

THE GOVERNMENT

No. 85/2011/ND-CP

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom – Happiness

Hanoi, September 20, 2011

DECREE

AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE GOVERNMENT'S DECREE NO. 100/ 2006/ND-CP OF SEPTEMBER 21, 2006, DETAILING AND GUIDING A NUMBER OF ARTICLES OF THE CIVIL CODE AND THE INTELLECTUAL PROPERTY LAW REGARDING 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 Law on Intellectual Property;

Pursuant to the June 19, 2009 Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property;

At the proposal of the Minister of Culture, Sports and Tourism,

DECREES:

Article 1. To amend and supplement a number of articles of the Government's Decree No. 100/2006/ND-CP of September 21, 2006, detailing and guiding a number of articles of the Civil Code and the Intellectual Property Law regarding copyright and related rights:

1. To add the following Clauses 11, 12, 13, 14 and 15 to Article 4:

"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 a sum of money paid by a party that uses a work to its author or copyright holder in order to acquire the authority to use such work.

14. Remuneration means a sum of money paid by a party that uses a work to its author or copyright holder; or by a party that uses a performance to performers who carry out creative activities to convey a copyrighted work to the public.

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.

Other material benefits mean economic advantages which authors, copyright holders 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 and interests in other related material forms."

2. To amend Article 10 as follows:

"1. Lectures, addresses and other sermons specified at Point b, Clause 1, Article 14 of the Intellectual Property Law constitute a genre of work presented in spoken languages and must be fixed in a certain material form.

2. In case authors fix their lectures, addresses and other sermons in the form of phonogram or video recording, they are 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."

3. To add the following Article 19a below Article 19:

"Article 19a. Copyright to computer programs

1. Authors of computer programs defined at Point m, Clause 1, Article 14, and Article 22 of the Intellectual Property Law are entitled to moral rights specified in Clauses 1, 2 and 4, Article 19 of the Intellectual Property Law.

When signing contracts on creation of computer programs, organizations or persons that provide funds and physical and technical foundations for creation of computer programs, and authors of such programs may reach agreement on the right to title such programs specified in Clause 1, Article 19 of the Intellectual Property Law and the modification and upgrading of such programs specified in Clause 4, Article 19 of the Intellectual Property Law.

2. Organizations or persons that provide funds and physical and technical foundations for creation of computer programs are copyright holders and entitled to the publication right and exclusive economic rights specified respectively in Article 19 and Article 20 of the Intellectual Property Law.

Authors of computer programs are entitled to royalty and other material benefits as agreed with copyright holders.

3. Organizations or persons that have the lawful use right to a copy of a computer program may make at most one back-up copy for replacement in case the copy currently in use is lost, damaged or unusable."

4. To add the following Article 20a below Article 20:

"Article 20a. Folk literary and artistic works

To-be-protected folk literary and artistic works defined in Clause 1, Article 23 of the Intellectual Property Law include:

1. Folk literary and artistic works defined at Point a, Clause 1, Article 23 of the Intellectual Property Law, which are works in different genres of the art of words such as humorous story, fable, epic, mythology, legend, anecdote, poem, folk song, proverb, riddle and other similar forms of expression.

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), theme song, music melody; dance, performance, folk game, village festival, folk ritual and other similar forms of expression.

3. Folk literary and artistic works defined at Point d, Clause 1, Article 23 of the Intellectual Property Law, which are works in different genres of plastic arts such as graphics, paintings, sculpture, musical instrument; architectural models and other similar forms of expression."

5. To amend Clause 2, Article 23 as follows:

"2. The right to reproduce works provided at Point c, Clause 1, Article 20 of the Intellectual Property Law means one of exclusive economic rights under copyright which are performed by copyright holders or their authorized persons to make copies of works by any means or in any form, including electronic ones."

6. To amend Article 26 as follows:

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

The term of protection of economic rights and moral rights specified in Clause 3, Article 19 of the Intellectual Property Law for a photographic work or a work of applied arts specified at Point a, Clause 2, Article 27 of the Intellectual Property Law is fifty years as from the date of first publication. For a work which remains unpublished within fifty years after fixation, the term of protection is fifty years from the date of fixation.

2. The term of protection of a cinematographic or photographic work, a work of applied art or an anonymous work specified at Point a, Clause 2, Article 27 of the amended Intellectual Property Law is as follows:

As from the effective date of the Law Amending and Supplementing a Number of Articles of the Intellectual Property Law, the term of protection for cinematographic or photographic works, works of applied art and anonymous works for which the term of protection under Intellectual Property Law has not yet expired complies with Point a, Clause 2, Article 27 of the amended Intellectual Property Law; for a dramatic work for which the term of protection under the Intellectual Property Law has not yet expired, the term of protection complies with Point b, Clause 2, Article 27 of the amended Intellectual Property Law, which is the lifetime of its authors plus fifty years after his/her death."

7. To amend Article 28 as follows:

"Article 28. Transfer of rights to anonymous works

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

1. Organizations or persons managing anonymous works may transfer rights to such works to others and are entitled to remuneration from such transfer.

2. Organizations or persons that are transferred rights under Clause 1 of this Article are entitled to rights of owners until work authors are identified."

8. To amend Article 36 as follows:

"Article 36. Use of broadcasts

1. Owners of broadcasts specified in Clause 3, Article 44 of the Intellectual Property Law are broadcasting organizations which provide funds and physical and technical foundations for broadcasting activities.

2. When using works, phonograms and video recordings to produce broadcasts, broadcasting organizations shall perform obligations toward holders of copyright and related rights according to law.

