

**THE GOVERNMENT**

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**SOCIALIST REPUBLIC OF VIET NAM**

**Independence - Freedom – Happiness**

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No. 22/2018/ND-CP

*Hanoi, February 23, 2018*

## **DECREE**

### **ON GUIDELINES FOR CERTAIN NUMBER OF ARTICLES OF THE INTELLECTUAL PROPERTY LAW AND LAW ON AMENDMENTS TO THE INTELLECTUAL PROPERTY LAW 2009 IN TERMS OF THE COPYRIGHT AND RELATED RIGHTS**

*Pursuant to the Law on Government Organization dated June 19, 2015;*

*Pursuant to the Law on Intellectual Property dated November 29, 2005 and Law on amendments to the Law on Intellectual Property dated June 19, 2009;*

*At the request of the Minister of Culture, Sports and Tourism;*

*The Government promulgates a Circular on guidelines for certain number of articles of the Intellectual Property Law and Law on amendments to the Intellectual Property Law 2009 in terms of the copyright and related rights.*

## **Chapter I**

### **GENERAL PROVISIONS**

#### **Article 1. Scope**

This Decree provides guidelines for certain number of articles of the Intellectual Property Law and Law on amendments to the Intellectual Property Law 2009 (hereinafter referred to as the Intellectual Property Law in terms of the copyright and related rights).

#### **Article 2. Regulated entities**

This Decree applies to:

1. Authors, copyright owners, performers, related right owners in accordance as prescribed in the Intellectual Property Law.
2. Other entities in connection with copyright and related rights.
3. Competent authorities in charge of copyright and related rights.

#### **Article 3. Interpretation of terms**

For the purposes of this Decree, these 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 or having not indicated their authors’ names (real names or pseudonyms) thereon.
3. “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.
4. “original of works” means versions presented in any material medium in which the creation of such works has been first fixed.
5. “copies of works” means directly or indirectly reproduced versions of the entire or part of works by any mean or form.
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 works made by similar method.
7. “copies of phonograms and video recordings” means directly or indirectly reproduced versions of the entire or part of fixed phonograms and video recordings made by any mean or form.
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 transmission of rebroadcasting or relay by one broadcasting organization.
10. “encrypted program carrying satellite signals” means program carrying signals transmitted by satellites in whatever forms in which phonogram or visual features or both have been changed so as to prevent those not having legal satellite signal decoder from illegally recording of the program transmitted in that signal.
11. “work of a foreign organization or individual first published in Vietnam” means a work which is not yet published elsewhere prior to its publication in Vietnam.
12. “simultaneous publication” means the publication of a foreign organization's or individual's work in Vietnam within 30 days after it is first published elsewhere.
13. “royalty” means payment is made by user of a work to the author or copyright owner if the copyright owner is not the author.

14. "remuneration" means a sum of money that an intended user of work pays to the copyright owner or a user of performance pays to the performer or owner of performance.

15. "material benefits" means a sum of money paid by a party that uses a phonogram or video recording to its producer or by a party that uses a broadcast to the broadcasting organization.

16. "other material benefits" means economic advantages which authors, copyright owners and related right holders are entitled to, in addition to royalty, remuneration, and material benefits, such as prizes, gift books, invitation tickets to performances, public presentation of cinematographic works, work displays or exhibitions.

#### **Article 4. The State's policies on copyright and related rights**

1. Providing financial aids for purchase of copyright by regulatory agencies, which are tasked to popularize works, performances, phonograms, video recordings and broadcasts of ideological, scientific or artistic value for public interest, thus contributing to socioeconomic development.

2. Prioritizing investment in training and retraining of officials and public employees engaged in the management and enforcement of copyright and related rights protection from central to local governments.

3. Prioritizing investment and application of science and technology to protection of copyright and related rights.

4. Promoting communication to raise public awareness of compliance with regulations on copyright and related rights. Intensifying the education of knowledge on copyright and related rights in schools and other educational institutions in conformity with each grade and level of education.

5. Channeling more social funds to improve capacity of the copyright and related right protection system and meet requirements for socio-economic development and international integration.

