

**DECREE No. 100/2006/ND-CP OF SEPTEMBER 21, 2006, DETAILING AND
GUIDING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE
CIVIL CODE AND THE INTELLECTUAL PROPERTY LAW REGARDING THE
COPYRIGHT AND RELATED RIGHTS**

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the June 14, 2005 Civil Code;

Pursuant to the November 29, 2005 Intellectual Property Law;

At the proposal of the Culture and Information Minister,

DECREES:

Chapter I
GENERAL PROVISIONS

Article 1.- Scope of regulation

This Decree details and guides the implementation of a number of articles of the Civil Code and the Intellectual Property Law regarding the copyright and related rights.

Article 2.- Subjects of application

This Decree applies to Vietnamese organizations and individuals; and foreign organizations and individuals engaged in activities relating to copyright and related rights.

Article 3.- Protection of copyright and related rights

1. Protection of copyright means protection of the rights of authors to all types of literary, artistic and scientific works specified in Article 738 of the Civil Code and Articles 18, 19 and 20 of the Intellectual Property Law.

2. Protection of related rights means protection of the rights of performers to their performances; the rights of producers of phonograms and video recordings to such phonograms and video recordings; the rights of broadcasting organizations to their broadcasts and encrypted program-carrying satellite signals specified in Articles 745, 746, 747 and 748 of the Civil Code and Articles 29, 30 and 31 of the Intellectual Property Law.

Article 4.- Interpretation of terms

In this Decree, the terms below shall be construed as follows:

1. Posthumous works means those first published after their authors' death.
2. Anonymous works means those published without indicating their authors' names (real names or pseudonyms) thereon.
3. Original exemplars of works means versions presented in any material medium in which the creation of such works has been first fixed.

4. Copies of works means directly or indirectly reproduced versions of the entire or part of works. Photocopies of works are also regarded as copies.
5. Fixation means the expression in written languages, other characters, lines, three-dimensional figures, layouts, colors, sounds, images or the reproduction of sounds or images in whatever material form from which a work can be perceived, reproduced or otherwise communicated.
6. Phonograms and video recordings means fixations of sounds and images of performances or other sounds and images or the reproduction of sounds and images not in fixed forms as part of cinematographic works or other audiovisual works.
7. Copies of phonograms and video recordings means directly or indirectly reproduced versions of the entire or part of fixed phonograms and video recordings.
8. Publication of fixed performances or phonograms and video recordings means the public presentation of copies of such fixed performances or phonograms and video recordings with the consent of related rights holders.
9. Retransmission means the simultaneous transmission by one broadcasting organization of a broadcast from another such organization. Relay is also regarded as retransmission.
10. Encrypted program-carrying satellite signals means program-carrying signals transmitted by satellites in whatever forms in which audio or visual features or both have been changed so as to prevent the illegal receipt of such programs.

Article 5.- The State's policies on copyright and related rights

The State's policies on copyright and related rights provided for in Clauses 2, 3 and 4, Article 8 of the Intellectual Property Law include:

1. To provide financial supports for purchase of copyright by state agencies or organizations, which are tasked to popularize works, performances, phonograms, video recordings and broadcasts of ideological, scientific or artistic value for public interest, thus contributing to socio-economic development.

The Culture and Information Ministry shall assume the prime responsibility for, and coordinate with the Finance Ministry, the Planning and Investment Ministry and concerned agencies in, guiding the elaboration of financial plans (creation of sources and setting up of funds) and formulating mechanisms for copyright purchase.

The Culture and Information Ministry shall approve the lists of works eligible for supports for copyright purchase by central agencies or organizations, while provincial People's Committees shall approve the lists of works eligible for supports for copyright purchase by local agencies or organizations.

2. To prioritize investment in training and retraining of cadres, civil servants and state employees engaged in the management and enforcement of copyright and related rights protection from the central to local levels.

To concentrate on training and retraining the contingent of cadres for performing the task of right self-protection in the collective representation of copyright and related rights.

3. To prioritize scientific research subjects concerning law, mechanisms and policies on, and the application of scientific-technical and technological solutions to, protection of copyright and related rights.

4. To intensify the education of knowledge on copyright and related rights in schools of all grades. The Education and Training Ministry shall assume the prime responsibility for, and coordinate with the Culture and Information Ministry in, the inclusion of the copyright and related rights in the university, college and professional secondary education curricula.

Article 6.- Contents of, and responsibilities for, state management of copyright and related rights

1. The Government shall perform the unified state management of copyright and related rights.

2. The Culture and Information Ministry shall be responsible before the Government for state management of copyright and related rights and have the following tasks and powers:

a/ To formulate and direct the implementation of strategies, laws, mechanisms and policies on protection of copyright and related rights;

b/ To promulgate and organize and guide the implementation of legal documents on copyright and related rights according to the provisions of law;

c/ To take measures to protect lawful interests of the State, organizations or individuals in the domain of protection of copyright and related rights;

d/ To manage copyright to works (including computer programs and compilations of data), related rights to performances, phonograms, video recordings or broadcasts belonging to the State according to the provisions of law;

e/ To provide for the supply, cooperation, placement of orders and assurance of copyright to works and related rights to performances, phonograms, video recordings or broadcasts;

f/ To build up and manage the apparatus in charge of copyright and related rights; to organize the training and retraining of personnel in charge of copyright and related rights;

g/ To manage activities of organizations acting as collective agents of copyright and related rights;

h/ To grant, re-grant, renew or revoke copyright registration certificates, related rights registration certificates and other relevant procedures;

i/ To compile and manage the national register of copyright and related rights;

j/ To publish and distribute the Official Gazette on copyright and related rights;

k/ To organize and direct the education, propagation and dissemination of knowledge, law, mechanisms, policies on copyright and related rights and the activities of supplying information and making statistics on copyright and related rights;

l/ To organize and manage the assessment of copyright and related rights;

m/ To conduct inspection, examination and handling of violations of law on copyright and related rights; to settle complaints and denunciations about copyright and related rights;

n/ To enter into international cooperation on copyright and related rights.

3. The Culture and Information Ministry shall be responsible before the Government for assuming the prime responsibility for, and coordinating with ministries, ministerial-level agencies, government-attached agencies, and provincial/municipal People's Committees (hereinafter referred to as

provincial-level People's Committees) in, performing the state management of copyright and related rights.

The Copyright Office of Vietnam is a body attached to the Culture and Information Ministry, assisting the Culture and Information Minister in performing the function of state management of copyright and related rights. The Culture and Information Minister shall specify the functions, tasks and powers of the Copyright Office of Vietnam in performing the state management of copyright and related rights.

The Culture and Information Ministry shall coordinate with the Science and Technology Ministry in formulating general guidelines, policies and law on protection of intellectual property rights, synthesizing general information on intellectual property, executing projects on international cooperation on intellectual property, and performing other common tasks under the Government's direction.

4. Ministries, ministerial-level agencies, government-attached agencies and provincial-level People's Committees shall, within the ambit of their respective tasks and powers, have to coordinate with the Culture and Information Ministry in performing the state management of copyright and related rights.

Article 7.- The state management competence of provincial-level People's Committees

1. Provincial-level People's Committees shall have the following tasks and powers:

a/ To organize and guide the enforcement of legal provisions on copyright and related rights in their respective localities;

b/ To promulgate according to their competence legal documents guiding and directing the enforcement of legal provisions, regimes and policies on copyright and related rights in suitability with local characteristics and conditions;

c/ To organize activities of protecting copyright and related rights in their localities; to apply measures to protect legitimate rights and interests of the State, organizations or individuals in relation to copyright and related rights;

d/ To inspect, examine and handle according to their competence complaints, denunciations and violations of legal provisions on copyright and related rights in their localities;

e/ To guide and receive applications for registration of copyright and related rights according to their competence and the provisions of law;

f/ To coordinate with the Culture and Information Ministry, concerned ministries, branches and provincial-level People's Committees in protecting copyright and related rights.

2. Provincial/municipal Culture and Information Services shall assist provincial People's Committees in performing the function of state management of copyright and related rights.

Presidents of provincial-level People's Committees shall specify functions, tasks and powers of provincial/municipal Culture and Information Services, district-level and commune-level People's Committees in performing the state management of copyright and related rights.

Chapter II COPYRIGHT

Article 8.- Authors

1. Authors means persons who personally create part of or the entire literary, artistic or scientific works and include:

a/ Vietnamese individuals who have works covered by copyright protection;

b/ Foreign individuals who have works created and expressed in whatever material forms in Vietnam;

c/ Foreign individuals who have works first published in Vietnam;

d/ Foreign individuals who have works protected in Vietnam under international conventions on copyright to which Vietnam is a contracting party.

2. Organizations and individuals that render supports, give comments or supply documents to others to create works shall not be recognized as authors.

Article 9.- Works presented in other characters

Works presented in other characters specified at Point a, Clause 1, Article 14 of the Intellectual Property Law means works presented in signs or symbols instead of written languages, i.e., Braille for the blind, shorthand signs and other similar signs, which can be reproduced or copied in different forms by interested parties.