3. Organizations or persons 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."

9. To amend Clause 1, Article 37 as follows:

"1. Authors and holders of copyright and related rights specified in Article 50 of the Intellectual Property Law may directly or authorize other organizations or persons to submit dossiers 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 or provincial-level Culture, Sports and Tourism Departments of localities in which they reside or are headquartered. Dossiers may be sent by post."

10. To amend Point a, Clause 1, Article 39 as follows:

"1. The Copyright Office of Vietnam is competent to grant, re-grant, renew and invalidate copyright registration certificates and related rights registration certificates specified in Clauses 1 and 2, Article 51 of the Intellectual Property Law.

a/ Authors and holders of copyright and related rights that wish to have their copyright registration certificates or related rights registration certificates re-granted or renewed shall file applications clearly stating the reason and one dossier specified in Article 50 of the Intellectual Property Law at 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 or provincial-level Culture, Sports and Tourism Departments of localities in which they reside or are headquartered. Dossiers may be sent by post."

11. To amend Article 41 as follows:

"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:

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

b/ They have signed authorization contracts on management of a specific right or group of rights with holders of these rights;

c/ The collection and division of royalty, remuneration and material benefits generated from the utilization of rights or groups of rights are specified in their operation charters and authorization contracts.

2. In case a work, phonogram, video recording or broadcast is related to the rights and interests of many organizations which are 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 make reports to the Ministry of Culture, Sports and Tourism before doing so.

3. The management, collection and division of royalty, remuneration and material benefits under Point a, Clause 2, Article 56 of the Intellectual Property Law is specified as follows:

a/ The collection and division of royalty, remuneration and material benefits by organizations acting as collective representatives of copyright and related rights must adhere to the principle of publicity and transparency.

b/ Organizations acting as collective representatives may retain an appropriate portion of collected amounts of royalty, remuneration and material benefits to cover expenses for the performance of their tasks as agreed with authorizers. The money amount to be retained shall be adjusted in conformity with the effectiveness of collective representation activities as agreed with authorizers and may be determined as a percentage of the total collected amount.

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

4. Organizations acting as collective representatives of copyright or related rights shall make biannual, annual or extraordinary reports under Point c, Clause 3, Article 56 of the Intellectual Property Law as follows:

a/ Reports to be sent to the Ministry of Culture, Sports and Tourism, the Ministry of Home Affairs and the Ministry of Finance have the following details: amendments or supplementations to the operation charters or regulations; changes in the leadership; participation in international organizations; other external activities; rates and modes of payment of royalty, remuneration and material benefits; long-term and annual programs and plans; operations, conclusion of authorization contracts and use licensing contracts; collection, levels, modes and methods of dividing royalty, remuneration and material benefits; and other related activities.

b/ Any modifications to charters must be reported to competent authorities for approval before realization."

12. To add the following Article 45a below Article 45:

"Article 45a. Principles and methods of payment of royalty, remuneration and material benefits

1. Royalty and remuneration specified in Clause 3, Article 20, Clause 4, Article 29 and material benefits specified in Clause 2, Article 30. and Clause 2. Article 31 of the Intellectual Property Law shall be determined as follows:

a/ Payment of royalty, remuneration and material benefits must assure the interests of authors, users and the public and suit national realities.

b/ The level of royalty, remuneration and material benefits depends on the category, form, quality, quantity or use frequency of works.

c/ Co-authors or collectives of authors shall reach agreement on specific rates for division of royalty and remuneration based on their creative contributions to the works in conformity with the form of use.

d/ Authors of works and organizations or persons that carry out performances or make phonograms, video recordings or broadcasts for children or ethnic minority people; Vietnamese creating works in foreign languages, Kinh persons creating works in ethnic minority their mother tongues; persons creating works under difficult or dangerous conditions or in other special cases are entitled to additional royalty, remuneration or material benefits as consolation.

e/ The use of copyright and related rights and payment of royalties, remuneration and material benefits must be carried out under written contracts according to law.

f/ Agencies and organizations funded with the state budget and state enterprises shall estimate expenses for payment of royalty, remuneration and material benefits within state budget allocations and other revenues according to law.

2. The Ministry of Culture, Sports and Tourism shall assume the prime responsibility for. and coordinate with the Ministry of Finance and the Ministry of Information and Communications in. specifying levels and modes of payment of royalty, remuneration and material benefits according to Clause 1, Article 26, and Clauses 1 and 2, Article 33 of the amended Intellectual Property Law."

13. To add the following Clause 4 to Article 46:

"4. Copyright and related rights protected under documents which look effect before the effective date of the amended Intellectual Property Law shall be further protected under the amended Intellectual Property Law, if their term of protection has not yet expired.

Copyright and related rights registration applications already submitted to competent processed according to the provisions of law applicable at the time of submission of applications.

All acts of infringing upon copyrights and related rights or breaching contracts committed before the effective date of the amended Intellectual Property Law shall be handled according to the provisions of law applicable at the time of commitment."

14. To replace the phrase "Ministry of Culture and Information" with the phrase "Ministry of Culture, Sports and Tourism."

To replace the phrase "provincial-level Culture and Information Department" with the phrase "provincial-level Culture, Sports and Tourism Department."

Article 2. Effect

This Decree takes effect on November 10, 2011.

Article 3. Implementation responsibilities

1. Ministers, heads of ministerial-level agencies, heads of government-attached agencies, chairpersons of provincial-level People's Committees and organizations and persons with related rights and obligations shall implement this Decree.

2. The Minister of Culture, Sports and Tourism shall guide and organize the implementation of this Decree.-

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung