

COPYRIGHT AND NEIGHBOURING RIGHTS IN CAMEROON

INTRODUCTION

Copyright seeks to protect all original literary and artistic creations such as novels, musical compositions, photographic works, drawings, just to name a few.

Neighbouring rights on its part seeks to accord to those who contribute to the diffusion of the original literary and artistic creation some prerogative rights in their work particularly videograms, phonograms, audiovisual broadcasting firms, etc.

Copyright and Neighbouring rights are one of the main branches of Intellectual Property Rights. Today, Copyright is used as a tool to promote, enrich and disseminate the national cultural heritage. It therefore stimulates the creativity of nationals via the dissemination of knowledge. Thus it constitutes an essential element in a country's development process.

It is worth noting that Cameroon is a Member State of the African Intellectual Property Organisation, known by its French acronym OAPI (Organisation Africaine de la Propriété Intellectuelle). All issues of Intellectual Property Rights are managed by this Regional Institution such as the registration and grant of intellectual property titles.

The Revised Bangui Accord and its Administrative Instruction rules, together with other international duly ratified treaties remain the legal guides for applicants or Accredited Attorneys.

Annex 7 of the Revised Bangui Accord of 1999 lays down the details of copyright protection within the OAPI Jurisdiction. By virtue of Article 3 of the same Law, each Member State has been granted the right to make use of its national law(s), if there be any.

There is no doubt that the international treaty takes precedence over national law, but Article 3 of the Revised Bangui Accord lays down an exception to this general rule.

This therefore implies that Annex 7 of the Revised Bangui Accord will not be applicable in Cameroon since there is a national enactment with respect to Copyright and Neighbouring Rights in Cameroon.

Thus the applicable text on this subject is the December 19th 2000 Law and its Decree of application dated November 1st 2001.

1. WORKS PROTECTED UNDER COPYRIGHT AND NEIGHBOURING RIGHTS.

All literary or artistic works irrespective of their mode, worth, genre or purpose of expression are protected under copyright, particularly:

- a) Computer programs;
- b) Musical composition with or without lyrics;
- c) Dramatic, dramatico-musical, choreographic works and pantomimes created for the stage;
- d) Audiovisual works;
- e) Drawings, paintings, lithographs, etchings or wood engravings and other works of the same kind;
- f) All kinds of sculptures, bas-reliefs and mosaics;
- g) Architectural works, including the drawings, models and the construction itself;
- h) Tapestries and objects created by the arts and applied arts, including the sketches or patterns and the works themselves;
- i) Maps as well as graphic and plastic drawings and reproductions of a scientific or technical nature;
- j) Photographic works including work expressed by a process similar to photography.

This is in accordance with Article 3(1) of the 19th December 2000 Law on Copyright in Cameroon.

Literary work shall include work expressed in words, numbers or other verbal or numerical symbols or insignia regardless of the nature of the material object used. This implies that all computer programs fall under literary works.

A work may be literary and artistic especially when it is composed of both words and signs other than words alone.

- k) The title of a work shall equally be protected as the work itself. (See Article 6 of the 2000 Copyright Law).

2. WORKS NOT ELIGIBLE FOR PROTECTION UNDER COPYRIGHT AND NEIGHBOURING RIGHTS.

Article 3(4) of the 19th December 2000 Copyright Law is to the effect that Copyright shall not protect:

- a) Official texts and their official translation, reports, court judgments and other official instruments and translations;
- b) Ideas themselves;
- c) Coats of arms, decorations, currency marks and other official insignia.

3. THE CRITERIA FOR COPY RIGHT AND NEIGHBOURING RIGHT PROTECTION IN CAMEROON.

The 2000 Copyright Law lays down three positive criteria for protection of all literary and artistic creations in Cameroon. These include:

i) THE WORK MUST EXIST IN A TANGIBLE FORM.

The work must be in a tangible form that is sufficiently stable so as to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration either by human sense(s) or with the help of a machine.

ii) THE WORK MUST BE ORIGINAL.

A work may be original even if it resembles a previous creation or even if it does not resemble any previous work.

We can appreciate originality only when the creation is an expression and where there is a distinctive element between it and any previous creation of the same kind. Thus there must be an established difference between what is created and any previous work of same kind.

iii) THE WORK MUST HAVE BEEN CREATED AND IT MUST CONSIST OF A LITERARY OR ARTISTIC WORK.

The created work must be a literary or artistic work or both literary and artistic work.

This also implies that the title of a work shall be protected as the work itself insofar as it is an original feature.

Furthermore, when the work is no longer protected, no one may use the title for another work of the same genre especially when such use is likely to cause confusion in the mind of the public.

A work is deemed to be created provided it was realized independently from any disclosure. This implies the work was realized only through the personal effort of the author. In this case the work is said to be original.

Created work as well as derivative literary and artistic work are protected under Copyright and Neighbouring Rights. Article 4(1) of the 2000 Copyright Law provides that: **a work shall refer to a creation not only in its original form, but also in its derivative or composite form.**

4. THE PROCEDURE TO ACQUIRE COPYRIGHT PROTECTION IN CAMEROON.

Article 13 of the 19th December 2000 Copyright Law states that authors of creative work shall in respect of such work and by reason of their creation enjoy right of exclusive ownership vis-a-vis all other persons referred to as "copyright" the protection of which shall be organized by this law.

