

Copyrights

6.1 Authors and Copyright Owners

Copyright protection shall be given to an author who is defined as the person directly creating the whole or part of a literary, artistic, scientific work and as the person who have created derivative works from other's works, including works translated from one language into another, recreated, transformed, adapted, compiled, annotated, or selected works.

Apart from the author of a work, the legal owner of a work shall be also entitled to copyright protection. The legal owner of a work may be one of the following:

- (i) The author or co-authors of the work;
- (ii) Organizations and individuals who assign tasks to authors or who enter into contracts with authors;
- (iii) A heir of the authors;
- (iv) The assignee of rights over the works; or
- (v) The State, in certain cases.

In accordance with Vietnamese IP Law 50/2005, the author and copyright holders are defined as (i) Vietnamese organizations and individuals; (ii) foreign organizations and individuals whose works to be protected were first published in Vietnam and not yet published in any other country, or whose works were published in Vietnam within thirty days from the date of the first publication in another country; and (iii) foreign organizations and individuals whose works have been protected in Vietnam in accordance with an international treaty on copyrights to which Vietnam is a member.

6.2 Copyrighted Works

Copyright protection is given to literary, artistic or scientific works which fall within any of the following categories:

- (i) Literary and scientific works, textbooks, teaching

- materials, and other works expressed written letters or other characters;
- (ii) Lectures, addresses, and other speeches;
 - (iii) Press works;
 - (iv) Musical works;
 - (v) Dramatic works;
 - (vi) Cinematographic works and works created by similar methods;
 - (vii) Fine art works and applied art works;
 - (viii) Photographic works
 - (ix) Architectural works;
 - (x) Sketches, plans, maps, and drawings relevant to topography or scientific works;
 - (xi) Folklore and folk art works;
 - (xii) Computer programs and data collections.
 - (xiii) Derivative works;

To qualify for protection, a work must be original. The current copyright rules expressly state that copyright protection for a work is granted upon creation of the work in a given work, without subject to publication or registration. The protection is also given to the work irrespective of its form of embodiment and quality.

Derivative works shall only be protected if such protection is not prejudicial to the copyright in the works used to create such derivative works.

6.3 Exceptions

Under the prevailing regulations of Vietnam, the following subject matter shall be excluded from copyrights protection

- (i) News of the day, as mere items of information;
- (ii) Legal legislations, administrative and other judicial documents, and official translations thereof;
- (iii) Processes, systems, method of operation, concepts, principles and data.

6.4 Property and Personal Rights of Copyright Owners and/or Authors

An author and/or copyright owner shall be entitled to certain “property” rights and “personal” rights, as the case may be. Personal rights include (1) to name the work; (2) to have real names or pen names put on the work or have real names or pen names cited when the work is published or used; (3) to publish the work, or permit others to do so; (4) to protect the integrity of the work, to allow or not allow other persons to alter, garble or distort the contents of the work by any means that prejudice against author’s honor and prestige. Property rights include (1) to make the derivative works; (2) to display the works to the public; (3) to reproduce the works; (4) to distribute or import the originals and copies of the works; (5) to disseminate the works to the public via radio, television, internet or by any other technical means; and (6) to lease the original or copies of a cinematographic works or computer programs. Organizations, individuals who wishes to exploit or use one, several or all of property rights and rights of publication of work are obligated to ask for permission from the copyright owners and pay royalties, remuneration and other material benefits.

6.5 Fair Use

An individual or organization may use a published copyright work for “non-commercial purposes” without the permission of the author and without paying royalties provided such use does not adversely affect the normal exploitation of the work and does not cause any detriment to the author’s enjoyment of copyright in the work. The author’s name and the origin of the work must, however, be mentioned.

“Non-commercial purposes” are defined to include the following acts:

(i) Making one copy of the work of an author for the purposes of science research and individual teaching;

(ii) Reasonably quoting a work in order to comment on or illustrate one's own works, without falsifying the author's views;

(iii) Quoting from a work in order to write an article published in a newspaper or periodical, in a radio or television broadcast or in a documentary, without falsifying the author's views;

(iv) Quoting from a work in school or university for lecturing purposes without falsifying the author's views and not for commercial purposes;

(v) Copying a work for archival in the library and for the purposes of research;

(vi) Performing a dramatic works or other art work in mass cultural, communication or mobilization activities without collecting fees in any form;

(vii) Audio-visual recording or a performance in order to report current events or for teaching purposes;

(viii) Photographing or televising a work of fine-art, architecture, photograph, or a work of applied fine-art displayed at a public place in order to present images of such work;

(ix) Transforming a work into Braille or into characters of other languages for the blind;

(x) Importing 1 copy of others' works for personal use.

