

# A Practical Guide for Copyright Related Matters in Vietnam

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## I. Vietnamese Legislation on Copyright and Related Rights

1. Constitution dated 28/11/2013 of the Socialist Republic of Vietnam.
2. Law No. 50/2005 of 29 November 2005 on Intellectual Property, amended and supplemented in 2009 and 2019 (IP Law).
3. Decree No. 22/2018/ND-CP 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 Copyright and Related Rights ("Decree 22"). Decree 22 replaced/superseded Decree No. 100/2006/ND-CP dated 21/9/2006 ("**Decree 100**") and Decree No. 85/2011/ND-CP dated 20/9/2011 ("**Decree 85**").
4. Decree No. 105/2006/ND-CP of 22/9/2006 on detailing and guiding the implementation of a number of articles of the IP Law on protection of IPRs and State management of intellectual property.
5. Decree No. 119/2010/ND-CP of 30/12/2010, amending and supplementing a number of articles of Decree No. 105/2006/ND-CP.
6. Decree No. 131/2013/ND-CP dated 16/10/2013 of the Government on sanctioning administrative violations of copyright and related rights.
7. Decree 28/2017/ND-CP dated 20/3/2017 on amendments to the Government's Decree No. 131/2013/ND-CP dated 16/10/2013 on penalties for administrative violations against copyright and related rights and the Government's Decree No. 158/2013/ND-CP dated 12/11/2013 on penalties for administrative violations against regulation on culture, sports, tourism, and advertising.
8. Decree No. 21/2015/ND-CP dated 14/02/2015 providing for regulations on loyalties and rewards for cinematographic, art, theatrical works and other forms of art performance.
9. Decree No. 18/2014/ND-CP dated 14/3/2014 prescribing the regime of royalties in the field of press and publication.
10. Directive No. 04/2007/CT-TTg dated February 22, 2007 of the Prime Minister on the strengthening of computer program copyright protection.
11. Directive No. 36/2008/CT-TTG on strengthening the management and implementation of copyright and related rights protection.
12. Joint Circular No. 01/2008/TTLT-TANDTC-VKSNDTC-BCA-BTP dated 29/02/2008 of the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security and the Ministry of Justice guiding the examination of penal liability for acts of infringing upon intellectual property rights.
13. Joint Circular No. 02/2008/TTLT-TANDTC-VKSNDTC-BVHTT&DL-BKH&CN-BTP dated 03/4/2008 of the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Culture, Sports and Tourism and the Ministry of Justice guiding the application of a number of legal provisions to the settlement of disputes over intellectual property rights at People's Court.
14. Circular No. 211/2016/TT-BTC dated 10/11/2016 providing for the fees for processing applications for registration of copyright and related rights, the collection, transfer and management thereof.
15. Joint circular No. 07/2012/TTLT-BTTTT-BVHTTDL dated 19/6/2012 of the Ministry of Information and Communications and the Ministry of Culture, Sports and Tourism stipulating duty of

- enterprises providing intermediary service in protection of copyright and related rights in the internet and telecommunication networks environment.
16. Circular No. 15/2012/TT-BVHTTDL dated December 13, 2012 of the Ministry of Culture, Sports and Tourism guiding the verification of copyrights and relevant rights.
  17. Press Law No. 103/2016/QH13 of 05 April 2016.
  18. Publishing Law No. 19/2012/QH13 of 20 November 2012.
  19. Decree No. 119/2020/ND-CP dated October 7, 2020 on penalties for administrative violations in journalistic and publishing activities (Decree 119/2020). This Decree replaced Decree No. 159/2013/ND-CP dated November 12, 2013, providing for administrative penalties for violations arising in the realm of journalism and publishing.
  20. Circular No. 01/2020/TT-BTTTT dated 07/02/2020 of the Ministry of Information and Communications detailing and guiding the implementation of a number of articles of the Publication Law and the Government's Decree No. 195/2013/ND-CP of 21/11/2013, detailing a number of articles of, and providing measures to implement, the Publication Law.
  21. Law on Cinematography No. 62/2006/QH11 dated 12/7/2006.
  22. Law No. 31/2009/QH12 amending and supplementing a number of articles of the cinematography Law.
  23. Decree No. 54/2010/ND-CP detailing a number of articles of cinematography Law No. 62/2006/QH11 and Law No. 31/2009/QH12 amending and supplementing a number of articles of the cinematography Law
  24. Law No. 28/2001/QH10 on cultural heritage dated 29/6/2001
  25. Law No. 32/2009/QH12 dated 18/6/2009 amending and supplementing a number of articles of the cultural heritage law.
  26. Law No. 16/2012/QH13 on advertising dated 21/6/2012.
  27. Law No. 67/2006/QH11 of June 29, 2006 on information technology.
  28. Decree No. 71/2007/ND-CP Detailing and guiding the implementation of a number of articles of the Law on information technology regarding information technology industry.
  29. Law No. 54/2014/QH13 on customs dated 23/6/2014
  30. Decree No. 08/2015/ND-CP dated 21/01/2015 providing specific provisions and guidance on enforcement of the customs law on customs procedures, examinations, supervision and control procedures. This Decree replaced Decree No. 154/2005/ND-CP dated December 15, 2005 on providing specific regulations on implementation of several articles of the Customs Law in terms of customs procedures, examination and supervision.
  31. Circular No. 13/2015/TT-BTC dated 30 January 2015, effective as from 15 March 2015, on supervision and suspension of customs procedure relating to IP protection.
  32. Law No. 15/2012/QH13 of 20 June 2012 on Handling Administrative Violations.
  33. Civil Code No. 91/2015/QH13 passed by the National Assembly on 24 November 2015, and came into effect on 1 January 2017 (Civil Code).
  34. Penal Code No. 100/2015/QH13 of November 27, 2015, amended and supplemented in 2017.

## II. Copyright registration in Vietnam

### 1. Six benefits of owning a copyright registration certificate in Vietnam

In conformity with Berne Convention, the IP Law of Vietnam also provides, under Article 6.1, that *“Copyright shall arise at the moment a work is created and fixed in a certain material form, irrespective of its content, quality, form, mode and language and irrespective of whether or not such work has been published or registered”*. The aforesaid legislation means that copyright registration is not a pre-requisite for entitlement of copyright protection and proceeding with legal actions. A work is automatically protected in Vietnam without having to register it with Vietnamese competent authority.

Despite not being legally obligatory, by virtue of the Vietnamese's limited knowledge of copyright law, registering works with Copyright Office of Vietnam is strongly recommended. Hereunder are 6 benefits of owning a copyright registration certificate in Vietnam.

- 1) A holder of a copyright registration certificate in Vietnam shall not bear the burden of proving his ownership of the copyright and related rights in a dispute, unless there is otherwise evidence under Article 49.3 of Vietnam IP Law. Thus, a Copyright Registration Certificate in Vietnam constitutes prima facie evidence of the validity of the copyright in a work.
- 2) Owning a copyright registration certificate in Vietnam enables the holder to license the IPR easily to others, enjoying remuneration and royalty resulting from allowing a third party to use the registered work or make a derivative work from the original work.
- 3) Vietnamese enforcement authorities hesitate to take enforcement actions if no Copyright Registration Certificate is submitted along with a petition for handling copyright infringement under administrative proceedings or a claim under civil proceedings. A copyright registration certificate makes it easier for enforcement authorities to accept settlement of a copyright infringement case since the copyright registration certificate details all the information of the owner/author.
- 4) Copyright registration also establishes the date of publication of the work when dealing with infringement matters. In a copyright infringement allegation, one of the key things is to trace back the date on which a work was created and published and from which date the alleged infringement started.
- 5) The Expertise Center of Copyright, Related Rights ("ECCR"), a Vietnamese state agency with authorisation to issue expert opinions on copyright and related right issues, responsible for assessing copyright infringements, does not accept to provide its expert opinions on demand if no Copyright Registration Certificate is available. A certificate of copyright registration is required to file a petition for assessment from ECCR. Kindly note that a Copyright Registration Certificate granted by a foreign country of Berne Convention is acceptable for ECCR to issue expert opinions on the likelihood of copyright infringement in Vietnam.
- 6) Early registering a work in Vietnam help minimize the risk of being appropriated by other organizations/individuals to register and become the legitimate owner of the work

## **2. Requirements for copyright registration in Vietnam**

### **Information required for copyright registration in Vietnam**

- Full name, address, nationality of applicant(s) and author(s);
- Title, kind and copy of work;
- Date on which the work was created and finished, date and place of the first publication of the work (if any);

### **Documents required for copyright registration in Vietnam**

- Signed Power of Attorney of applicant in favour of Kenfox;
- Notarized Copy of Business License of the applicant if the applicant is Company;
- Notarized Copy of Passport of the author;
- Assignment Agreement from the author/s to the applicant/s;
- Undertaking of the author stating that he is the author of the work; and
- Copy of the work, fixed or represented in a certain form (3 copies).