#### **Article 5. Roles of regulatory agencies in copyright and related rights**

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

2. The Ministry of Culture, Sports and Tourism shall be held accountable to the Government for state management of copyright and related rights and have the following duties and powers:

a) Formulate, promulgate and direct the implementation of strategies, laws, mechanisms and policies on protection of copyright and related rights.

b) Take measures to protect lawful rights and interests of the State, organizations or individuals in the sector of protection of copyright and related rights.

c) Manage and exploit copyright of works, related rights of performances, phonograms and video recordings, broadcasts owned by the State; receive transfer of copyright of entities to the State as per the law.

d) Provide guidelines for the supply, cooperation, placement of orders, use and assurance of copyright to works and related rights to performances, phonograms, video recordings or broadcasts.

dd) Provide training and refresher courses in copyright and related rights.

e) Manage operation of designated collective representative of copyright and related rights (hereinafter referred to as designated collective representative), advisory organizations of copyright and related rights.

g) Issue, reissue, change, or cancel validity of copyright registration certificates and related right registration certificates.

h) Compile and manage the national register of copyright and related rights.

i) Publish and issue Official Gazettes on copyright and related rights.

k) 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) Manage the assessment of copyright and related rights.

m) Inspect, examine and take actions against violations of law on copyright and related rights; to settle complaints and denunciations about copyright and related rights.

n) Enter into international cooperation on copyright and related rights.

3. Ministries, ministerial-level agencies, Governmental agencies shall, within their respective duties and powers, cooperate with the Ministry of Culture, Sports and Tourism in performing the state management of copyright and related rights.

4. A People's Committee of province or central-affiliated city (hereinafter referred to as province) shall perform state management of copyright and related rights in the province, with duties and powers below:

a) Organize activities of protecting copyright and related rights in their localities; apply measures to protect legitimate rights and interests of the State, organizations or individuals in relation to copyright and related rights.

b) Inspect, examine and settle according to their competence complaints, denunciations and violations of legal provisions on copyright and related rights in the province.

c) Perform other duties as per the law.

## **Chapter II**

### **COPYRIGHT**

#### **Article 6. Authors and joint authors**

1. Author means a person who personally creates part of or the entire literary, artistic or scientific works.
2. Joint authors means persons who jointly create part of or the entire literary, artistic or scientific works.
3. Any person who renders supports, give comments or supply documents to others to create works shall not be recognized as author or joint author.

#### **Article 7. Works presented in other characters**

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

#### **Article 8. Copyright of lectures, addresses and other sermons**

1. 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 certain material forms.
2. In case an author fixes his/her lectures, addresses and other sermons in the form of phonogram or video recording, he/she is entitled to copyright to such lectures, addresses and sermons and, at the same time, hold rights to such phonograms or video recordings according to Clause 2, Article 44 of the Intellectual Property Law.

#### **Article 9. Press works**

Press works prescribed in Point c Clause 1 Article 14 of the Intellectual Property Law means those with independent contents and completed structure, which take the following forms: reports, quick notes, news reports, interviews, features, investigative stories, commentaries, editorials, treatise, memoirs or other forms, which are published or transmitted on the print, phonogram, visual or online media or other media.

#### **Article 10. 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 or fixed in phonograms and video recordings, with or without lyrics, regardless of whether they are performed or not.

#### **Article 11. Copyright on dramatic works**

1. Dramatic works specified at Point dd, Clause 1, Article 14 of the Intellectual Property Law means works of various performing arts, including: traditional operetta (cheo), classical drama (tuong), reformed opera (cai luong), puppetry, play, folk drama, drama, opera, circus, comedy, variety shows and other theatrical genres.

2. Dramatic works are created by authors prescribed in Clause 1 Article 21 of the Intellectual Property Law.

3. The author is entitled to moral rights prescribed in Article 19 and economic rights prescribed in Article 20 of the Intellectual Property Law.

4. An author not also the copyright owner is entitled to moral rights prescribed in Clauses 1, 2 and 4 Article 19 of the Intellectual Property Law; an copyright owner is entitled to the rights prescribed in Clause 3 Article 19 and Article 20 of the Intellectual Property Law.

