

Law n° 2009-33 dated 23 June 2009, amending and completing law n° 94-36 dated 24 February 1994, relating to the literary and artistic property (1).

In the name of the People,

The Chamber of Deputies and the Chamber of Advisors having adopted,

The President of the Republic enacts the following law:

Article one - Are repealed, the provisions of dashes eleven and fourteen of article one, paragraph two of article 6, and articles 8, 9, 10, 12, 13, 14, 18, 19, 36, 37, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56 and 57 of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property. They are replaced by the following provisions:

Article one – paragraph two :

Dash eleven (new): Orally expressed works, such as the conferences, short speeches and other similar works.

Dash fourteen (new): Creations of clothing, fashion and dress.

Article 6 - paragraph 2 (new) :

It is the same for the authors of works collections, such as the encyclopaedias or anthologies, the collections of folkloric expression or the databases including simple facts or data, which by the choice, or the arrangement of matters, constitute intellectual creations, without prejudice to the rights of the authors of original works.

Article 8 (new):

The author enjoys non pecuniary and pecuniary rights on his work.

The non pecuniary rights are imprescriptible, may not be the subject of waiver and are inalienable. They are however transmissible by way of inheritance or will.

The pecuniary rights may be transmitted partially or totally by way of inheritance or transfer. They are exercised by the author himself, his representative or any other holder of these rights within the meaning of the law herein.

In the event of litigation in the exercise of their rights between the heirs, the beneficiaries of a will, or other holders of copyright, the competent courts are seized by the concerned parties to rule on this litigation.

Unless legal exceptions, no one does have the right to communicate to the public or to reproduce a work belonging to a third party in form or in circumstances which do not take account of the non pecuniary and pecuniary rights of the author.

(1) Preparatory works :

Discussion and adoption by the Chamber of Deputies during its session held on 26 May 2009.

Discussion and adoption by the Chamber of Advisors during its session held on 6 June 2009.

Article 9 (new) :

The non pecuniary rights of the author include the exclusive right to accomplish the following acts:

a) to place his work at the disposal of the public and to claim his paternity by using its name or a pseudonym, or to preserve anonymity.

The name of the author shall be indicated, in a way in conformity with the custom, each time the work is communicated to the public and on any specimen reproducing the work contents, each time that it is presented to the public, in any method or form of expression.

b) to oppose any mutilation, deformation, addition or another modification of his work without his written consent, as well as any other violation of the same work, prejudicial to the honor of the author or his reputation.

c) to withdraw his work from circulation in the public, in counterpart of a fair allowance, to the profit of the authorized exploiting person, having suffered a prejudice.

Article 10 (new):

Are licit, without authorization of the author or counterpart, the hereafter indicated uses of the protected works which were made available to the public, subject to the provisions of article 37 of the law herein:

a) the reproduction of the work intended for the private use, provided that this reproduction does not violate the normal exploitation of work, nor causes an unjustified prejudice to the legitimate material interests of the author.

b) the use of work by way of illustration for educational aims, in printed papers, performances, dramatic representations or audio or audio-visual recordings.

c) reproduction, for education or for the examinations in the educational establishments, in a noncommercial and non profit aim and to the extent justified by the aim to reach, of the isolated articles licitly published in a newspaper or periodical publication, short extracts of a work or a short work licitly published, in the following conditions:

1 - the indication of source in a complete manner and the author name, each time when the work is used.

2 - the use of work for noncommercial or for-profit purposes.

d) the communication or reproduction of press articles published in newspapers or periodical publication on subjects of economic, political or social current events; or of broadcast works having the same nature, by way of press, radio or television, or communication to the public, if the rights of communication to the public, reproduction, and radio and television broadcasting are not expressly reserved, with the obligation to clearly indicate the source and the author name, if this name appears in the source.

e) the reproduction or the recording of a specimen of a protected work for its use in a legal procedure or an

administrative litigation, within the limits required by these procedures or litigation, with indication of source and the author name.

f) the pastiches, parodies, caricatures of an original work, taking into account the laws of the kind.

g) the reproduction or communication of a work of architecture or fine arts, or of a work of the applied arts or a photographic work, when it is located permanently in a public place, except for the museums, art galleries or any artistic heritage bequeathed by the former generations.

Article 12 (new):

The public libraries, the non commercial centers and departments of archives and the libraries of the education and training establishments may, without the author authorization, or counterpart, reproduce a work in one or two specimens, to preserve it or replace it if it would be destroyed, lost or made unusable, for the needs of teaching and without that having a commercial or lucrative goal.

They also may without the author authorization or counterpart, reproduce an article or a short extract of a writing, other than a computer program, published in a collection of works or an issue of a newspaper or a periodical publication and when the goal of the reproduction is to answer to the request of a natural person and to purposes of research and teaching.

Article 13 (new):

The Ministry in charge of culture may deliver nonexclusive licenses for:

a) the reproduction of protected work for purposes of publication, if it were not previously published in Tunisia, at a price equivalent to that practiced by the national publishers, three years after its first publication if it is about a scientific work, seven years after its first publication if it is about a fiction work, and five years after the first publication for any other work.

b) the translation of a protected work for purposes of publication in Tunisia, in form of graphic edition or by sound broadcasting or television broadcasting, if it were not previously translated into Arabic language or put in circulation or communicated to the public in Tunisia, one year after its first publication.

The licenses delivered according to the provisions of this article are in no case transferable to the third parties, their validity is limited to the Tunisian territory.

It is obligatorily made mention on any specimen of work reproduced and/or translated under license of the Ministry in charge of culture which its putting into circulation is limited only to the Tunisian territory.

However, it is allowed to the public administration to dispatch specimens of the work reproduced and/or translated under the license provided for by this article, to the Tunisians resident abroad at aims of teaching, research and without for-profit aim.

The author name and the original title of work shall be indicated on all the specimens of reproduction or of the translation published according to the licenses delivered in application of the provisions of paragraphs "a" and "b" of this article.

The author benefits in counterpart of the delivery of these licenses, from an equitable remuneration paid by the license beneficiary, it is fixed by the institution in charge of the collective management of the copyrights and similar rights which proceeds in this case to its perception and its payment to the rights holders, in the absence of an amicable agreement between the parties.

Article 14 (new):

The licenses provided for in article 13 of the law herein are delivered for purposes of teaching and research, and at a request presented to the Ministry in charge of culture accompanied by the documents justifying that the applicant for the license could not recognize the entitled person or his representative or that those refused to him their authorization of reproduction or translation for purposes of publication, despite all his diligence.

The applicant for the license is bound to address by registered mail, a copy of his request mentioned in first paragraph of this article to any international center concerned by the administration of the international treaties relating to the copyrights and similar rights and whose Tunisia is member, and with the publisher whose name is mentioned on the work.

The licenses provided for by this article concerning the reproduction of a protected work, are delivered only six months after the date of presentation of the request if it is about a scientific work, and three months for other works.

As for the licenses of translation, this duration is nine months after the presentation of the request.

The granted licenses are withdrawn, when the right holder or his representative proceeds, according to the same conditions and price, at the reproduction or translation of the concerned work, in the same language and its contents essentially the same one as that of the authorized translation and its availability to the public at a price equivalent to that which is of custom in Tunisia.

The putting into circulation of the specimens of works already reproduced and/or translated before the withdrawal of the license, may be continued until their exhaustion.

The licenses may not be delivered for the withdrawn works from the circulation by the entitled person or his representative.

Article 18 (new):

The protection is granted to the work because of the only fact of its creation whatever the form and the method of expression and even if it is not fixed on a material support.

The protection of the non pecuniary rights of the author lasts during his entire life, the remainder of the year of his death and fifty years, as from January first of the year following that of his death or of the date retained by the declaratory judgment of his death, in the event of absence or disappearance.

For works of collaboration, protection lasts during fifty years as from the first of January of the year following that of the death of the last collaborator author or the date retained by the declaratory judgment of death, in the event of absence or disappearance.

As for anonymous works or having a pseudonym, protection lasts fifty years as from the first of January of the year following that of the first publication of work, the copyright is exercised in this case by the editor or the distributor of work.

If the pseudonym does not hide the identity of the author to the public or when the author of an anonymous work or having a pseudonym reveals his true identity, the duration of protection is that provided for in subparagraph two of this article.

As for the works published after the author death, protection lasts fifty years as from January first of the year following that of the first publication of work, the copyright is exercised in this case by the heirs and the legatees, within the limits indicated in the law in force.

Article 19 (new):

The protection of the pecuniary rights of the author for photographic works lasts fifty years as from the date of realization of work.