Article 10.- Lectures, addresses and other sermons

Lectures, addresses and other sermons specified at Point b, Clause 1, Article 14 of the Intellectual Property Law constitute a type of work presented in spoken languages and required to be fixed in whatever material forms.

Article 11.- Press works

Press works specified at Point c, Clause 1, Article 14 of the Intellectual Property Law shall take the following forms: news articles, quick notes, news reports, interviews, features, investigative stories, commentaries, editorials, special articles, memoirs or other forms, which are published or transmitted on the print, audio, visual or online media or other media.

Article 12.- Musical works

Musical works specified at Point d, Clause 1, Article 14 of the Intellectual Property Law means works presented in the form of musical notes in musical pieces or other musical characters, with or without lyrics, regardless of whether they are performed or not.

Article 13.- Dramatic works

Dramatic works specified at Point e, Clause 1, Article 14 of the Intellectual Property Law means works of various performing arts, including drama (play, ballet, opera, pantomime), circus, dance, puppetry and works of other theatrical genres.

Article 14.- Cinematographic works

Cinematographic works and works created by a process analogous to cinematography specified at Point f, Clause 1, Article 14 of the Intellectual Property Law means works each consisting of a sequence of images that, when viewed in rapid succession, gives the appearance of movement, with or without soundtracks, fixed on a specific medium, able to be distributed or communicated to the public by technical devices and technologies, and including feature films, documentaries, scientific films, cartoons and other similar genres.

Article 15.- Plastic-art works and works of applied art

1. Plastic-art works specified at Point g, Clause 1, Article 14 of the Intellectual Property Law means works presented by lines, colors, three-dimensional figures or layouts, such as works of fine-arts, graphic arts, sculpture, installation arts and similar forms of presentation, which are available in unique copies. Particularly, a work of graphic art may be presented in as many as 50 copies which are ordinally numbered and bear the author's signature.

2. Works of applied arts specified at Point g, Clause 1, Article 14 of the Intellectual Property Law means works presented by lines, colors, three-dimensional figures or layouts, having useful features associated with useful objects, and being mass-produced by hand or by machines, such as: logos; handicraft and fine-arts articles; expressions on products or packages.

Article 16.- Photographic works

Photographic works specified at Point h, Clause 1, Article 14 of the Intellectual Property Law means works showing images of the objective world on photosensitive materials or other media on which images are created or can be created by any technical methods (chemical, electronic or other methods).

Still images taken from a cinematographic work or a work created by a process analogous to cinematography shall not be regarded as photographic work but part of that cinematographic work.

Article 17.- Architectural works

Architectural works specified at Point i, Clause 1, Article 14 of the Intellectual Property Law means design drawings in any forms conveying creative ideas about houses, construction works or spatial plans (construction plans), completely built or not. An architectural work consists of design drawings of floor space, elevation, cross-section and perspective, which convey creative ideas about a house, a work or an architectural complex, spatial organization or landscape architecture of an area, an urban center, system or functional quarter, or a rural population area.

Models or relief plans of houses, construction works or spatial plans shall be recognized as independent architectural works.

Article 18.- Sketches, plans, maps and drawings

Sketches, plans, maps and drawings specified at Point j, Clause 1, Article 14 of the Intellectual Property Law include sketches, plans, maps and drawings related to terrains, and various types of scientific and architectural works.

Article 19.- Copyright to cinematographic works and dramatic works

1. A cinematographic or dramatic work is created by a collective of authors. Persons who take part in the creation of a cinematographic or dramatic work defined in Clause 1, Article 21 of the Intellectual Property Law shall enjoy the moral rights to their parts of creative work according to the provisions of Clauses 1, 2 and 4, Article 19 of the Intellectual Property Law.

Producers, directors and screenwriters may agree on the exercise of the right to title their cinematographic works provided for in Clause 1, Article 19 of the Intellectual Property Law, and the right to modify screenplays of their cinematographic works provided for in Clause 4, Article 19 of the Intellectual Property Law.

2. Organizations and individuals that invest finance and material-technical facilities in the production of cinematographic works or the staging of dramatic works defined in Clause 2, Article 21 of the Intellectual Property Law shall be holders of the rights provided for in Clause 3, Article 19, and Article 20 of the Intellectual Property Law.

Organizations and individuals that invest finance and material-technical facilities in the production of cinematographic works or the staging of dramatic works may agree on the exercise of the rights provided for in Clause 3, Article 19, and Article 20 of the Intellectual Property Law and the performance of the obligations specified in Clause 3, Article 21 of the Intellectual Property Law.

Article 20.- Use of folklore and folk art works

1. Folklore and folk art works specified at Points a, b and c, Clause 1, Article 23 of the Intellectual Property Law shall be protected regardless of their fixation.