5. The author and any entity providing financial aid, technical facilities to create the work may reach arrangements repair of the work.

#### **Article 12. Copyright on cinematographic works**

1. Cinematographic works and works created by a process analogous to cinematography specified at Point e, Clause 1, Article 14 of the Intellectual Property Law means works each viewed in movement, with or without soundtracks, and other means according to cinematographic language. Static images taken from a cinematographic work shall be regarded as part of such cinematographic work.

2. Cinematographic works are created by authors prescribed in Clause 1 Article 21 of the Intellectual Property Law.

3. The author is entitled to moral rights prescribed in Article 19 and economic rights prescribed in Article 20 of the Intellectual Property Law.

4. An author not also the copyright owner is entitled to moral rights prescribed in Clauses 1, 2 and 4 Article 19 of the Intellectual Property Law; an copyright owner is entitled to the rights prescribed in Clause 3 Article 19 and Article 20 of the Intellectual Property Law.

5. The author and any entity providing financial aid, technical facilities to create the work may reach arrangements repair of the work.

### **Article 13. Plasticart works and works of applied art**

1. Plasticart 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 finearts, 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 ordinarily 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 produced by hand or by machines, such as: graphic designs (expression of logo, identification system and packaging labels), fashion designs, product designs, interior design and decoration.

### **Article 14. 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 chemical, electronic or other technical methods. Photographic works may whether or not have captions.

### **Article 15. Copyright on architectural works**

1. Architectural works specified at Point i, Clause 1, Article 14 of the Intellectual Property Law means works of architectural type, including:

a) architectural design drawings of facilities or complex of facilities, interior and landscapes.

b) architectural facilities.

2. The author is entitled to moral rights prescribed in Article 19 and economic rights prescribed in Article 20 of the Intellectual Property Law.

3. An author not also the copyright owner is entitled to moral rights prescribed in Clauses 1, 2 and 4 Article 19 of the Intellectual Property Law; an copyright owner is entitled to the rights prescribed in Clause 3 Article 19 and Article 20 of the Intellectual Property Law.

4. The author and any entity providing financial aid, technical facilities to create the work may reach arrangements repair of the work.

### **Article 16. Sketches, plans, maps and drawings**

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

## **Article 17. Copyright on computer programs**

1. The author is entitled to moral rights prescribed in Article 19 and economic rights prescribed in Article 20 of the Intellectual Property Law.
2. An author not also the copyright owner is entitled to moral rights prescribed in Clauses 1, 2 and 4 Article 19 of the Intellectual Property Law; an copyright owner is entitled to the rights prescribed in Clause 3 Article 19 and Article 20 of the Intellectual Property Law.
3. The author and any entity providing financial aid, technical facilities to create the computer programs may reach arrangements repair or upgrade of the computer programs.
4. Any entity that has the lawful use right to a copy of a computer program may make one back-up copy for replacement in case the copy currently in use is lost, damaged or unusable.

## **Article 18. Folklore and folk art works**

1. Folklore and folk art works specified at Point a Clause 1, Article 23 of the Intellectual Property Law are types of verbal art.
2. Folk literary and artistic works defined at Points b and c, Clause 1, Article 23 of the Intellectual Property Law, which are works in different genres of the art of performance such as classical drama (tuong), traditional operetta (cheo), reformed opera (cai luong), puppetry, theme song, music melody; dance, performance, folk game, village festival, and folk ritual.
3. 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.
4. The use of folklore and folk art works specified in Clause 2, Article 23 of the Intellectual Property Law means the research into, collection, performance and introduction of true values of such folklore and folk art works.
5. Reference to sources of folklore and folk art works mentioned in Clause 2, Article 23 of the Intellectual Property Law means the indication of origin, geographical areas inhabited by population communities where such folklore and folk art works are created.

## **Article 19. Subject matters 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, and people's armed forces units.



## **Article 20. Moral rights**

1. The right to title works is provided for in Clause 1, Article 19 of the Intellectual Property Law. This right 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 owner of a work or another individual or organization authorized by the author or copyright owner 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.