Article 36 (new):

Each recorded specimen of the recording supports or other recorded specimens shall obligatorily carry:

a- the name of the legally responsible producer, as well as his initials and his complete address,

b- the initials of the institution in charge of the collective management of the copyrights and similar rights, and the authorization number,

c- the work title and the order number which is attributed to,

d- the names of the authors and playing artists.

Article 37 (new):

A tax of incentive to the creation is instituted, which is due on the importation and locally, on the not recorded audio and audio-visual supports, as well as on the apparatuses and equipment of recording and reproduction.

The list of products submitted to this tax is fixed by decree.

The tax is fixed locally at 1% of the sales turnover of the manufacturers of products submitted to this tax, taking into account the value - added tax or the customs value on the importation.

This tax is perceived locally on the basis of a monthly declaration, according to a model established by the administration and deposited at the relevant tax office, within the given deadlines in the field of the value - added tax and customs taxes on the importation.

Are applied to this tax, for the perception, control, report of the infringements, the sanctions, litigations, prescription and reimbursement, the same rules provided for in the field of customs taxes on the importation or those provided for in the tax rights and procedures code in the internal regime.

Article 46 (new):

Is prohibited, any use of a computer program not expressly authorized in writing, by its author or his representative, unless contrary contractual stipulation.

However, is allowed without authorization of the author or his representative, the realization of only one backup copy of the computer program by the owner of the licit specimen of this computer program.

Article 47 (new):

Are applicable to the computer programs, the provisions of article 18 of the law herein.

Article 48 (new):

The authors and holders of similar rights may exercise their rights on an individual basis or by way of collective management, entrusted to an institution in charge of the collective management of the copyrights and similar rights, which will be entitled for this purpose by decree.

Article 49 (new):

The institution in charge of the collective management of the copyrights and similar rights has notably the role:

- to safeguard the copyrights and similar rights, and to defend the material and non pecuniary interests of these rights holders.

- to represent their members and to be the agent or the representative of the foreign institutions for the protection of the copyrights and similar rights and the members of those, that it is according to an agency or of a reciprocal agreement of representation.

- to receive works by way of declaration or deposit.

- to fix the rates and amounts of the copyrights due to the authors and the holders of the similar rights.

The institution in charge of the collective management of the copyrights and similar rights is charged to establish links with the foreign institutions in charge of the copyrights and similar rights, notably with an aim:

- to safeguard for the authors and the holders of similar rights, the rights and advantages acquired by the aforesaid institutions.

- to sign conventions of reciprocal representation with the aforementioned foreign institutions.

The internal regulation of the institution in charge of the collective management of the copyrights and similar rights fixes notably:

- the conditions of membership to this institution, as well as the obligations and rights of the members,

- the methods and procedures of declaration or deposit of works,

- the rules of rights collection and their distribution,

- the conditions and procedures of delivery of the authorizations of works exploitation.

The internal regulation cited in the preceding paragraph of this article is approved by order of the Minister in charge of culture.

Article 50 (new):

Are prohibited, the importation on the Tunisian territory of the specimens of a work by any mean, as well as the production or reproduction or the distribution or export, or the marketing of those, contrary to law and order, the good morals and the legislation in force, and which constitute a violation of the copyrights or similar rights within the

meaning of the law herein, and of the international conventions concluded by Tunisia in the field of the copyrights and similar rights.

Article 51 (new):

Whoever will not respect the copyrights and similar rights provided for by the law herein, will be bound to pay to the holder of these rights, material and non pecuniary damages whose amount will be determined by the relevant court.

Article 52 (new):

Notwithstanding the sanctions provided for by special texts, will be punishable by a fine from thousand to fifty thousand dinars any person exploiting of a protected work who did not obtain an authorization, in accordance with the provisions of articles 7, 9 - ter-, 13, 47-quater -, 47-sexies -, and 47-nonies- of the law herein and taking into account the exceptions and limits provided for in articles 10, 11, 12, 15, 16, 17 and 47 - decies -.

In the event of relapse, the fine is doubled, to which it may associate an imprisonment of one to twelve months or only one of the two punishments.