2. The use of folklore and folk art works specified in Clause 2, Article 23 of the Intellectual Property Law means the research into, collection and introduction of true values of such folklore and folk art works.

3. Users of folklore and folk art works mentioned in Clause 2 of this Article must agree on the payment of remuneration to keepers of such folklore and folk art works and shall enjoy copyright to their researches, collections or introductions.

4. Reference to sources of folklore and folk art works mentioned in Clause 2, Article 23 of the Intellectual Property Law means the indication of geographical areas inhabited by population communities where such folklore and folk art works are created.

Article 21.- Objects not covered by copyright protection

1. News of the day as mere items of press information specified in Clause 1, Article 15 of the Intellectual Property Law means daily news briefs which are merely of informatory nature and contain no creative elements.

2. Administrative documents specified in Clause 2, Article 15 of the Intellectual Property Law include documents issued by state agencies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations, economic organizations, people's armed forces units and other organizations defined by law.

Article 22.- Moral rights

1. The right to title works provided for in Clause 1, Article 19 of the Intellectual Property Law shall not apply to works translated from one language into another.

2. The right to publish works or authorize other persons to publish works provided for in Clause 3, Article 19 of the Intellectual Property Law means the right of the author or copyright holder of a work or another individual or organization authorized by the author or copyright holder to make a work available to the public in a sufficient amount of copies to satisfy the reasonable demand of the public, depending on the nature of the work.

Publication of a work does not mean the performance of a dramatic, cinematographic or musical work; public recitation of a literary work; broadcasting of a literary or artistic work; exhibition of a plastic work; or construction of structures based on an architectural work.

3. The right to protect the integrity of works and to prevent other persons from modifying or mutilating works provided for in Clause 4, Article 19 of the Intellectual Property Law means the right of the author of a work to prevent other persons from modifying or mutilating his/her work without his/her consent.

4. Authors of computer programs and investors in production of computer programs may agree on the titling and development of such computer programs.

Article 23.- Economic rights

1. The right to perform works before the public provided for at Point b, Clause 1, Article 20 of the Intellectual Property Law means the exclusive right of copyright holders or their authorized persons to perform works either directly or through phonograms or video recordings or with whatever technical devices accessible by the public.

In this Clause, public performance of works means performance of works anywhere except in the family.

2. The right to reproduce works provided for at Point c, Clause 1, Article 20 of the Intellectual Property Law means the exclusive right of copyright holders or their authorized persons to make copies of works by whatever means or in whatever form, including permanent or provisional backup of works in electronic form.

3. The right to distribute original works or copies thereof provided for at Point d, Clause 1, Article 20 of the Intellectual Property Law means the exclusive right of copyright holders or their authorized persons in whatever forms or with the assistance of whatever technical devices accessible by the public to sell, lease or otherwise assign their original works or copies thereof.

For plastic or photographic works, the distribution of works also means the public display or exhibition thereof.

4. The right to communicate works to the public by wire or wireless means, electronic information networks or any other technical means provided for at Point e, Clause 1, Article 20 of the Intellectual Property Law means the exclusive right of copyright holders or their authorized persons to make their works or copies thereof available to the public, in such a way that members of the public may access such works from a place and at a time they themselves select.

5. The right to lease original cinematographic works and computer programs or copies thereof provided for at Point f, Clause 1, Article 20 of the Intellectual Property Law means the exclusive right of copyright holders or their authorized persons to lease their works for use within a definite term.

The right to lease works shall not apply to computer programs which do not themselves constitute principal objects for lease, such as computer programs conducive to the normal operation of means of transport as well as other machines and technical devices.

Article 24.- Reasonable recitation and importation of copies of works

1. Reasonable recitation of a work by a person without misrepresenting the author's views for commentary or illustrative purpose in his/her work as provided for at Point b, Clause 1, Article 25 of the Intellectual Property Law must satisfy the following conditions:

a/ The recited parts aim merely to introduce, comment or clarify matters touched upon in his/her work;

b/ The number and essence of parts recited from the work used for recitation are not prejudicial to the copyright to such work and suitable to the nature and characteristics of the type of work used for recitation.

2. Importation of copies of another person's work for personal use as provided for at Point j, Clause 1, Article 25 of the Intellectual Property Law shall only apply to case of importation of no more than one copy of a work.

3. The use of works in the cases specified in Clause 1, Article 25 of the Intellectual Property Law shall not apply to the reproduction of architectural or plastic works and computer programs.

Article 25.- Reproduction of works

1. Duplication of works by their authors provided for at Point a, Clause 1, Article 25 of the Intellectual Property Law shall apply to the case of non-commercial scientific research or teaching by individuals.