However, the above-mentioned uses shall not apply to the architectural works, fine-art works and computer software.

6.6 Term of Protection

In general, copyright is protected for the lifetime of the author plus fifty years after his/her death. Some personal rights (such as the rights to name the work, to have the author's name attached to the work, and to protect the integrity of the work) last indefinitely.

With respect to cinematographic works, photographic works, dramatic works, applied art works, anonymous works; the

copyright shall last for 50 years from the date of first publication.

6.7 Copyright Registration

In Vietnam, copyright arises as from the date on which a work is created and expressed in a certain material form regardless of its content, quality, form, mean, language, whether or not it has been published or registered. Accordingly, though registration of a work is not required for the work to be protected, registration provides proof of authorship or ownership. In order to register a work, an author or copyright owner must file an application for registration with the National Office for Copyright Office (NOC), which is based in Hanoi. The application must follow the form specified by the Ministry of Culture and Information and contain papers proving the authorship/ownership of the work, and pay a registration fee. In case the NOC approves the application for registration, the individual who or organization, which holds the registration certificate for the work, will be assumed to be the legal owner of the work in case any dispute regarding the ownership of the work arises.

6.8 Assignment and Licensing of Copyright

An author or copyright holder of a work can transfer all or any of the property rights and the right to publish the work, or given written permission to others to do so in respect of that work to another person or to license another person to use such copyrights or related rights. A licensee to the licensed copyrights or related rights over the work may sublicense such rights in respect of that work upon the consent of the author (or of the copyright holder).

Where a work, performance, audio and visual fixation, or broadcast is under joint ownership, the licensing of copyright or related rights therein must be agreed upon by all co-

owners. If a work, performance, audio and visual fixation or broadcast is composed of separate parts that have been separately created by different authors or owned by different copyright/related right holders, such authors or copyright/related right holders may license their copyrights or related rights with respect to their separate parts to other organizations or individuals.

6.8 Contract for Assignment and Use of Copyrighted Works

A contract for the assignment of copyright or related rights must be made in writing and include provisions which specify the following matters: the names and addresses of the assignor/licensor and the assignee/licensee; the grounds for the assignment/license; the scope of the license (for the licensing of copyright or related right); the price and method of payment; the rights and obligations of the parties; and the liability for contractual breach. Such contracts are not subject to registration to be legally effective. Of note, personal rights are not subject to transfer/licensing, except the right of publication of the work.

6.9 Infringement and Enforcement

An author or owner of a copyrighted work has the right to claim for protection if any of the following acts is conducted in respect of that work without his/her consent:

- (i) Seizing copyrights of a literary, artistic, scientific work;
- (ii) Assuming the author's name of a work;
- (iii) Publishing, disseminating a work without permission of author;
- (iv) Publishing, disseminating a co-author work without permission of other co-author(s);
- (v) Modifying, mutilating or distorting a work in any forms which is prejudicial to the author's honor and prestige;
- (vi) Copying a work without permission of the author or the copyright owner;

(vii) Making derivative works without permission of the author or the copyright owner of the work used to make such derivative work;

(viii) Exploiting a work without permission of copyright owner, without paying royalties and remuneration and other material benefits under the law;

(ix) Renting a work without any payment of royalties, remuneration and other material benefits to its author and copyright owner;

(x) Photocopying, producing, disseminating, publishing, displaying or communicating a work to the public by broadcasting network or digital devices without permission of the copyright owner;

(xi) Publishing a work without permission of the copyright owner;

(xii) Intentionally canceling or invalidating technical methods applied by the copyright owner to protect copyrights of his/her work;

(xiii) Intentionally erasing or amending electronic information on copyrights management of a work;

(xiv) Producing, assembling, altering, distributing, importing, exporting, selling or leasing an item of equipment when knowing or having basis to know that such equipment is used for invalidating the technical measures taken by the copyright owner to protect the copyright to his/her work;

(xv) Making and selling a work of which the author's signature is being forged;

(xvi) Exporting, importing, disseminating copies of a work without permission of the copyright owner.