## **Article 21. 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 owners or their authorized persons to perform works either directly or through phonograms or video recordings or with whatever technical devices accessible by the public. Public performance of works means performance of works any place accessible to the public.
2. The right to reproduce works provided at Point c, Clause 1, Article 20 of the Intellectual Property Law means exclusive rights under copyright which are performed by copyright owners or their authorized persons to make copies of works by any means or in any form, including electronic ones.
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 owners 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.
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 dd, 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 e, Clause 1, Article 20 of the Intellectual Property Law means the exclusive

right of copyright owners or their authorized persons to lease their works for use within a definite term.

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

## **Article 22. 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 noncommercial scientific research or teaching by individuals.

2. Reprographic reproduction of works by libraries for archival and research purpose provided for at Point dd, 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 23. Reasonable recitation**

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:

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

2. 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.

## **Article 24. Term of protection granted to copyright of posthumous work**

The term of protection of moral rights specified in Clause 3, Article 19 and economic rights specified in Article 20 of the Intellectual Property Law for a posthumous work is fifty years as from the date of first publication.

## **Article 25. Copyright owners**

Copyright owners 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 to which Socialist Republic of Vietnam is a contracting party.

#### **Article 26. Transfer of rights to anonymous works**

The exercise of rights to anonymous works specified in Clause 2, Article 41, and Point a, Clause 1, Article 42 of the Intellectual Property Law is specified as follows:

1. Entities managing anonymous works may transfer rights to such works to others and are entitled to remuneration from such transfer.
2. Entities that are transferred rights under Clause 1 of this Article are entitled to rights of owners until work authors are identified.

#### **Article 27. Use of works under the state ownership**

1. A body placing an order, assigning duty or entering into a contract with an author of work funded by state budget shall be representative of state as well as copyright owner of the work.
2. Users of works owned by the state, which are specified in Clause 1 of this Article, must obtain consent of the copyright owner and respect the moral rights provided for in Clauses 1, 2 and 4, Article 19 of the Intellectual Property Law.
3. Users of works owned by the state, which are specified in Point b and Point c Clause 1 Article 42 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.
4. When a regulatory body or entity detects acts of infringement upon copyright prescribed in Clause 2 and Clause 3 of this Article, the regulatory body or entity is entitled to request the competent authority to take actions as per the law.

#### **Article 28. Use of works belonging to the public**

1. Users of 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.
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.

3. Socio-political professional organizations, socio-professional organizations, designated collective representative 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 29. Rights of performers**

1. The right to 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 right of owner of performance in the making or authorized making of other copies from these phonograms or video recordings.

2. The right to 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 right of owner of performance in the making or authorized making of other copies from sources other than these phonograms and video recordings, such as broadcasts, websites, services of relevant post and telecommunications networks and similar media.

3. The right to public communication by other modes of unfixed performances specified at Point c, Clause 3, Article 29 of the Intellectual Property Law means the right of owner of public distribution to exclusive or authorized making of unfixed performances by whatever technical modes other than transmission.

#### **Article 30. Reasonable recitation of performances, phonograms and video recordings, broadcasts**

1. 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.

2. The reasonable recitation prescribed in Clause 2 of this Article and must satisfy the following conditions

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

b) The 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 31. Provisional copies**

Provisional copies 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 32. 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.
2. 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.
3. Use of phonograms or video recordings already published in business or commercial activities specified at Clause 2, 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, and mass transit activities.
4. 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.

### **Article 33. Use of broadcasts**

1. 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, unless otherwise agreed.
2. 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.
3. Entities that relay, re-broadcast or transmit via telecommunications or electronic communication networks or in any technical media broadcasts of other broadcasting organizations under Points a and b, Clause 1, Article 31 of the Intellectual Property Law shall comply with relevant agreements and laws. Any modification, mutilation or supplementation of broadcasts of other broadcasting organizations for re-broadcasting or transmission via telecommunications or electric communication networks or in any technical media must be agreed by owners of such broadcasts.

## **Chapter IV**

### **COPYRIGHT AND RELATED RIGHTS REGISTRATION**

#### **Article 34. Procedures for registration of copyright and related rights**

1. Authors and owners of copyright and related rights may directly or authorize other entities to submit a set of application for registration of copyright or related rights to the headquarters of the Copyright Office of Vietnam, representatives offices of the Copyright Office of Vietnam in Ho Chi Minh City or Da Nang city affiliated to the Ministry of Culture, Sports and Tourism. Dossiers may be sent by post.
2. Foreign entities 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 in Ho Chi Minh City or Da Nang city affiliated to the Ministry of Culture, Sports and Tourism, or authorize copyright and related rights consultancy or service organizations to do so.

#### **Article 35. Issuance, re-issuance, change, or invalidation of copyright registration certificates and related right registration certificates**

1. The Copyright Office of Vietnam affiliated to the Ministry of Culture, Sports and Tourism is competent to issue, re-issue and invalidate copyright registration certificates and related rights registration certificates specified in Clauses 1 and 2, Article 51 of the Intellectual Property Law.
2. Copyright registration certificates and related rights registration certificates shall be issued as prescribed in Articles 49 and 50 of the Intellectual Property Law.
3. Copyright registration certificates and related rights registration certificates shall be re-issued in a case where they are lost or torn.
4. Copyright registration certificates and related rights registration certificates shall be changed in a case of changes to copyright owners or related right owners or changes to authors, owners of copyright, related rights, work, performance, phonogram and video recordings, broadcast.
5. Copyright registration certificates and related rights registration certificates shall be invalidated as prescribed in Clause 2 and Clause 3 Article 55 of the Intellectual Property Law.
6. The Ministry of Culture, Sports and Tourism stipulates forms of registration of copyright or related rights, copyright registration certificates, and related right registration certificates as prescribed in Point a Clause 2 Article 50 and Clause 4 Article 51 of the Intellectual Property Law.

#### **Article 36. Application for issuance, re-issuance, or change of copyright registration certificates and related right registration certificates**

1. Applications for copyright registration certificates and related rights registration certificates are prescribed in Articles 50 of the Intellectual Property Law.

2. An author, copyright owner or related right owner seeking re-issuance of a copyright registration certificate or related rights registration certificate shall file an application form for registration of copyright or related right (using the prescribed form), 2 copies of the work or 2 copies of performance, phonogram and video recording, or broadcast.

3. An author, copyright owner or related right owner seeking change of a copyright registration certificate or related rights registration certificate shall file an application form for registration of copyright or related right (using the prescribed form), 2 copies of the work or 2 copies of performance, phonogram and video recording, or broadcast; documentation evidencing the change and return the former copyright registration certificate or related rights registration certificate.

**Article 37. Time limit for issuance, re-issuance, or change of copyright registration certificates and related right registration certificates**

1. Time limit for issuance of copyright registration certificates and related rights registration certificates are prescribed in Articles 52 of the Intellectual Property Law.

2. Within 7 working days from the date on which a satisfactory application is received, the Copyright Office of Vietnam affiliated to the Ministry of Culture, Sports and Tourism shall re-issue a copyright registration certificate or related rights registration certificate.

3. Within 12 working days from the date on which a satisfactory application is received, the Copyright Office of Vietnam affiliated to the Ministry of Culture, Sports and Tourism shall change the copyright registration certificate or related right registration certificate.

4. If the application for re-issuance or change is refused, the Copyright Office of Vietnam affiliated to the Ministry of Culture, Sports and Tourism shall give a notice to the applicant.

**Article 38. Copies of works registered for copyright, copies of fixations of objects registered for related rights**

1. The Copyright Office of Vietnam affiliated to the Ministry of Culture, Sports and Tourism is responsible for keeping 1 copy of a work registered for copyright or an object registered for related rights; 1 copy of a work registered for copyright or an object registered for related rights bearing the certificate number, and then returning it to the holder as prescribed in Point b Clause 2 Article 50 of the Law on Intellectual Property.

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. Invalidation of copyright registration certificates and related rights registration certificates**

1. The Copyright Office of Vietnam affiliated to the Ministry of Culture, Sports and Tourism is competent to invalidate copyright registration certificates and related rights registration certificates in circumstances specified in Clauses 2 and 3, Article 55 of the Intellectual Property Law.