2. Reprographic reproduction of works by libraries for archival and research purpose provided for at Point e, Clause 1, Article 25 of the Intellectual Property Law means reproduction of no more than one copy of a work. Libraries must not reproduce and distribute copies of works, including digital copies, to the public.

Article 26.- Term of copyright protection

1. The term of protection of economic rights and moral rights provided for in Clause 3, Article 19 of the Intellectual Property Law for a posthumous work shall be fifty years as from the date of its first publication.

2. The term of protection of economic rights and moral rights provided for in Clause 3, Article 19 of the Intellectual Property Law for a photographic work or a work of applied art provided for at Point a, Clause 2, Article 27 of the Intellectual Property Law shall be fifty years as from the date of its first publication. Within fifty years after the fixation of a work, if it has not yet been published, the term of protection shall be fifty years from the date of its fixation.

3. As from July 1, 2006 - the effective date of the Intellectual Property Law, the term of protection of photographic works and works of applied art shall be calculated according to the provisions of Clause 2 of this Article.

Article 27.- Copyright holders

Copyright holders defined in Article 36 of the Intellectual Property Law include:

1. Vietnamese organizations and individuals;
2. Foreign organizations and individuals that have works created and expressed in whatever material forms in Vietnam;
3. Foreign organizations and individuals that have works first published in Vietnam;
4. Foreign organizations and individuals that have works protected in Vietnam under international conventions on copyright to which Vietnam is a contracting party.

Article 28.- Holders of copyright to anonymous works

1. Anonymous works specified at Point a, Clause 1, Article 42 of the Intellectual Property Law shall be under the state ownership.
2. Where an anonymous work is managed by an organization or individual, such organization or individual shall enjoy the rights of a copyright holder.
3. When the name of the real owner of a work is identified, the ownership of the work shall belong to such owner as from the date his/her name is identified.

Article 29.- Use of works under the state ownership

1. Except in the cases specified in Clauses 2 and 3, Article 28 of this Decree, when using works under the state ownership specified at Points a and b, Clause 1, Article 42 of the Intellectual Property Law, organizations and individuals shall have to perform the following obligations:

- a/ Asking for the use permission;
 - b/ Paying royalty, remuneration and other material benefits;
 - c/ Depositing a copy of the work within thirty days as from the date of publication or distribution.
2. Organizations and individuals shall perform the obligations specified in Clause 1 of this Article at the Copyright Office of Vietnam.
3. The Copyright Office of Vietnam shall be responsible for receiving copyright assigned in any form by organizations and individuals defined at Point c, Clause 1, Article 42 of the Intellectual Property Law according to the provisions of law.

The Culture and Information Ministry and the Finance Ministry shall prescribe the financial management regime applicable to amounts specified at Point b, Clause 1 of this Article.

Article 30.- Use of works belonging to the public

1. Organizations and individuals that use works belonging to the public, which are specified in Article 43 of the Intellectual Property Law, must respect the moral rights provided for in Clauses 1, 2 and 4, Article 19 of the Intellectual Property Law.

Holders of copyright to works belonging to the public shall not enjoy the right to publish such works, provided for in Clause 3, Article 19, and the economic rights provided for in Article 20 of the Intellectual Property Law.

2. When detecting acts of infringing upon the moral rights provided for in Clauses 1, 2 and 4, Article 19 of the Intellectual Property Law to works for which the term of protection has expired, state agencies, organizations and individuals that have related rights and obligations may request persons committing acts of infringement to stop such acts, make public apology or correction, and pay damages; may lodge complaints or denunciations or request competent state agencies to handle such acts. Depending on the nature and severity of violations, violating organizations or individuals may be handled according to the provisions of administrative, civil or penal law.

Socio-political-professional organizations, socio-professional organizations, organizations acting as collective representatives of copyright or related rights may request competent state agencies to protect the moral rights to works of their members for which the term of protection has expired.

Chapter III RELATED RIGHTS

Article 31.- Rights of performers

1. Direct reproduction of performances which have been fixed on phonograms or video recordings according to the provisions of Point b, Clause 3, Article 29 of the Intellectual Property Law means the making of other copies from these phonograms or video recordings.

2. Indirect reproduction of performances which have been fixed on phonograms or video recordings according to the provisions of Point b, Clause 3, Article 29 of the Intellectual Property Law means the making of other copies from sources other than these phonograms or video recordings, such as websites, broadcasts, services of relevant post and telecommunications networks and similar media.

3. Public communication by other modes of unfixed performances specified at Point c, Clause 3, Article 29 of the Intellectual Property Law means the public distribution of unfixed performances by whatever technical modes other than transmission.

