

- 1/ The scope of assignment or license shall be limited to the use or exploitation of the economic rights specified in the agreement.
- 2/ The right of a copyright owner or the assignment or licensing of economic rights shall not extend to the ownership of the material object that constitutes the protected work.
- 3/ Where an agreement for the assignment or licensing of specific economic right fails to specify the time for which the assignment or license shall operate, the assignment or license shall terminate after 10 or 5 years respectively.
- 4/ Where an agreement for the assignment or license of specific economic rights, under Sub Article (2) of this Article, fails to explicitly provide the ways and means of use or exploitation of the right; the assignee or licensee shall be entitled to exploit the right by such ways and means as are necessary for the purpose envisaged by the parties.

25. Non-use of economic rights

- 1/ Subject to the provision of Sub Article (2) of this Article, where a person to whom an economic right in a work has been assigned, or an exclusive licensee does not exercise his right or does so only inadequately, and authors legitimate interest are prejudiced by such failure, the author may revoke the assignment or exclusive license.

- 2/ A revocation in accordance with Sub Article (1) shall not be effected where the non exercise or inadequate exercise of a right is primarily due to circumstances which the author can be expected to remedy.
- 3/ The right to revoke an assignment or a license in accordance with Sub Article (1) shall not be exercised earlier than 3 years from the date of assignment or license or if the work is supplied subsequently, from the date of delivery of the work.
- 4/ The right of revocation referred to in Sub Article (1) of this Article may not be waived in advance.

PART FIVE

PROTECTION OF PERFORMERS, PRODUCERS OF SOUND RECORDINGS AND BROADCASTING ORGANIZATIONS

26. Acts requiring authorization of performers

- 1/ Without prejudice to the provision of Article 32 of this Proclamation, a performer shall have the exclusive right to carry out or authorize:
 - a) the broadcasting or other communication to the public of his performance, except where the broadcasting or the other communication:
 - i. is made from a fixation of the performance which the performer has authorized to be made; or
 - ii. is a rebroadcasting made or authorized by the organization initially broadcasting the performance;
 - b) the fixation of his unfixed performance,
 - c) the reproduction of a fixation of his performance, in any manner or form,
 - d) making available the first fixation of his performance, or copies thereof;
 - e) rental or public lending of a fixation of his performance, or copies thereof irrespective of the ownership of the copy rented or lent;
 - f) making his fixed performance available to the public by wire or wireless means, in such a way that members of the public may have access to them from a place or at a time individually chosen by them.

- 2/ The provisions of Sub-Article (1) of this Article shall not be applicable where the performer has authorized the incorporation of his performance in a visual or audiovisual fixation.
- 3/ Notwithstanding the provision of Sub-Article (1) of this Article, the performer can not forbid the reproduction and the communication to the public of his performance, if it is accessory to an event constituting the principal subject of a scene, or of a work, or of an audio-visual document.
- 4/ The performer independently of his economic rights or even after the transfer of that right shall have the right:
 - a) to be identified as the performer as regards his live performances, the performances fixed in sound recordings, except where omission is dictated by the manner of the use of the performance.
 - b) object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.
 - c) the provision of Article 8 (2) and (3) shall apply mutatis mutandis to the right of performers granted in this Article.
- 5/ The right referred in this section shall be protected until the end of the fiftieth Calendar year, following the year in which the performance was fixed in a sound recording or in the absence of such fixation, from the end of the year in which the performance took place.

27. Exclusive rights of producers of sound recordings

- 1/ Without prejudice to the provisions of Article 28 of this proclamation, a producer of a sound recording shall have the exclusive right to carry out or to authorize:
 - a) reproduction of his sound recordings, in any manner or form;
 - b) importation of copies of his sound recordings;
 - c) distribution to the public the original or copies of his sound recordings, that have not already been subject to a distribution authorized by the producer, by sale or other means of transfer of ownership
 - d) Rental or lending to the public a copy of the sound recording, irrespective of the ownership of the copy rented or lent.

- e) Making available to the public of a sound recording, by wire or wireless means, in such a way that members of the public may have access to it from a place or at a time individually chosen by them.
- 2/ The right referred in Sub-Article (1) of this Article shall be protected from the publication of the sound recording until the end of 50 years from the end of year of publication, or when the sound recording has not been published until the expiry of 50 years from the end of the year of fixation.

28. Obligations of producers of sound recording

- 1/ A producer of a sound recording or of an audiovisual work shall state on the label of the recording or on its container:
- the title of the work or works
 - the name of the author and of the main performers
 - the name or distinguishing mark of the producer, and
 - that the rights accruing to the producer under this proclamation are reserved.
- 2/ A choir or an orchestra shall be referred to by its name and that of its leader, if any for the purposes of Sub Article 1 (b) of this Article.

29. Notice of protection

- 1/ Where a copy of an audiovisual or a sound recording is made for commercial purposes, a notice shall be printed on the label or its container consisting of:
- the symbol (P) and
 - the year in which the recording was first published,
- placed in such manner as to give reasonable notice of claim to protection of the rights of the producer.
- 2/ A notice referred to in Sub Article (1) of this Article shall be prima facie evidence of the facts stated thereon for the purposes of any proceedings brought under this proclamation with respect to the rights of the producer.

30. Remuneration for the use of sound Recordings

- 1/ Where a sound recording published for a commercial purpose or a reproduction of such sound recording, is used directly for broadcasting or other communication to the public or is publicly performed, a single equitable remuneration for the performer and the producer of the sound recording shall be paid by the user to the producer.

- 2/ Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under Sub-Article (1) of this Article shall be paid by the producer to the performer.
- 3/ The right to an equitable remuneration under this Article shall subsist from the date of publication of the sound recording until the end of 50 years following the year of publication, or when the sound recording has not been published, from the date of fixation of the sound recording until the end of the fiftieth year following the year of fixation.

31. Acts requiring authorization of broadcasting organization

- 1/ A broadcasting organization shall have the exclusive right to carry out or authorize;
- Rebroadcasting of its broadcasts;
 - Fixation of its broadcasts;
 - Reproduction of a fixation of its broadcast.
- 2/ The rights under this Article shall be protected from the moment the broadcast takes place until the expiry of 20 years following the year in which the broadcast took place.

32. Limitations of right

The rights referred to in Articles 26-31 shall not apply to acts related to;

- using short excerpts for reporting current events to the extent justified by the purpose of providing current information;
- reproduction solely for scientific research;
- reproduction solely for the purpose of face-to-face teaching activities, except for performances and sound recordings which have been published as teaching or instructional materials;
- cases where, under Prt II, a work can be used without the authorization of the author or other owner of copyright.

PART SIX ENFORCEMENT OF RIGHTS

33. Provisional measures

- 1/ The court shall order prompt and effective provisional measures:
- to prevent an infringement of a right from occurring, in particular to prevent the entry into channels of commerce goods, including imported goods immediately after customs clearance,

- b) to preserve relevant evidence in regard to the alleged infringement.
- 2/ The court shall have the power to adopt provisional measures, in *audita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.
- 3/ In a suit for restraining the defendant from committing an infringement, the plaintiff may apply to the court for a temporary injunction to restrain the infringement until the suit is disposed of. The court:
- shall consider if the threatened interest can not be redressed by awarding damages, whether the threat is imminent, the *prima facie* strength of the action and the gravity of the prejudices a decision for or against may cause to either of the parties in deciding an application of injunction.
 - may grant injunction on such terms as to the duration of the injunction, keeping an account, giving security or otherwise, as it thinks fit.
 - may make a deeper investigation of the relative strength of the parties before granting a temporary injunction where the applications of the above criteria put the parties on equal position.
- 4/ Where an act that infringes the rights protected under this law is committed, the provisions of the civil procedure and the criminal procedure codes on search and seizure shall be applicable.
- 5/ The court shall have the power to require the applicant to provide evidence in order to satisfy it with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.
- 6/ Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

- 7/ Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of a copyright, the court shall have the power to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

34. Civil Remedies

- 1/ The court that have jurisdiction to try civil suits arising under this law, shall have the authority to award adequate compensation for the material and moral damage suffered including payment of the right holder's expenses, grant injunction, give order, including those provided below, as it may deem reasonable.
- To grant injunction that prohibit the committing or the continuation of committing an infringement of any right protected under this law.
 - To order confiscation of the infringed work that is made or imported without the authorization of the owner of any right protected under this law, where the making or importation of copies is subject to such authorization.
 - To impound the packaging and implements that could be used for the making of documents, accounts or business papers referring to such copies.
- 2/ The owner of copyright or neighboring rights may instead of or alternatively to compensation under Sub Article (1) of this Article claim for the replacement of the unjust enrichment derived from the act of infringement. The infringer shall be deemed unlawfully enriched to the extent he could have reasonably paid as a royalty had he been licensed by the owner of the right.
- 3/ Notwithstanding Sub Article (2) of this Article the right holder can instead claim to be paid the net profit gained by the infringer. In such cases an account will be made to determine the net profit derived by the infringement and it shall be for the infringer to prove that part of the profit is attributable to other market factors.

- 4/ The amount of compensation for material damage under Sub Article (1) of this Article shall be fixed taking into account the extent of material damage suffered by the owner of the right and the amount of profit attributable to the act of infringement. The amount of compensation for moral damage shall be determined based on the extent of the damage and not be less than Birr 1000,000 (Birr one hundred thousand).
- 5/ Where the person who commits the act of infringement is not aware of or has no reasonable ground to be aware of, the court may limit the amount of compensation to the profit derived from the act.
- 6/ Where copies and packages that infringes a right are discovered, unless the owner of the right otherwise requires, the court shall make the copies outside the channels of commerce, order their destruction or other reasonable disposition, without causing harm to the owner of the right. This provision shall not apply to copies and packages acquired by third parties in good faith.

35. Border Measure

- 1/ The Customs authority shall, based on a written application of the owner of copyright or neighboring right, retain under its control the goods, which in the opinion of the applicant constitutes infringed goods.
- 2/ The customs authority shall forthwith inform the applicant or the owner of the good of the measure taken to retain the said goods.
- 3/ The measure to retain goods shall be lifted where the applicant fails to provide with any justifiable evidence within ten days beginning from the date of notification of retention of the goods.
- 4/ The applicant shall be held responsible for the damage caused by the retention of goods, where the application is proved unfounded.
- 5/ The customs authority may confiscate infringed goods when ordered by the court.

36. Criminal Sanctions

- 1/ Unless otherwise heavier penalty is provided for under the criminal law, whoever intentionally violates a right protected under this law shall be punished with rigorous imprisonment of a term not less than 5 years and not more than 10 years.
- 2/ Unless otherwise heavier penalty is provided for under the criminal law, whoever by gross negligence violates a right protected under this law shall be punished with rigorous imprisonment of a term not less than 1 year and not more than 5 years.
- 3/ The penalty, where appropriate, shall include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements used in the commission of the offence.

PART SEVEN MISCELANEOUS PROVISIONS

37. Works Protected Under The Existing Law

- 1/ The provisions of this proclamation shall apply to works dating back to before the coming into effect of this proclamation, provided that the term of protection had not expired under the former legislation
- 2/ This proclamation shall not affect contracts on works concluded before the coming in to force of this proclamation.

38. Inapplicable laws

Any other law, which is inconsistent with this Proclamation, shall not be applicable with respect to matters provided for in this Proclamation

39. Power to Issue Regulations and directives

- 1/ The Council of Ministers may issue regulations for the implementation of the Proclamation.
- 2/ The Office may issue Directives for the implementation of the regulations.

40. Effective Date

This Proclamation shall enter into force as of the date of its publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this 24th day of July, 2004.

**GIRMA WOLDEGIORGIS
PRESIDENT OF THE FEDERAL
DEMOCRATIC REPUBLIC OF ETHIOPIA**