Is punishable by the same sanctions provided for in the two preceding paragraphs of this article:

- whoever proceeds to the sale of manuscripts and plastic works without payment of the rights of the holders of the manuscripts and plastic works, their heirs or their representatives, as provided for in article 25 of the law herein,

- the publisher who refuses to answer the request of the author or his representative, to provide him the justifying documents to establish the accuracy of his accounts, contrary to what is provided for in article 29 of the law herein,

- the manufacturer of specimens recorded in form of audio or audio-visual support who refuses to provide to the author, to his heirs or his representative, justifying documents to establish the accuracy of his accounts, contrary to what is provided for in article 34 of the law herein,

- whoever manufactures recorded specimens in form of phonogram and videogram or in any other form, of protected works, if it is not justified by a contract concluded with the author or the institution in charge of collective management of the copyrights and similar rights, or carries out fraudulent operations in the accountancy relating to the incomings of exploitation of the recordings, contrary to the provisions of article 35 of the law herein,

- whoever manufactures specimens recorded without putting the obligatory mentions provided for by the provisions of article 36 of the law herein, on the supports of recording and the recorded specimens,

- any producer of a cinematographic or audio-visual work which did not proceed to the concluding of contracts with all those whose works are designed for the realization of cinematographic or audio-visual work, contrary to the provisions of article 39 of the law herein,

- all exploiting persons of cinematographic and audio-visual works, as well as the owners of the movie and audio-

visual projection theaters, mentioned in article 42 of the law herein, who did not establish contracts with the holders of the same rights or their representatives for the payment of the royalties relating to the copyrights,

- whoever uses protected computer programs without authorization from the author or his representative, contrary to the provisions of article 46 of the law herein,

- whoever proceeds to the importation, reproduction, sale, export, marketing, publicity, of the specimens of protected works, contrary to the provisions of article 50 of the law herein,

- whoever avoid or try to avoid the control operations intended to check the counterfeited or suspected products of counterfeit,

- whoever prevents, in any manner that it is, the agents entitled by the law herein to reach the buildings of production, manufacture, deposit, sale, distribution or to the transport means,

- whoever refuses to present accounting documents, or administrative, technical or commercial supporting documents necessary to the control,

- whoever provides false information or falsified documents with regard to the product.

Article 54 (new):

The report of the infringements to the law herein, as well as the drafting of the related minutes are ensured by:

- 1- the officers of judiciary police, mentioned in points 3 and 4 of article 10 of the penal procedures code.

- 2- the customs agents.

- 3- the agents of economic control, appointed in accordance with the particular status of the body of the economic control agents.

- 4- the agents entitled by the Minister in charge of culture, among the agents of the Ministry in charge of culture and the establishments placed under its supervision, of category "A" and which are sworn for this purpose.

The agents indicated above may, after giving their quality, seize the necessary documents and take samples of the products subject of the infringement to the copyrights and similar rights, for the needs of investigation and to establish the proof of the infringement, against receipt.

They may also on a preventive basis seize the products suspected of counterfeit and not in conformity with the rules in force, in the field of the copyrights and similar rights.

The seized products remain under the guard of their owners or in a place decided by the agents indicated in paragraph one of this article.

The police force members are bound, in the event of need, to assist the entitled agents in order to guarantee the good achievement of their missions.

The conveyors are bound not to make obstacle to the request of the agents mentioned in paragraph one of this article in order to carry out the sampling or seizure, and to present the loading or transport documents, the receipts, the tickets and the declarations of which they are holders.

The minutes of report and seizure are drafted by one of the officers of judiciary police indicated in point 1 of paragraph one of this article or two agents among those indicated in points 2, 3 or 4 of paragraph one of this article, having carried out personally and directly the report of the infringement or the seizure.

The minutes shall comprise the first name of the judiciary police officer or of each of the two agents who drafted as well as his name, quality, rank, signature and shall carry the seal of the administration to which he belongs,

He shall also comprise the declarations of the offender or his representative, as well as his signature.

It is mentioned the absence of the offender or his representative if it does not appear, or the refusal of signature when he is present.

The minutes shall also mention the date and place of the report or the seizure and the information of the offender or his representative of the subject of the reported infringement or the seizure, if he is present, or to address him a copy of the minutes by registered mail, in the event of absence, and proving the transmission of the aforementioned copy to the interested party.

The minutes of the report and seizure are addressed within seven days to the relevant public prosecutor, who transmits them to the competent court to rule on the confirmation or the lifting of the seizure within a deadline which should not exceed one month as from the date of the realization of the seizure. If the court does not rule on the seizure within the prescribed deadlines, the seizure is automatically lifted.

The responsibility of the departments, to which the agents mentioned in paragraph one of this article belong may in no case be engaged if they do not manage to recognize the suspected products not respecting the copyrights and similar rights.