2. Within 15 working days from receipt of one of the following documents, the Copyright Office of Vietnam affiliated to the Ministry of Culture, Sports and Tourism shall issue a decision on invalidation of the copyright registration certificate or related rights registration certificate:

a) An effective judgment/decision of court or decision of competent authority on actions against infringements prescribed in Article 200 of the Intellectual Property Law in terms of invalidation of the copyright registration certificate or the related rights registration certificate.

b) A document of holder of copyright registration certificate or the related rights registration certificate which applies for invalidation of such certificate.

### **Article 40. Fees for registration of copyright and related rights**

Upon registration of copyright or related rights, the applicant must pay a certain amount of fee as per the law.

### **Article 41. Validity of copyright registration certificates and related rights registration certificates**

Various kinds of copyright certificates and related rights registration certificates granted by the Copyright Protection Firm of Vietnam, the Copyright Protection Agency of Vietnam, Literature – Art Copyright Office or the Copyright Office of Vietnam shall continue to be valid.

## **Chapter V**

### **DESIGNATED COLLECTIVE REPRESENTATIVE, COPYRIGHT AND RELATED RIGHTS CONSULTANCY**

#### **Article 42. Designated collective representative**

A designated collective representative specified in Clause 1, Article 56 of the Intellectual Property Law must perform in conformity with its operation and authorization contract between the copyright owner, related right owner and the designated collective representative in terms of management of a right or a group of specific rights.

#### **Article 43. Royalties, remunerations, material benefits**



1. The designated collective representative shall make a schedule of royalties, remunerations and material benefits prescribed in Clause 3 Article 20, Clause 4 Article 29 of the Intellectual Property Law and material benefits prescribed in Clause 2 Article 30, Clause 2 Article 31 of the Intellectual Property Law.

2. Users of works, phonogram and video recordings, broadcasts prescribed in Clause 1 Article 26, Clause 1 and Clause 2 Article 33 of the Intellectual Property Law are obliged to contact copyright owner or related right owner or designated collective representative directly in terms of the use thereof. If the copyright owner or related right owner cannot be directly contacted, the user of the work, phonogram or video recording, broadcast shall make a notice by means of mass media.

3. The user of work, performance, phonogram or video recording, broad and designated collective representative shall reach an agreement on sums of royalties, remunerations, material benefits and methods of payment.

4. Royalties, remunerations and material benefits shall be determined according to the following rules:

a) Payment of royalties, remunerations and material benefits must assure the interests of authors, users and the public and suit national socio-economic conditions.

b) The sums of royalties, remunerations and material benefits depends on the category, form, quality, quantity or use frequency of works.

c) Joint copyright owners, joint related right owners shall reach an agreement on distribution of royalties and remunerations in conformity with extent of creativity in accordance with the use.

d) The sums of royalties, remunerations, material benefits shall be determined according to a written contract as per the law.

#### **Article 44. Collection and distribution of royalties, remunerations, material benefits**

1. The collection and distribution of royalties, remunerations, material benefits shall be carried out in accordance with the charter of designated collective representative and authorization document of copyright owner or related right owner with agreement on the sum or percentage, methods and time for distribution of royalties, remunerations, material benefits.

2. The collection and distribution of royalties, remunerations, material benefits are conducted by designated collective representative in accordance with rules of publicity and transparency associated with works, performances, phonogram and video recordings, and broadcasts as per the law.

3. In case a work, phonogram, video recording or broadcast is related to the rights and interests of many designated collective representatives of specific 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 distribute money according to the charter and authorization document.

4. The collection and distribution of royalty, remuneration and material benefits from corresponding foreign or international organizations comply with foreign exchange management regulations.

#### **Article 45. Exploitation and use of phonograms and video recordings**

1. Direct or indirect users of phonograms and video recordings prescribed in Clause 1 and Clause 2 Article 33 of the Intellectual Property Law must pay royalties, remunerations, material benefits to copyright owners or related right owners.

2. Designated collective representatives may reach an agreement, authorize the negotiation, collect royalties, remunerations, material benefits as per the law. Proportion of royalties, remunerations, material benefits shall be agreed by the above-mentioned bodies.

3. The designated collective representative, which enters into an authorization contract with another body for negotiation and collection of royalties, remunerations, and material benefits, shall make a list of members, works, phonograms and video recordings, broadcasts or members.

4. The authorized body may solely engage in negotiation and collection of royalties, remunerations, and material benefits according to the said list of members, works, phonograms and video recordings, broadcasts or members.

#### **Article 46. Managerial information of copyright and related rights**

A designated collective representative shall disclose information below on its website:

1. Name of author, copyright owner, related right owner.

2. In case of individuals: Date of birth; year of death (if any).

In case of organizations: Date of establishment; year of dissolution (if any).

3. Name of work, subject matter of related rights (performance; phonogram and video recording; broadcast).

4. Content of work; performance; phonogram and video recording; broadcast.

5. Area of authorization; entry into force of authorization contract.

6. Licensing, collection and distribution of royalties, remunerations, material benefits.

7. Activities of designated collective representatives.

8. Relevant information.

### **Article 47. Reporting**

1. Designated collective representative shall report to the Ministry of Culture, Sports and Tourism, the Ministry of Home Affairs, the Ministry of Finance and governing body on any amendment to charter, operation regulations; systems of financial management; change of leaders; participation in international organizations; other foreign affairs; schedules, methods of payment of royalties, remunerations, material benefits; long-term and annual plans; financial performance, signing of authorization contracts, contracts for authorization of such use; collection, sums, methods of distribution of royalties, remunerations, material benefits; and relevant activities.

Any modifications to the charter must be reported to competent authorities for approval before being made.

2. The designated collective representative shall build a website which links to copyright and related right authority and designated collective representatives.

3. The designated collective representative shall build a database system, which links to the national database system in respect of copyright and related rights.

### **Article 48. Copyright and related rights consultancies**

Copyright and related right consultancies prescribed in Clause 1 Article 57 of the Intellectual Property Law include:

1. Enterprises incorporated and operating under law on enterprises.

2. Cooperatives and unions of cooperatives incorporated and operating under law on cooperatives.

3. Public sector entities.

4. law-practicing organizations incorporated and operating under law on lawyers, except for branches of foreign law-practicing organization, wholly foreign-owned limited liability law firms, limited liability company law firms under joint ventures between law-practicing organization(s) of Vietnam and foreign law-practicing organization(s).

## **Chapter VI**

### **IMPLEMENTATION**

### **Article 49. Protection of copyright and related rights**

1. A copyright owner or related right owner may, in person or authorize the designated collective representative or another entity to protect his/her copyright or related rights. The authorized party shall disclose information to enable users of the work, performance, phonogram or video recording, or broad to contact and reach an agreement on use.
2. The user of works, audio and video recordings, broadcasts is obliged to contact copyright owner or related right owner or authorized party to reach an agreement on the use as prescribed in law on copyright and related rights.
3. Any dispute over copyright and related rights shall be settled in accordance with law on civil procedures or arbitrators.

#### **Article 50. Entry into force**

1. This Decree comes into force as of April 10, 2018.
2. The following documents shall cease to be effective as of the entry into force of this Decree:
  - a) Government's Decree No. 100/2006/ND-CP dated September 21, 2006 on guidelines for certain number of articles of the Civil Code and the Intellectual Property Law regarding the copyright and related rights;
  - b) Government's Decree No. 85/2011/ND-CP dated September 20, 2011 on amendments to certain number of articles of Decree No. 100/2006/ND-CP dated September 21, 2006 on guidelines for certain number of articles of the Civil Code and the Intellectual Property Law regarding the copyright and related rights.

#### **Article 51. Implementation**

1. The Minister of Culture, Sports and Tourism shall provide guidelines and implement this Decree.
2. Ministers, heads of ministerial-level agencies, and Heads of Governmental agencies, Presidents of People's Committees of provinces, and relevant entities shall implement this Decree./.

**ON BEHALF OF THE GOVERNMENT  
PRIME MINISTER**

**Nguyen Xuan Phuc**

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