

Decree of President of Government of Islamic Republic of Afghanistan regarding signing The Law on the support the right of authors, composers, artists and researchers (Copy Right Law)

Number: 54

Date: 21 July, 2008

Article 1:

I am signing the Law on the support the right of authors, composers, artists and researchers (Copy Right Law) pursuant to the article 79 of Constitution of Afghanistan which is confirmed in 7 chapters and 49 articles based on approval # 18 dated 17/4/1387 of ministerial council.

Article 2:

Minister of Justices and Government Minister in parliamentary affairs are held responsible to present this decree within 30 days from the date of first National Assembly meeting.

Article 3:

The decree from the date of signature shall be enforced and be published along the law in the official gazette.

Hamed Karzai

President of Islamic Republic of Afghanistan

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The law of support the right of Authors, Composers, Artists and Researchers (Copy Right Law)

Chapter One

General Provisions

Basis:

Article 1:

This Law has been put in effect pursuant to the article 47 of the Constitution of Afghanistan in order to protect the economical and moral rights of the works of an author, writer, _____, artist and researcher and the way to profit from the work of ownership rights to organize issues pertaining to the copyright.

~~This Law has been put in effect pursuant to the article 47 of the Constitution of Afghanistan in order to protect the economical and moral rights of the works of an author, writer, artist and researcher and the way to profit from the work of ownership rights to organize issues pertaining to the copyright.~~

Abbreviated Name

Article 2:

Author, writer, artist and researcher in this law are names as those who create.

Terms and Expressions

Article 3:

The terms in this Law have the following meaning:

1. **Work:** Any original literary, artistic, or scientific work, regardless of its type, form of expression, significance, or purpose is a phenomenon that is created through knowledge, art or the initiative of the creator without taking into account the way that it is said, appeared or created.
2. **Audiovisual work:** A work that consists of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied. is a work that is audible or visible via using electronic device or any other instruments.

3. **Collective Work:** a collection of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of its contents, constitutes an intellectual creation. ~~is a work that is created as a result of the participation of natural or legal persons as to each one of them has independently executed a part of the work and is published and broadcasted under the lead of one person as a completed collection.~~
4. **Joint Work:** is a work that is created as a result of the participation of two or several natural or legal persons inseparable from each other and is published and broadcasted as a

terms of its arrangement or content selection. Compilations include readable databases that are read from a computer or another medium, and collective works. ~~is the compiling and gathering of the existing information or material from the past which is selected, coordinated and organized in a way that the end work is a new collected work. Classic Work also includes collective works.~~

~~11.~~12. **Architectural Work:** ~~The design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard feature. is a work that is composed of cartography or constructional designs.~~

~~12.~~13. **Literary works:** ~~is a work that is created without audio or video and it is created using words, numbers or other literal or numerical symbols. is a work that is created without audio or video and it is created using words, numbers or other literal or numerical symbols without taking into account the origin of material or the mode of its creation.~~

~~13.~~14. **Photography, Painting and Statuary Works:** ~~are Two-dimension and three-dimension works, designing, photography and cartography which are created as a result of innovation and creativity.~~

~~14.~~15. **Metaphorical Work:** ~~is a work where author's nickname, literal or metaphorical name is mentioned.~~

~~15.~~16. **Owner:** ~~is a natural or legal person who holds one or more of the exclusive rights envisaged in this Law.~~

~~16.~~17. **Exhibition of Work:** ~~is is to exhibit or display the work or a copy of it directly or through film, slide, television pictures, motion pictures or any other mean or mode. In the case of a motion picture or other audiovisual work, exhibition includes displaying individual images non sequentially. to exhibit the work or a copy of it directly or through film, slide, television pictures, motion pictures or any other mean or mode.~~

~~17.~~18. **Execution of the work Public performance:** ~~Any act that may render the work available to the public in any manner, such as acting, a musical performance, or transmission, by wire or wireless means, enabling the public to have direct contact with the work by means of a performance, a phonogram, or an audiovisual recording. is to recite the work with a rhythmic and artistic voice or play it with rhythmic and artistic moves by any mean or mode.~~

~~18.~~19. **The performer of the work Performers:** ~~Actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore. is a person who performs the contents of this Law through any ideal mean or mode.~~

~~19.~~20. **Motion Pictures:** ~~An audiovisual work consisting of a series of related images when shown with sound or without sound imparts an impression of motion. is a work consisted of a series of related images when shown with sound or without sound imparts a special meaning, context or an intention.~~

~~20-21.~~ **Broadcasting Organization:** Any person or authority entrusted with or responsible for broadcasting. is a legal person who has a license to publish, broadcast, promulgate, perform or display a work on behalf of its author.