Article 32.- Use of related rights, requiring no permission and payment of royalties and/or remunerations

Cases of use of related rights not for commercial purposes shall not require permission and payment of royalties and/or remunerations, including:

1. Duplication of works by authors for scientific research purpose as specified at Point a, Clause 1, Article 32 of the Intellectual Property Law.

2. Duplication of works by authors for teaching purpose, except for performances, phonograms, video recordings or broadcasts which have been published for teaching purpose as specified at Point b, Clause 1, Article 32 of the Intellectual Property Law.

Article 33.- Reasonable recitation

Reasonable recitation for informatory purpose specified at Point c, Clause 1, Article 32 of the Intellectual Property Law means the use of quotations for merely informatory purpose and must satisfy the following conditions:

1. Recited parts aim only to introduce, comment or clarify some matters in the supplied information;

2. The number and essence of parts recited from performances, phonograms, video recordings or broadcasts are not prejudicial to the rights of performers, the rights of producers of phonograms or video recordings, the rights of broadcasting organizations to their performances, phonograms, video recordings or broadcasts used for recitation; and are suitable to the nature and characteristics of performances, phonograms, video recordings or broadcasts used for recitation.

Article 34.- Provisional copies

Provisional copies of broadcasts of broadcasting organizations which enjoy the broadcasting right specified at Point d, Clause 1, Article 32 of the Intellectual Property Law means copies fixed for a definite term by broadcasting organizations with their instruments and equipment to serve their own coming-up broadcasting sessions. In special cases, such copies shall be stored at an official archive center.

Article 35.- Use of phonograms and video recordings

1. Direct use of phonograms or video recordings already published for commercial purposes in making broadcasts which are sponsored, advertised or charged in whatever form specified at Point a, Clause 1, Article 33 of the Intellectual Property Law means the transmission by broadcasting organizations of such phonograms or video recordings by wire or wireless means, including the transmission by satellites or in digital environment.

Indirect use of phonograms or video recordings already published for commercial purposes in making broadcasts which are sponsored, advertised or charged in whatever form specified at Point a, Clause 1, Article 33 of the Intellectual Property Law means the relay or retransmission of transmitted broadcasts; or putting of broadcasts in digital environment on air.

2. Use of phonograms or video recordings already published in business or commercial activities specified at Point b, Clause 1, Article 33 of the Intellectual Property Law means the direct or indirect use by organizations or individuals of published phonograms or video recordings in restaurants, hotels, shops and department stores; in establishments providing karaoke, post, telecommunications or digital environment services; in tourist, aviation, mass transit activities and other business and commercial activities.

3. When phonograms or video recordings are used as specified in Article 33 of the Intellectual Property Law, performers shall enjoy remunerations on the basis of agreements made with producers or in the course of producing such phonograms or video recordings.

The proportional sharing of royalties, remunerations and other material benefits shall be agreed upon by rights holders or organizations acting as collective representatives of copyright and related rights. Organizations acting as collective representatives of copyright and related rights may entrust one of them to collect and distribute royalties, remunerations and other material benefits. Entrusted organizations being collective representatives of copyright and related rights shall enjoy a charge as agreed upon.

Article 36.- Owners of broadcasts

Owners of broadcasts specified in Clause 3, Article 44 of the Intellectual Property Law means broadcasting organizations which invest their finance and material-technical facilities in broadcasting activities.

When using works, phonograms or video recordings for the production of broadcasts, broadcasting organizations shall have to perform obligations toward copyright holders and related rights holders according to the provisions of law.

Chapter IV
COPYRIGHT AND RELATED RIGHTS REGISTRATION CERTIFICATES

Article 37.- Registration of copyright and related rights

1. Authors, copyright holders and related rights holders specified in Article 50 of the Intellectual Property Law may directly file applications for registration of copyright or related rights with the Copyright Office of Vietnam and Culture or Information Services of provinces or cities where they are based or reside, or authorize other organizations or individuals to do so.
2. Foreign individuals and organizations whose works, performances, phonograms, video recordings or broadcasts are covered by copyright and related rights protection specified in Clause 2, Article 13 and Article 17 of the Intellectual Property Law may directly file applications for copyright and related rights registration with the Copyright Office of Vietnam or Culture and Information Services of provinces or cities where they are based or reside, or authorize copyright and related rights consultancy or service organizations to do so.