Where his/her copyrights are infringed, the author or owner of the work shall be entitled to apply the following measures for protecting their copyrights:

(i) Taking technological measures to prevent infringement of copyrights;

(ii) Requesting the infringer to cease the infringement, apologize publicly, issue a public rectification, and/or compensate for damage suffered;

- (iii) Requesting the competent authorities to handle the infringement;
- (iv) Initiating a lawsuit at a competent court or an arbitrator to protect their legitimate rights and interests.

6.10 Copyright Protection of Foreign Works

6.10.1 International Conventions and Treaties

Up to date, Vietnam is the member of the following international convention on copyright protection:

- (i) Berne Convention for the Protection of Literary and Artistic Works;
- (ii) Brussels Convention relating to the distribution of program-carrying signals transmitted by satellite;
- (iii) Geneva Convention for the protection of producers of phonograms against unauthorized duplication of their phonograms;
- (iv) Rome Convention for the protection of performers, producers of phonograms and broadcasting organizations.
- (v) Agreement on trade-related aspects of intellectual property rights (TRIPS Agreement)

Accordingly, works belonging to foreign individuals and juridical persons shall be protected in Vietnam if they fall within any of the following:

- (i) Works were first published in Vietnam and not yet published in any other country, or works were published in Vietnam within thirty days from the date of the first publication in another country;
- (ii) Works were created and expressed in a given material form in Vietnam;
- (iii) Works have been protected in Vietnam in accordance with an international treaty on copyrights to which Vietnam is a member.

6.10.2 Vietnam-United States Copyright Agreement

On 27 June 1997, the United States and Vietnam entered into a

bilateral copyright protection agreement (Agreement). The Agreement took effect on 23 December 1998 with an exchange of diplomatic notes between the two parties. The entering into force of the Agreement enables US copyright owners and authors to have a legal basis to take legal action against piracy of their works in Vietnam. The Vietnamese copyright owners and authors have the same rights in the US.

The Agreement protects: (i) works have been protected by either the US or Vietnamese government; (ii) works were first published in either the US or Vietnam; and (iii) works were first published in a country which is a member of a multilateral copyright treaty to which either the US or Vietnam is a member, provided the copyrights of such works were acquired by a US or Vietnamese copyright holder within one year following the date of the work's first publication.

The Agreement also states that the works of nationals or domiciliaries of the US or Vietnam, which were first published in either country before the Agreement comes into force, will be also given copyright protection, provided that such works have not yet become part of the public domain. However, any copyright infringement committed prior to the Agreement effective date shall not be considered as an act of copyright infringement.

For enforcement, the Agreement specifically requires the two parties, through their national laws, to provide full and effective enforcement of copyrights within their territories by:

(i) making available in the context of civil actions preliminary injunctive relief, permanent injunctive relief, damages, and the seizure and destruction of infringing goods and materials and machinery predominately used to create them; (ii) enacting criminal procedures and penalties to deter infringers from engaging in copyright piracy on a commercial scale, including the imposition of fines and imprisonment sufficient to provide a deterrent, seizure and destruction of

infringing goods and materials and machinery predominately used to create them; and

(iii) making available effective enforcement at their borders, providing for the seizure and destruction of infringing goods in transit or bound for import or export.

With such enforcement measures, the Agreement provides the US copyright holders a higher level of protection than that given to Vietnamese copyright holders by the Vietnamese laws.

6.10.3 Vietnam-Switzerland Bilateral Agreement

Vietnam also signed a bilateral agreement regarding intellectual property rights with Switzerland on 13 July, 1999. The Agreement came into force on 28 June 2000/ The purpose of the Agreement is to strengthen co-operation between the two countries in the field of IP protection. The Agreement provides that nationals and organizations of each country shall enjoy national treatment.

6.10.4 Memorandum

Apart from the above-mentioned international conventions and bilateral agreements on copyright protection, Vietnam also signed the following Memorandum:

(i) Memorandum of Understanding between Department of Intellectual Property of the Kingdom of Thailand and Agencies concerned the Socialist Republic of Vietnam on the Cooperation of the Promotion and protection of intellectual property;

(ii) Memorandum of Understanding between the Department of Intellectual Property of the Kingdom of Thailand and the Copyright Office of Vietnam on cooperation in the field of copyright and neighboring rights;

(iii) Memorandum Cooperation in Copyrights and Relevant Rights between the Copyright Office of the Socialist Republic of Vietnam and the National Copyright Bureau of the People's Republic of China.

The signing of these Memorandums shall strengthen mutual

protection of copyright and relevant rights in Vietnam and other countries.