~~21-22.~~ **Lateral rights:** are rights that protect the exhibition, producers, phonograms and broadcasting organizations.

~~22-23.~~ **Person:** includes:

National natural person: is a person who is identified pursuant to the enforced laws.

National legal person: is a person that is has been established pursuant to the enforced laws as an organization, company, Monopoly ownership,

26. **Transferring the copy right Transfer of Copyright Ownership**: An assignment,

| 3. Audiovisual work, such as those created for the purpose of performance on a movies scene or broadcast from radio or te

(1) — 18. Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work. (Per Article 2(3) of the Berne Convention.) ~~The following works shall be protected:~~

~~1— Book, pamphlet, brochure, essay, play and other academic—technical and artistic writings,~~

~~2— Poem, melody, song and compose that has been written, recorded or published using any mean.~~

~~through a different procedure. The author can record the work, name, title and logo of his/her work in the Ministry of Information and Culture. How to apply, record and other issues related to this shall be communicated through a different procedure issued from the Ministry of Information and Culture.~~

- (2) The author can apply to present his/her works to the Ministry if it includes the followings:
- 1- Name of author or authors or person with lateral rights.
 - 2- Contents of the work or issue of lateral right.
 - 3- Two copies of the work or issue of lateral right.
 - 4- An exact correspondence on the characteristics of the work or issue of lateral right
 - 5- Written correspondence from the author regarding the ownership of the work or lateral right

States of no protection

Article 8:

- (1) The provisions of this Law shall not protect works which are in contradiction with the provisions of the Law.
- ~~(2) The subject matter of copyright includes derivative works that has been presented by the author where the use of preexisting material has been differentiated. This right does not extend to~~

public performance of derivative works, as well as dramatic, dramatic musical and musical works.

Communication to the public of performances of works, including derivative works, and, during the full term of the author's rights in an original dramatic or dramatico musical work, the same rights with respect to translations thereof.

broadcasting and other wireless communications, public communication of broadcast by wire or rebroadcast, and public communication of broadcast by loudspeaker or analogous instruments of literary and artistic works.

public recitation, and communication to the public of recitations, of literary works and, durm

- 1- Mention or no mention of his/her name or his/her metaphorical name.
 - 2- ~~B"Ban to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the author's work that would be prejudicial to his honor or reputation."~~ ~~an on any kind of use from his/her work that negates the reputation and credibility of the author~~
 - 3- ~~Whenever an employee during the scope his/her employment creates a work using the facilities of the employer, the work belongs and is owned by the employer unless there has been a different agreement on that **in writing**.~~ ~~Objection on any kind of alternation, change of form or possession of the work.~~
- (3) Whenever an employee during the scope his/her employment creates a work using the facilities of the employer, the work belongs and is owned by the employer unless there has been a different agreement on that.

Cession or Transfer of Rights

Article 12:

- (1) ~~The author a work protected by the provisions of this law can transfer in writing **one or more** of economic rights of his work to another person with the clear mention of the timeframe, modality of the transfer, purpose, place and amount of it.~~ ~~The author a work protected by the provisions of this law can transfer in writing the economic rights of his work to another person with the clear mention of the timeframe, modality of the transfer, purpose, place and amount of it.~~
- (2) The author cannot stop the person whom he has transferred the rights, but can withdraw to publish or broadcast his work or can bring a change in that, in which case he has to compensate for the losses of the person whom he had transferred the rights previously.
- (3) The honor of the moral rights enshrined in this Law shall be transferred to the legal inheritor of the author after his/her death. Where author dies without an inheritor, the rights shall be undertaken by the Ministry of Information and Culture.
- (4) If the author advises in his testament for a certain date of his work to be published or not, his testament will be fully taken into account.
- (5) If an author, his/her partners or one of his co-authors has no legal inheritor, the share of their economical rights shall be attributed to the Ministry of Information and Culture after their death.

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~~5—Audiovisual works shall be protected for fifty years effective from the first year of the publication or broadcast.~~

~~6—Photography and painting works shall be protected fifty years effective from the first year of publication and broadcast.~~

~~(2) Provisions of the article 15 of this Law for the publication of the audiovisual work in the case of not being publicized and broadcast, effective from the date of phonogram's fixation shall be protected for fifty years.~~

Start and Termination Date of the timeline for the protection of the work

Article 167:

(1) If the timeline of the protection under Article 15 of this Law starts from the date of the publication and broadcast, therefore the first date of the publication shall be the date for the protection timeline unless the author when reproducing the work brings fundamental changes in the work in way that results into a new work. If the work consists of several components or is published in different phases, the timeline for the protection shall be accounted for each component as a separate work.

(2) Where the term of protection under Article 16 of this Law is calculated on a basis other than the life of a natural person, the protection term shall be calculated from the end of the calendar year of authorized publication, or, if there is no authorized publication within fifty years from the making of the work, from the end of the calendar year of the creation of the work. ~~If the timeline of the protection starts from the date of the publication and broadcast, therefore the first date of the publication shall be the date for the protection timeline unless the author when reproducing the work brings fundamental changes in the work in way that results into a new work. If the work is consisted of several components or is published in different phases, the timeline for the protection shall be accounted for each component as a separate work.~~

Chapter Four

Rights of the Broadcasting Organization and the Performer of Work

Ownership of the work based on an agreement

Article 178:

If an author based on a contract creates a work for the owner of the broadcasting organization, the rights of this work belongs to the author and not to the owner of the broadcasting organization unless

~~the agreement states differently. If an author based on a contract creates a work for the owner of the broadcasting organization, the rights of this work belongs to the owner of the broadcasting organization unless the agreement states differently.~~

Term of protection for Broadcasting Organizations Reproduction

Article 189:

~~The term of protection for broadcasts of broadcasting organizations shall commence from the end of the calendar year in which the broadcast took place and shall last for twenty years from the end of the calendar year in which the broadcast took place. The broadcasting organization has the right to reproduce its publications; this right is reserved twenty years effective from the date of publication.~~

Obligations of the Broadcasting Organization

Article 1920:

Broadcasting organization or other persons who lawfully print, publish, disseminate or replicate works enshrined in the article 6 of the this Law are obliged to record the number of publication, copies, records, disseminations, issue and serial number on the musical page and audio page with the date and name of the print house or broadcasting organization or firm accordingly.

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Profit from a joint work

Article 24:

If a work has been created by more than one person and each one's role is identified, each one of them can use their share without causing any damage to the profit of others, unless it has been agreed upon differently.

Exclusive Right of a joint musical work

Article 25:

- (1) If a musical work is created due to a joint work, composer has the right to sanction the display, performance, publication, reproduction or replay of the whole work to the public, providing that he/she causes no damage to the right of the writing components of the author.
- (2) Provision enshrined in the first clause of this article shall apply to the art works of Atan

Co-authorship of an Audiovisual Work

Article 26:

1-It includes the following individuals:

1. Author of the scenario or the written idea;
2. Author of the dialogue;
3. Editor of the existing literary Work, adapting it to the Audiovisual Work;
4. Composer of the music especially composed for the Audiovisual Work;
5. Producer, if he or she exercises an effective control and provides positive intellectual input to realize the Work in all its aspects.
6. Director

2-Where the Audiovisual Work is amended or extracted from another previous Work, the Author of the previous Work shall be considered as a co-Author of the new Work. His or her name shall be explicitly mentioned in reference to the amendment or extraction.

3- If any of the co-Authors of an audiovisual Work fails to complete his or her assigned part, the remaining co-Authors shall not be prevented fr

Non-prevention of Production or Display of Collective Work

Article 28:

If the Authors of a literary text, scenario and dialogue, and the Producer and music composer collectively create an Audiovisual Work, neither of them shall have the right to prevent the production or display of such Work, without prejudice to the moral and economic rights of the dissenter.

Chapter Six

Corrective Provisions

Court Proceeding

Article 29:

Court proceedings against the violators of the provisions of this law may take place on the basis of a written request from the individual whose rights have been infringed.

Right of referral to court; Remedies

Article 30:

(1) **The owner of a right in a work , protected by the provisions of this law, or any of his or her successors or hirers, can refer to the court to report violations of the terms of this law**~~Author/Owner of the right of the Work, protected by the provisions of this law, or any of his or her successors or hirers, can refer to the court to report violations of the terms of this law.~~

(2) **mentioned in the (1) paragraph of this article and based on the circumstances, shall take have the authority to take any of the following measures**~~The Court regarding the complaints mentioned in the (1) paragraph of this article and based on the circumstances, shall take one of the following decisions:~~

1. Grant injunctions to prohibit the committing of infringements.
2. **Order the seizure and destruction or disposal outside the channels of commerce of infringing goods or any part thereof, with no compensation to any party, and in such a way as to avoid any harm to**

| the right holder Order the seizure of the infringing copies or any part

(4) The court shall have the authority to order, in accordance with applicable Laws, regulations, provisional measures to prevent an infringement of any rights under this Law, or to preserve evidence relevant to an alleged infringement. Where appropriate, such measures may be adopted without notice or hearing afforded to the defendant, in particular where any delay is likely to cause irreparable harm to a right holder, or where there is a demonstrable risk of destruction of evidence

Penalties

Article 31:

(1) Persons found guilty of willful copyright infringement on a commercial scale in Afghanistan

Protection of Defendants Order of Confiscation

Article 32:

Broadcasting Order

Article 35:

In case of recurrence, the sanctions provided in Article 31, shall be doubled, and the

(1) A Person who takes photographs, films, portraits or records voice of a Person shall be prohibited from publishing, displaying or distributing the original or copy of picture, film or voice record of the said person; this provision shall not apply if the Publication of the photograph or portrait was done on the occasion of a public event, or if relating to public figures or world known celebrities, or if authorized by public authorities for the public interest.

~~(2) The Person represented in the photograph, portrait, film, or recorded voice, may authorize its Publication in newspapers and magazines and other similar Publications or electronic transferors, without the authorization of the photographer, unless otherwise agreed.~~

Reproduce of work

Article 39:

(1) Reproduce of published Work is permitted by a natural person without the Author's authorization provided that it is exclusively for the personal use, the followings are exceptions:

- 1- Reproduction of architecture Work in the form of a building or construction. R
- 2- Reproducing in copy form of copying documents (Reprography) or photography of all or an important part of book of musical Work.
- 3- Reproducing all or part of database digitally. Reproduction [adaptation] of a computer program mentioned in the (2) paragraph of this Article is not included.

~~(2) The making of a single copy or adaptation of a computer program by the rightful owner of a copy of that computer program shall be allowed for the purposes that follow: The Reproduction, in a single copy, or the adaptation of a computer program by the rightful owner of a copy of that computer program and publishing it shall be allowed for the purposes that follow:~~

- 1- For the use of computer programming and to an extent and purpose for which the program is designed.
- ~~2—~~For the purpose of archive and documenting [keeping documents] and papers or changing a rightful computer program, provided that the version of the computer program is destroyed, lost or unusable.

~~(3) Any person may make quotations from a work which has already been lawfully made The~~

Article 41

(1) Owners of copyrights and related rights may register and deposit copies of their works at the Ministry of Information and Culture. The Ministry shall deliver to such owners a certificate, specifying the date of registration and deposit, the subject matter and nature of the right, and the name of the owner, subject to the payment of the required fees. Such certificate shall constitute evidence of the authenticity of the data included therein. The Ministry of Information and Culture shall deliver to the Owners of rights or the Owners of Neighboring Rights a certificate, specifying the date of deposit, the subject matter and nature of the neighboring right and the name of the holder or Owner, subject to the payment of the required certification fees. Such certificate shall be an evidence of the authenticity of the data included therein.

(2) The fees for issuing deposit certificates mentioned in paragraph (1) of this Article shall be determined by a decision of the Councils of Ministers upon the proposal of the MoIC.

Public Broadcasting of Work

Article 42

Lectures, addresses and other works of the same nature which are delivered in public may be reproduced by the press, broadcast, communicated to the public by wire, or made the subject of public communication as set out in Article 9(6) of this Law, when such use is justified by its inforamatory purpose. Nevertheless, the author shall enjoy the exclusive right of making a collection of his works.