Article 38.- Copies of works registered for copyright, copies of fixations of performances, phonograms, video recordings or broadcasts registered for related rights

1. The Copyright Office of Vietnam is responsible for keeping one copy of a work registered for copyright or one copy of a fixation of an object registered for related rights specified at Point b, Clause 2, Article 50 of the Intellectual Property Law after granting a copyright registration certificate or related rights registration certificate.
2. Copies of works registered for copyright specified at Point b, Clause 2, Article 50 of the Intellectual Property Law may be substituted by three-dimensional photos thereof, for works with particular features, such as paintings, statues, monuments, bas reliefs or murals attached to architectures; and oversized works.

Article 39.- Competence to grant copyright registration certificates and related rights registration certificates

1. The Copyright Office of Vietnam is competent to grant, re-grant, renew or revoke copyright registration certificates and related rights registration certificates defined in Clauses 1 and 2, Article 51 of the Intellectual Property Law.
 - a/ Authors, copyright holders and related rights holders that wish to have their copyright registration certificates or related rights registration certificates re-granted or renewed shall file applications, clearing stating reasons for re-grant or renewal, and dossiers according to the provisions of Article 50 of the Intellectual Property Law;
 - b/ The Copyright Office of Vietnam shall re-grant copyright registration certificates or related rights registration certificates in case such copyright registration certificates or related rights registration certificates are lost; renew copyright registration certificates or related rights registration certificates which are torn or damaged or of which copyright holders or related rights holders are changed;
 - c/ When the Copyright Office of Vietnam determines that persons granted copyright registration certificates or related rights registration certificates are not authors or copyright or related rights holders or the registered works, performances, phonograms, video recordings or broadcasts are not covered by copyright protection, it shall revoke copyright registration certificates or related rights registration certificates according to the provisions of law.
2. After receiving applications for registration, re-grant or renewal of copyright registration certificates or related rights registration certificates according to the provisions of law,

provincial/municipal Culture and Information Services shall forward them to the Copyright Office of Vietnam for examination and handling according to its competence.

Right after receiving results of examination and handling of applications from the Copyright Office of Vietnam, provincial/municipal Culture and Information Services shall have to forward such results to application-filing organizations and individuals.

3. When carrying out procedures related to copyright or related rights, organizations and individuals are obliged to pay charges and fees to the Copyright Office of Vietnam according to the provisions of law.

4. The Culture and Information Ministry shall set forms of registration application, copyright registration certificate and related rights registration certificate.

Article 40.- Validity of copyright registration certificates and related rights registration certificates

Various kinds of copyright certificates granted by the Copyright Protection Firm of Vietnam, the Copyright Protection Agency of Vietnam or the Copyright Office of Vietnam prior to the effective dates of the Civil Code and the Intellectual Property Law shall continue to be valid.

Chapter V

ORGANIZATIONS ACTING AS COLLECTIVE REPRESENTATIVES OF COPYRIGHT AND RELATED RIGHTS, ORGANIZATIONS PROVIDING COPYRIGHT AND RELATED RIGHTS CONSULTANCY OR SERVICES

Article 41.- Organizations acting as collective representatives of copyright or related rights

1. Organizations acting as collective representatives of copyright or related rights specified in Clause 1, Article 56 of the Intellectual Property Law must satisfy the following conditions for their operation:

a/ They are authorized by authors, copyright holders or related rights holders;

b/ They are authorized to represent authors, copyright holders or related rights holders in managing a specific right or group of rights;

c/ The collection and distribution of royalties, remunerations and other material benefits generated from the exercise of a right or a group of rights specified in their operation charters.

2. When authors, copyright holders or related rights holders have not yet authorized any organizations to act as collective representatives of copyright or related rights, the Culture and Information Ministry shall guide the division of royalties, remunerations and other material benefits.

3. Where a work, phonogram, video recording or broadcast is related to rights and benefits of many organizations authorized to act as collective representatives of different rights or groups of rights, the involved parties may agree to designate one of them to negotiate on their behalf on the grant of use licenses, collect and divide money, and report to the Culture and Information Ministry before doing so.

4. Organizations acting as collective representatives of copyright or related rights shall biannually, annually or extraordinarily report and supply information on their activities to the Copyright Office of Vietnam.

Article 42.- Organizations providing copyright and related rights consultancy or services

1. Organizations providing copyright and related rights consultancy or services shall be established according to the provisions of Clause 1, Article 57 of the Intellectual Property Law when their heads and individuals engaged in the provision of copyright and related rights consultancy or services fully satisfy the following conditions:

a/ Being Vietnamese citizens and having full civil act capacity;

b/ Permanently residing in Vietnam;

c/ Possessing law university degree.

2. They shall biannually, annually or extraordinarily report and supply information on their copyright and related rights consultancy or services to the Copyright Office of Vietnam.