Article 55 (new):

The competent courts may, when ruling on the substance, automatically order or at the request of the holder of the not respected right or his representative, the confiscation or destruction of copies, material or means having been mainly used for the achievement of the infringement.

They may also order the suspension of activity subject of the infringement in the premises where it was reported, temporarily for a period not exceeding six months or on a final basis in the event of relapse.

They may order the publication of the judgment in its entirety or partially in the newspapers which they indicate by fixing the duration of publication, and the posting of a copy of this judgment in the places that they indicate at the expenses of the convicted person.

Article 56 (new):

The provisions of the law herein relating to the copyrights apply to:

a- the works whose original author or any other holder of the copyright is Tunisian, or has his usual residence or its registered office in Tunisia,

b- the audio-visual works whose producer is Tunisian, or has his usual residence or its registered office in Tunisia,

c- the works published for the first time in Tunisia or those published in Tunisia in the thirty days following their first publication in another country,

d- the works of architecture erected in Tunisia or the works of fine arts incorporated in a building located in Tunisia.

The provisions of the law herein relating to the copyrights apply to the works which are entitled to protection according to an international convention ratified by the Tunisian State.

Article 57 (new):

The provisions of the law herein relating to the similar rights apply to:

a) the interpretations when:

- the interpreter artist is Tunisian,

- the interpretation takes place on the Tunisian territory,

- the interpretation is fixed on an audio or audio-visual recording protected by the law herein or when it was not fixed, it was incorporated in a radio or television broadcast protected by the law herein.

b) the audios or audio-visual recordings when:

- the producer is Tunisian,

- the first fixing of the sound or the image and sound, was carried out in Tunisia,

- the audio or audio-visual recording was published for the first time in Tunisia.

c) the radio or television broadcast when:

- the registered office of the organization of radio and television is located in Tunisia;

- the radio or television broadcast is diffused from a station located in Tunisia.

The provisions of the law herein also apply to the interpretations, the audio-visual recordings audios or the radio or television broadcasts, protected by an international convention ratified by the Tunisian State.

Article 2 :

It is added to law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, a last dash and a last paragraph to article one, a last paragraph to article 4, articles 9-bis-, 9-ter -, a last paragraph to article 39, article 42 -bis -, articles 50 bis to 50-sexies- and article 54 -bis-:

Article one :

last dash:

- digital works.

last paragraph:

The protection of the copyright extends to the expressions and does not cover:

- Ideas, procedures, methods of operation or mathematical concepts, as such.

- Official texts of legislative, administrative or legal nature and their official translations.

- the daily news or the various facts which have the nature of press simple information.

Article 4 (last paragraph):

The author of work, his representative or his entitled person may declare or lodge their works at the institutions in charge of the collective management of the copyrights and similar rights.

The declaration or deposit shall be admissible by the third parties until proof of the opposite.

Article 9 - bis -:

The pecuniary copyrights representing of the exclusive rights which the work author enjoys, to exploit his work or to authorize its exploitation by others, by achieving any of the following acts:

a) to reproduce work by all the processes and notably by printing, drawing, audio or audio-visual recording on magnetic tapes, discs, compact disks or by any informatics system and other means.

b) to communicate the work to the public by all processes and notably by:

- the representation in public places such as the hotels, restaurants, the terrestrial, maritime and air transportation means, as well as the festivals and the theaters of shows,

- the dramatic representation or public interpretation,

- the wire and wireless diffusion of works by use of:

1- transmission and reception means of radio and television and electronics and others,

2- loudspeakers or any other transmitting instrument of signs, sounds or images,

3- satellites, cables, informatics networks or by other similar means.

c) any form of exploitation of work in general, including the commercial lease of the original and of its specimens.

d) the translation, adaptation, arrangement and other transformations of work considered by the law herein as derived works.

Article 9 - ter -:

No exploiting person other than the work owner or his representative may carry out the performance of the actions mentioned in article 9-bis- referred to above if it does not justify a preliminary authorization of the entitled person or his representative in form of written contract indicating notably:

a) the person in charge of the exploitation.

b) the exploitation method (form, language, place).

c) the exploitation duration.

d) the amount of the counterpart of the right holder.

Article 39 (last paragraph):

Is notably considered as collaborator of the production of cinematographic or audio-visual work:

- the author of the adaptation.

- the author of the scenario.

- the author of the dialogue.

- the author of the musical compositions with or without lyrics especially carried out for the work.

- the director.

Article 42 - bis -:

The duration of protection of the pecuniary rights of cinematographic or audio-visual works is fifty years as from the first licit public representation of work.

In the absence of representation, the duration of this protection is fifty years as from the date of realization of the first copy of reference.

Article 50 - bis -:

The customs departments may suspend the clearance procedures concerning the products for which there is apparent evidence of infringement to the copyrights and similar rights. They may request from the author or the holders of the similar rights or their representative any information which could help them to exercise their prerogatives.

The customs departments inform within a short deadline the author or the holders of the similar rights or their representative of this suspension, the latter persons shall, within seven days of the date of notification, deposit the request provided for in article 50-ter- of the law herein.

Article 50 - ter -:

The author, the holders of similar rights or their representative may present to the customs departments a written request for the stay of the clearance procedures at the import or export of products for which they have legitimate reasons to suspect that they do not respect the copyrights and similar rights.

The formula of the request mentioned in paragraph one of this article as well as the data which will have to be presented are fixed by joint order of the Ministers in charge of finance and culture.

Article 50 - quater -:

The customs departments proceed in the two cases provided for in articles 50-bis- and 50-ter- of the law herein to the retention of the products when they report the existence of an infringement to the copyrights and similar rights.

The customs departments inform immediately the author or the holders of the similar rights or their representative as well as the owner, the importer, the exporter or the recipient, of the retention while granting them the possibility of examining the products retained in accordance with the provisions of the customs code, and with no prejudice to the professional secrecy principle.

In order to allow the author or the holders of similar rights or their representative to bring actions at law, the customs departments are bound to inform them about name and address of the owner, importer, exporter, or recipient if he is known, according to an order on request.

Article 50 - quinques -:

The measure of retention of the products is automatically lifted, failing to justify, for the author, the holders of the similar rights or their representative, within

ten day, as from the notification of the retention, to the customs departments having:

- obtained adequate precautionary measures from the competent court,
- engaged a civil or penal action,
- presented a sufficient guarantee to cover the responsibility towards the concerned persons, if it would be established thereafter, that the products in question do respect the copyrights and similar rights.

The amount of this guarantee is fixed by the competent court.

The deadline mentioned in paragraph one of this article may be extended for a further ten days at maximum by the customs departments, in appropriate cases.

The measure of retention of the products taken according to article 50 - bis - is also automatically lifted failing by the author, the holders of the similar rights or their representative to have deposited the request indicated in the same article within seven day of the notification date at the customs departments.

Article 50 - sexes -:

The owner, importer, exporter or recipient have faculty to obtain from the competent court, the lifting of the retention of the products subject of the litigation with the deposit of a sufficient guarantee to protect the interests of the author or holders of the similar rights, on condition that :

- the customs departments were informed within the deadline mentioned in article 50 -quinquies- of the law herein of the seisin of the competent court to rule on the substance;
- the competent court did not order precautionary measures at the expiration of this deadlines;
- all the customs formalities were accomplished.

Article 54 - bis -:

The right holder or his representative may on a precautionary basis and according to an order on request of the president of the competent court, proceed by bailiff assisted by a designated expert, if necessary, by the president of the competent court, to a detailed description, with or without real seizure of the products which present a violation of the copyrights and similar rights.

The real seizure is limited, if necessary, to put between the hands of justice the samples necessary to prove the violation.

May be stopped or prohibited the representations or public performances in progress or already announced, according to an order on request obtained of the president of the competent court.

The president of the competent court may also in the document order:

- 1- the suspension of any operation of manufacture in progress tending to the illicit reproduction of a work.
- 2- the seizure of the specimens already manufactured or in the course of manufacture constituting illicit reproduction of a work, the realized incomings, as well as

the specimens illicitly used, in accordance with the provisions of the penal procedures code.

3- the seizure of the incomings from any reproduction, representation, interpretation or diffusion of a work, by any means, carried out in violation of the copyrights or similar rights.

The president of the competent court may by an order on request, in the cases provided for in paragraphs one, two, and four of this article, order the preliminary constitution by the applicant, of a guarantee before carrying out the seizure.

The description, seizure, stop or prohibition of the representation or performance are automatically lifted failing by the applicant within fifteen days to bring an action at law and this, independently of the damages.

The fifteen-day deadline shall run as from the day of description, seizure, stop or prohibition.

Article 3:

Is added to the law n° 94- 36 dated 24 February 1994, relating to the literary and artistic property chapter VII - bis - entitled "the similar rights ". This chapter includes the articles of 47- bis - to 47-decies-:

Chapter VII bis **Similar rights**

Article 47 - bis - :

It shall be meant by similar rights within the meaning of the law herein, the rights which enjoy the interpreter or performer artists, the producers of audio or audio-visual supports and the radio and television institutions.

The protection of similar rights provided for by the law herein leaves intact and does not affect in any way the protection of the copyrights. Consequently, no provision relating to the similar rights could be interpreted so as to limit the exercise of the copyrights.

Article 47 - ter -:

It shall be meant by interpreter or performer artists, within the meaning of the law herein: the actors, singers, musicians, dancers and other persons who represent, sing, recite, declaim, play or perform in any other manner protected literary or artistic works, folkloric works within the meaning of article 7 of the law herein or works which fell within the remit of the public domain.

Article 47 - quater -:

The interpreters or performer artists enjoy the following non pecuniary and pecuniary rights:

1- the non pecuniary rights which are:

- the right, with regard to their live or fixed on an audio or audio-visual recording audio or audio-visual interpretations or performances, to be mentioned as artists interpreters or executants, except when the use method of interpretation or performance imposes the absence of this mention.

- the right to oppose any deformation, mutilation, other modification or non respect of their interpretations or performances, prejudicial to their reputations.

The non pecuniary rights are imprescriptible, may not be the subject of waiver, and are inalienable. However, they may be transferred by way of inheritance or will.

2 - the pecuniary rights which are:

- the right of broadcasting and communication to the public of their non fixed interpretations or performances, except when the interpretation or performance is already a broadcasted interpretation or performance.

- the right of fixing of their non fixed interpretation or performance.

- the right of direct or indirect reproduction of their interpretations or performances fixed on audio or audio-visual recordings, in any manner and form.

- the right of distribution to the public of the original and specimens of their interpretations or performances fixed on audio or audio-visual recordings, by sale or any other transfer of property.

- the right of commercial lease to the public of the original and of specimens of their interpretations or performances fixed on audio or audio-visual recordings, even after the distribution of those by the interpreter artists themselves or with their authorization.

- the right to place at the disposal of the public by wire or wireless, their Interpretations or performances fixed on audio or audio-visual recordings so that individuals may have access to the place and time that they choose.

These pecuniary rights constitute exclusive rights recognized to the interpreter or performer artists to authorize the integral or partial exploitation of their interpretations or performances.

The duration of the protection of the pecuniary rights of the interpreter or performer artists is fifty years as from January first of the year following that when the interpretation or performance was fixed on audio or audio-visual recording.

If the interpretation or performance is not fixed on phonogram or videogram the duration of protection is fifty years as from January first of the year following that when the interpretation or performance is communicated to the public for the first time.

The pecuniary rights may be transferred by way of inheritance or transfer, completely or partially.

Article 47 - quinquies -:

It shall be meant by producer of audio or audio-visual recording, within the meaning of the law herein: the natural person or legal entity who takes the initiative on his/its behalf and under his/its responsibility for the first fixing of sounds or of images accompanied or not by sounds from an interpretation or performance or other sounds or sounds and images, or of fixing of the representations of the sounds or sounds and images.

It shall be meant by fixing, within the meaning of the law herein, the incorporation of sounds or sounds and images, or the representations of those in a material support which allows to perceive, reproduce or communicate them using an appropriate system.

Article 47 - sexies -:

The producers of the audio or audio-visual recordings enjoy the following rights:

- the right of direct or indirect reproduction of their audio or audio-visual recordings in any manner and any form.

- the right of distribution to the public of the originals or other specimens of their audio or audio-visual recordings by sale or any other transfer of property.

- the right of commercial lease to the public of the originals or other specimens of their audio or audio-visual recordings, even after the distribution of those by the producer himself or with his authorization.

- the right to place at the disposal of the public, by wire or wireless, their audio or audio-visual recordings so that individuals may have access in the place and time that they choose.

These rights recognized to the producers of the audio or audio-visual recordings constitute exclusive rights to authorize the integral or partial exploitation of their audio or audio-visual recordings.

The duration of the protection of the rights of the producers of the audio or audio-visual recordings is fifty years as from January first of the year following that when the audio or audio-visual recording was published or, failing such a publication within fifty years as from January first of the year following that of the fixing of the audio or audio-visual recordings.