~~without the authorization of the Author, play or Perform published Work in as much as such playing or performance does not produce directly or indirectly any financial revenue.~~

Translation of Foreign Work

Article 44:

- (1) ~~Notwithstanding the provisions of Article 9 of the Law, any Afghan citizen may obtain from the Ministry of Information and Culture a non-exclusive and non-assignable license for the translation of a foreign work, published in a printed form or any other form, into a language in general use in Afghanistan, and for the publication of this translation in a printed form or any other form, after three years from the date of the first publication of this work and provided that no translation of this work was previously published in the State by the owner of the translation right or with his or her consent or upon the depletion of the translated editions. Any Afghan citizen may obtain from the Ministry of Information and Culture a non-exclusive and non-assignable license for the translation of a foreign Work, published in a printed form or any other form, and for the Publication of this translation in a printed form or any other form, after three Years from the date of the first Publication of this Work and provided that no translation of this Work was previously published in the State by the owner of the translation right or with his or her consent or upon the depletion of the translated editions.~~
- (2) ~~Any Afghan citizen may obtain from the Ministry of Information and Culture a non-exclusive and non-assignable license to reproduce and publish any published work according to the following conditions. Any Afghan citizen may obtain from the Ministry of Information and Culture a non-exclusive license to reproduce and publish any published Work according to the following conditions:~~
 - 1- Broadcasted Work of poetry, theater, music or art book.
 - 2- **Lapse of seven years from the first publ**

3- Copies of the Work were not distributed in the State to satisfy the needs of the public or for school or university education by the Owner of the Reproduction right by or with his or her consent and for a price similar to the prices of similar Works in the State, and

4- The published copy is sold according to the provisions of this paragraph for a price which is similar or less than the price provided for in Section (2) of this paragraph.

- (3) The translation licenses provided for in paragraph (1) of this Article are granted for the purposes of school and university education or research, whereas Reproduction licenses, provide for in (2) paragraph of this Article are granted only for the use in school or university education.
- (4) Where a translation or Reproduction license is granted, the Author of the original translated or reproduced Work shall be entitled to a fair compensation in conformity with the criteria of economic rights applied for voluntary licenses between Persons in the State and Persons in the Author's country.
- (5) The conditions and procedure of grant of licenses, provided for in this Article, are regulated by the Ministry of Information and Culture in a separate regulation.

Protection of National Folklore

Article 45:

~~National folklore shall be the public property of the State, the Ministry of Information and Culture, shall protect National Folklore by all legal means.~~

Publisher of Work

Article 46:

~~The Owner or maker shall always be considered the publisher of the Work and shall have all Publication rights of the tape and its copies. The Publisher shall always be considered the publisher of the Work and shall have all Publication rights of the tape and its copies.~~ He or she shall act, during the period of exploitation of the tape, on behalf of the co-Authors of the Audiovisual Work and their successors, as to the terms of the display and exploitation of the tape without prejudice to the rights of the Author of the literary and musical Works in publishing their Works by other means, unless otherwise agreed.

Applicability Applicable Areas of this Law

Article 47

(1) The provisions of this Law shall apply to the following Works:

1-Work of Afghan Authors (Citizens of Afghanistan) or Afghanistan habitual Permanent Residents or of citizens or habitual residents of countries with which Afghanistan has concluded applicable intellectual property treaties

2-Works, without a consideration of their author's country of origin or residence, that are published in another country for the first time, and also published within 30 days within Afghanistan or within any other country refe

headquartered in Afghanistan, or in any other country referenced in paragraph 1(1) of this Article, and broadcasts transmitted from a transmitter situated in any such country

(2) The provisions of this Law shall apply to Works, performances, Phonograms or broadcasts in existence at the time of its entry into force, provided that the protection period had not lapsed under a previous legislation.

(3) The provisions of this Law shall not apply to contracts concerning Works artistic performances, Phonograms or broadcasts, which were concluded prior to its entry into force.

Formulation of Regulations and Procedures

Article 48

The Ministry of Information and Culture for the better implementation of the provisions of this Law, shall issue procedures, rules and regulations.

Date of Enforcement

Article 49

This Law shall enter into force as from the date of its Publication in the Official Gazette. Starting from its enforcement provisions inconsistent with this law shall be repealed.