Chapter VI

PROTECTION OF COPYRIGHT AND RELATED RIGHTS

Article 43.- Right to self-protection

1. The application of technological measures to prevent acts of infringing upon copyright and related rights specified at Point a, Clause 1, Article 198 of the Intellectual Property Law means the communication by right holders of right management information attached to original works, phonograms, video recordings or broadcasts or copies thereof; the disclosure of right management information to make them available together with the public communication of works in order to identify works, their authors and right holders, and to supply information on term of protection, conditions for use of works as well as all data, codes or signs used to express such information for the purpose of protection of copyright and related rights. At the same time, right holders may apply technological measures to protect right management information and prevent acts of making access to works or illegally exercising their ownership right according to the provisions of law.

2. Right holders may apply other measures specified in Clause 1, Article 198 of the Intellectual Property Law to protect their legitimate rights and interests.

Article 44.- Right to initiate civil lawsuits on copyright or related rights

1. The following right holders may initiate lawsuits at competent courts to protect their legitimate rights and interests related to copyright or related rights:

a/ Authors;

b/ Copyright or related rights holders;

c/ Lawful heirs of authors or copyright or related rights holders;

d/ Individuals or organizations assigned with rights of copyright or related rights holders;

e/ Individuals or organizations using works under contracts;

f/ Performers;

g/ Producers of phonograms or video recordings;

h/ Broadcasting organizations;

i/ Organizations acting as collective representatives of copyright or related rights, vested with power of attorney;

j/ Other right holders specified by law.

2. Involved state agencies and organizations shall, within the ambit of their tasks and powers, have the right to initiate civil lawsuits to request the court to protect the public interest and the State's interest in the domain of copyright and related rights.

Article 45.- Complaints and denunciations about the registration of copyright or related rights

1. The following persons may lodge complaints or denunciations:

a/ Authors, copyright holders, related rights holders, their authorized organizations or individuals may complain about the grant, re-grant, renewal or revocation of copyright registration certificates or related rights registration certificates;

b/ Any third party may denounce the grant of copyright registration certificates or related rights registration certificates.

2. Procedures for lodging complaints or denunciations are specified as follows:

a/ Persons complaining about the registration of copyright or related rights must lodge complaints with the Copyright Office of Vietnam, clearly stating the date of making complaints; their names and addresses; names and addresses of complained agencies, organizations or individuals; contents of and reasons for complaints, and their requests. Complaints must bear signatures of complainants. Enclosed with complaints must be such documents as copyright registration certificates, related rights registration certificates, decisions on revocation of such certificates or written refusals to grant, re-grant or renew such certificates, and other relevant documents and proofs;

b/ Denouncers must file their denunciations with competent state agencies, clearly stating the date of making denunciations; their names and addresses; names and addresses of denounced agencies, organizations or individuals; contents of and reasons for denunciations and their requests. Denunciations must bear signatures of denouncers. Enclosed with denunciations must be relevant documents and proofs.

3. Within a time limit set by the Law on Complaints and Denunciations, the Copyright Office of Vietnam, the Culture and Information Ministry or competent state agencies shall have to reply in writing complainants or denouncers.

4. If complainants or denouncers disagree with replies of the Copyright Office of Vietnam, the Culture and Information Ministry or competent state agencies, they may further lodge their complaints or denunciations with competent authorities according to the provisions of law.

Chapter VII IMPLEMENTATION PROVISIONS

Article 46.- Transitional duration

1. Copyright and related rights which are protected under the provisions of the legal documents with effective dates prior to the effective date of the Intellectual Property Law and still in the term of protection on the effective date of the Intellectual Property Law shall be further protected under the provisions of the Intellectual Property Law.

2. Applications for registration of copyright or related rights, already filed with competent agencies before the effective date of the Intellectual Property Law, shall be handled according to the provisions of legal documents in force at the time of filing.

3. All acts infringing upon copyright or related rights or breaching contracts committed before the effective date of the Intellectual Property Law shall be handled according to the provisions of law which are in force at the time of commission.

Article 47.- Effect

This Decree shall take effect 15 days after its publication in “CONG BAO.” This Decree replaces the Government’s Decree No. 76/CP of November 29, 1996, guiding the implementation of a number of the Civil Code’s provisions on copyright.

Article 48.- Implementation responsibilities

1. Ministers, heads of ministerial-level agencies and government-attached agencies, presidents of People’s Committees of provinces or centrally run cities, agencies, organizations and individuals that have related rights and obligations shall have to implement this Decree.

2. The Culture and Information Minister shall have to guide and organize the implementation of this Decree.

On behalf of the Government
Prime Minister
NGUYEN TAN DUNG