Article 47 - septies-:

It shall be meant by radio and television institutions, within the meaning of the law herein: the institutions which produce or distribute the sounds, images or sounds and images by wire or wireless or by any other mean, for purposes of communication to the public.

Article 47 - octies-:

The radio and television institutions have on their broadcasts the following rights:

- the right of fixing, recording on material support their broadcasts or reproduction of these recordings.

- the right of re-diffusion of their broadcasts.

- the right of communication to the public of their television broadcasts when it is made in places accessible to the public against payment of entrance fees.

These rights constitute exclusive rights recognized to the radio and television institutions to authorize the integral or partial exploitation of their broadcasts.

Article 47 - nonies-:

The protection of the rights of the radio and television institutions lasts fifty years as from the first of January of the year which follows that of:

- the fixing, for the audio or audio-visual recordings and performances fixed on those.

- the performance, for the non fixed performances on audio or audio-visual recordings.

- the broadcasting, for the radio and television broadcasts.

The recordings and programs mentioned in the preceding paragraph may not be exploited, without the authorization of the protected radio and television institution.

Article 47 - decies-:

The limits and exceptions provided for in articles from 10 to 17 of the law herein are applicable to the interpreter artists, the producers of the audio or audio-visual recordings and to the radio and television institutions.

Article 4:

The expression " حق التأليف ", in the Arabic text of articles one, 4, 5, 23, 24 and 38, and in the heading of chapter III of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, is replaced by the expression " حق المؤلف ".

The expression " حقوق التأليف " in the Arabic text of articles 7 and 42 of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property is replaced by the expression " حقوق المؤلف ".

Article 5:

The expression " نقل ", in the Arabic text of articles 15 and 16 of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, is replaced by the expression " إستنساخ ".

The expression " نقله " in the Arabic text of article 23, of the law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, is replaced by the expression " إستنساخه ".

The expression " نقلا عن " in the Arabic text of article 35 of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, is replaced by the expression " استنساخا لـ ".

Article 6:

The expression " عرض المصنفات " in the Arabic text of article 17 of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, is replaced by the expression " نقل المصنفات ".

The expression " de présenter les oeuvres " in the French text of article 17, of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, is replaced by the expression " de communiquer les oeuvres ".

The expression " عرض مصنف على العموم " in the Arabic text of article 23 of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, is replaced by the expression " نقل المصنف إلى العموم ".

The expression " عرضه على العموم " in the Arabic text of article 23 of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, is replaced by the expression " إلى العموم ".

The expression " عرض المصنفات المحمية على العموم " in the Arabic text of article 53 of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, is replaced by the expression " نقل المصنفات المحمية إلى العموم ".

The expression "par l'exposition au public " in the French text of article 53 of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, is replaced by the expression " par communication au public ".

Article 7:

The expression "the institution in charge of the copyrights" mentioned in articles 7, 24 (subparagraph 2) and 35 of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, is replaced by the expression "the organization in charge of the collective management of the copyrights and similar rights".

The expression "the institution in charge of the protection of the copyrights" mentioned in articles 7 and 35 of the law referred to above n° 94-36 dated 24 February 1994, relating to the literary and artistic property is replaced by the expression "the institution in charge of the collective management of the copyrights and similar rights ".

The expression "the Tunisian institution in charge of the copyrights ", mentioned in article 17 of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property, is replaced by the expression "the institution in charge of the collective management of the copyrights and similar rights ".

The expression "exercise of the copyright" mentioned in the heading of chapter VIII of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property is replaced by the expression "of the collective management of the rights ".

Article 8:

The expression "article 2" mentioned in paragraph (a) of article 33 of law n° 94-36 dated 24 February 1994 relating to the literary and artistic property is replaced by the expression "article 9 - ter -".

Article 9:

The heading of the chapter IX "Procedures and sanctions" of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property is replaced by "measures at the borders, procedures and sanctions ".

This chapter is subdivided in two sections:

- Section one, entitled "measures at the borders "; it includes the articles from 50 (new) to 50 - sexies -.

- Section two, entitled "procedures and sanctions "; it includes the articles from 51 (new) to 55 (new).

Article 10:

The provisions of articles 2, 3, 20, 21, 22 and 58 of law n° 94-36 dated 24 February 1994, relating to the literary and artistic property are repealed.

The law herein shall be published in the Official Gazette of the Republic of Tunisia and implemented as law of the State.

Tunis, 23 June 2009.

Zine El Abidine Ben Ali