This implies that an author by reason of her creation of a literary or artistic property is entitled to an automatic protection. Protection is automatic here because the author does not need to register the said piece of work unlike in some other jurisdiction where registration becomes mandatory.

In Cameroon, registration of a created work is not a fundamental condition for protection. Registration must be effected in front of the competent collective management body. Registration in any collective management body merely serves as proof of who is the right author in case of infringement and proof with respect to the originality of the said piece of work.

5. WHO IS AN AUTHOR?

Article 7(1) – (4) of the Cameroon Copyright Law provides answers to the above-mentioned question thus:

An author shall be:

- a) One who created the literary or artistic work.
- b) One who designed the work or initiated its realization.
- c) One who holds the right of authorship on the said work (licensee).
- d) The one in whose name or pseudonym is on the declaration of the work that was filed or published.

6. CONTENTS OF AUTHORS' RIGHTS.

Article 13(2) of the December 19, 2000 Copyright Law of Cameroon provides that the law shall comprise moral and patrimonial implications.

Thus authors' rights shall consist of both patrimonial and moral rights.

1) PATRIMONIAL RIGHT.

Patrimonial Right permits the author to use or authorize the use of his work so as to reap financial benefit there from. Patrimonial right therefore gives to the author an exclusive right to his work and protects him/her against any possible infringement.

The following rights are said to fall under patrimonial rights because they are the means through which an author can exploit her work: **REPRESENTATION RIGHT, REPRODUCTION RIGHT, TRANSFORMATION RIGHT, DISTRIBUTION RIGHT, INDEFEASIBLE MORTGAGE RIGHT and RIGHT OF PURSUIT.**

a) **REPRESENTATION RIGHT:** This shall mean the communication of a literary or artistic work to the public, including its publication in such a way that everyone has individual access to it where and when he so chooses. Representation shall comprise notably: Telecasting that is to say either wireless broadcast such as radio or television broadcast by wire or any other similar technical device, of sounds, images, texts or messages of the same nature.

The satellite broadcast of a work shall be considered as a representation even if such broadcast takes place out of the national territory, where it is done at the request or behalf or under the supervision of a communication firm having its main establishment in the national territory.

b) **REPRODUCTION:** This shall mean the material fixation of all or part of a literary or artistic work through any means that will enable its indirect communication including permanent or temporary electronic storage. It shall be done through photography, printing, drawing, engraving, casting and audiovisual tape or mechanical recording.

c) **TRANSFORMATION:** This shall mean the adaptation, translation, arrangement or any other alteration of a literary or artistic work.

- d) **DISTRIBUTION:** This shall mean the offer to sell or lease, the sale, rental or any other act of marketing the original or copies of a literary or artistic work.
- e) **RIGHT OF PURSUIT:** This right confers on the author of graphic, plastic work or manuscript, notwithstanding any transfer of the original of the work or manuscript an inalienable right to share in the proceeds of any such original work or manuscript in a public auction or through a merchant, irrespective of the terms and conditions under which the later carried out the transaction.

The right of pursuit is an inalienable right. This right can only be transferred upon the death of the author by will or without a will.

DURATION OF PATRIMONIAL RIGHT.

Patrimonial right exists as long as the work exists. This implies that Patrimonial Right shall last for the lifetime of the author plus 50 years after his/her death. They shall subsist after his death throughout the current calendar year and for the next fifty years. They shall also subsist for all his successors or rightful claimants during the year of the death of the last surviving co-author plus fifty years for joint works [see Article 37(1) and (2) of the December 2000 Law].

II) MORAL RIGHT.

Moral implication shall confer on the author independently of his patrimonial right and even after the transfer of such rights, the right to:

- a) Decide on disclosure and determine the procedure and conditions of such disclosure;
- b) Claim ownership of his work by requiring that his name or capacity be mentioned each time the work is made available to the public;
- c) Defend the integrity of his work by objecting especially to its defamation or mutilation;
- d) Put to an end the dissemination of his work and make changes thereto.

CHARACTERISTICS OF MORAL RIGHT.

Moral implication is linked to the person of the author. They shall be perpetual, inalienable and imprescriptible.

INALIANABILITY: Moral right can never be transferred by the will of the author during his lifetime or upon his death. It is a right attached to the authors.

PERPETUALITY: This signifies that moral right lives as long as the work exists. Once there is no work, there is no moral right. Moral right shall disappear as the work disappears.

IMPREScriptABILITY: Moral right cannot be lost with time. It is not susceptible to the prescription of extinction. Moral right is attached to the author thus it cannot disappear with time but with the author.

Please for more information with respect to the registration of your literary or artistic property in Cameroon, Licensing or Assignment of your Copyright, Seizure of the Infringing goods of Copyright litigation and enforcement in general, do not hesitate to contact the Nico Halle & Co. Law Firm.