Notes: Original documents are required at the time of filing.

### **Timeline for copyright registration in Vietnam**

In general, it takes 10 - 20 working days from the date of filing to the issuance of the copyright certificate. During this period the application will be examined as to form and eligibility for protection.

### 3. Copyrighted Works

Per Article 14 of Vietnam IP Law, copyright protection is given to literary, artistic or scientific works which fall within any of the following 13 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 (it is of note that derivative works shall only be protected if such protection is not prejudicial to the copyright in the works used to create such 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.

### 4. Authors and Copyright Owners

Per Article 14 of Vietnam IP Law, 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) An heir of the authors;
- (iv) The assignee of rights over the works; or
- (v) The State, in certain cases.

Under Vietnam IP Law, 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.

## 5. Exceptions to copyright protection in Vietnam

Per Article 14 of Vietnam IP Law, the following subject matter shall be excluded from copyrights protection.

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

## 6. 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 per Article 19 of Vietnam IP Law 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.*

Per Article 20 of Vietnam IP Law, 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 wish 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.

## 7. Term of Protection

Term of copyright protection for cinematographic, photographic, works of applied art and anonymous works shall be extended up to 75 years under the terms of the amended IP Law (previously 50 years) from the date of first publication, or 100 years from the date of fixation if such works (except anonymous works) have not been published within 25 years from its fixation. Simultaneously, copyright for dramatic works shall apply for the whole of the author's lifetime and for 50 years after his death (the previously applying term is not based on lifetime basis but only 50 years).

## III. Fair Use / Defences to Copyright Infringement Allegation in Vietnam

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.

Article 25 of Vietnam IP Law provides for 10 cases “when published works may be used without having to seek permission or pay royalties or remuneration” as follows:

- 1) *Make a copy of works for personal scientific researching and teaching (this exception is not applied for architectural works, art works or computer programs);*
- 2) *Reasonable quoting for commentary or illustrative purposes without misrepresenting the authors' ideas;*
- 3) *Quoting without misrepresenting the authors' ideas for writing articles, using in periodicals, radio/television broadcasts, or documentaries;*
- 4) *Quoting for lecturing without misrepresenting the authors' ideas and commercial purposes;*
- 5) *Copying by libraries for archival and researching purposes (this exception is not applied for architectural works, art works or computer programs);*
- 6) *Performing stage works or other performance arts in cultural and propaganda activities without charging in any form;*
- 7) *Recording live performances for reporting news or teaching;*
- 8) *Photographing/ broadcasting art, architectural, photographic, applied-art works displayed in public areas for presentation of images of the works;*
- 9) *Transcribing works into Braille or other languages for the blind;*
- 10) *Import copies of others' works for personal use.*

Article 26 of Vietnam IP Law set out cases where published works may be used without consent, but royalties and remunerations must be paid to the copyright holders, i.e. where broadcasting organisations use published works for broadcasting with or without sponsorship, advertising or charges. This exception is not applied for cinematographic works. The application of the above limitations must not affect the normal exploitation of the works, prejudice the rights of the authors and copyright holders, and must be subject to citation of the authors' names and sources/ origins of the works

#### **IV. Assignment and Licensing of Copyright in Vietnam**

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 sub-license 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.

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.

#### **V. Copyright Infringement and Enforcement in Vietnam**

##### **1. Acts of Copyright Infringement In Vietnam**

Per Article 28 of Vietnam IP Law, an author or owner of a copyrighted work is entitled to enforce against copyright infringement if any of the 16 following acts is conducted in respect of that work without his/her consent:

- 1) *Appropriating the copyright in works*
- 2) *Impersonating the author*
- 3) *Publishing, distributing a work without the author's consent*
- 4) *Publishing, distributing a work subject to joint authorship without a co-author's consent*
- 5) *Editing, modifying or distorting a work in any way that prejudices the honour and reputation of the author*
- 6) *Reproducing a work without consent of the author or copyright holder*
- 7) *Making a derivative work without consent of the author or copyright holder of the work used for making such derivative work*
- 8) *Using a work without consent of the copyright holder and without paying royalties, remuneration or other material benefits in accordance with IP Law*
- 9) *Renting a work without paying royalties, remuneration or other material benefits to the author or copyright holder*
- 10) *Duplicating, producing copies of, distributing, displaying a work or communicating a work to the public via a communications network or digital means without consent of the copyright holder*
- 11) *Publishing a work without consent of the copyright holder*
- 12) *Deliberately destroying or deactivating technical protection measures applied by the copyright holder to protect copyright*
- 13) *Deliberately deleting or modifying electronic copyright management information in a work*
- 14) *Manufacturing, assembling, transforming, distributing, importing, exporting, selling or renting equipment knowing, or having grounds to know, that such equipment may deactivate technical protection measures applied by the copyright holder to protect copyright*
- 15) *Making and selling a work with a forged signature of the author*
- 16) *Exporting, importing or distributing copies of a work without consent of the copyright holder*

## **2. Routes / Avenues To Deal With Copyright Infringement In Vietnam**

Where 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.*

Vietnam has a three-track enforcement system for copyrights – criminal, civil and administrative. In other words, copyright can be enforced through civil, administrative and criminal IP protection systems. Currently, copyright infringement in Vietnam is usually handled administratively, which is reportedly straightforward and inexpensive compared to civil proceedings. It is believed that for an effective copyright protection and enforcement, a combined strategy of self-protection measures (for small scale infringers), administrative actions (to halt the infringing acts and apply for customs border protection), civil remedies (to claim damages and put a stop to infringement) and criminal remedies (to stop large scale counterfeiting) should be adopted in large-scale or severe infringement cases.

## **3. Administrative, Civil and Criminal Remedies Against Copyright Infringement in Vietnam**

What remedies are available in Vietnam against copyright infringers? In general, administrative, civil, and criminal remedies are available to enforce copyrights in the event of infringement.

### **Administrative remedies:**

As regards administrative remedies, the principal administrative sanctioning form being imposed on a copyright infringer is the **monetary fine**. The maximum administrative fine for an individual is VND 250 million and for an organization is VND 500 million.

Apart from the principal sanctioning form, one or more of the following remedies may be imposed on copyright infringers:

- (i) forcible bringing out of the territory of Vietnam or forcible re-export of goods, articles or means;*
- (ii) forcible destruction of goods or articles harmful to human health, domestic animals, plants and environment, or cultural products with harmful contents;*
- (iii) forcible correction of untruthful or misleading information;*
- (iv) forcible removal of infringing elements from goods, goods packages, business means or articles;*
- (v) forcible correction of author's name, name of the work, name of performers;*
- (vi) forcible withdrawal of certificate of copyright registration, certificate of related-right registration;*
- (vii) forcibly removing copies of works, performances, phonograms, video recordings, or broadcasts which are infringed in electronic form, on internet and digital environment;*
- (viii) forcible refund of royalties, remuneration, or material benefits obtained from committing violation, to copyright or related right holders.*

Sanction forms, amounts and procedures for each type of infringing acts are stipulated in Decree 99/2013/ND-CP and Decree 131/2013/ND-CP as revised in 2017.

As regards civil remedies, Vietnamese courts shall apply the following civil remedies in handling organizations and individuals that have committed acts of infringing upon copyrights:

- (i) compelling the termination of infringing acts;*
- (ii) compelling the public apology and rectification;*
- (iii) compelling the performance of civil obligations;*
- (iv) compelling the payment of damages;*
- (v) compelling destruction, distribution or use for non-commercial purposes of goods, raw materials, materials and means used largely for the production or trading of infringing goods, provided that such destruction, distribution or use does not affect the exploitation of rights by copyright holders.*

### **Civil remedies:**

Although filing court cases in Vietnam is relatively expensive and time consuming, overall civil litigation is a good way to claim damages from infringers and to send a strong deterrent message not only to the infringer, but also other potential infringers. Civil courts can provide preliminary injunctions and award damages. If a copyright holder builds a reputation for being litigious then malicious companies tend to be less likely to infringe their rights in the future.

The court may apply the 5 following remedies against copyright infringers:

- 1) Termination of infringing acts.
- 2) Public apology and rectification.
- 3) Implementation of civil obligations.
- 4) Payment of damages.



- 5) Destruction, distribution or use for non-commercial purposes of goods, raw materials, materials and means used mainly for the manufacturing or trading of infringing goods, on the condition that the exploitation of rights by right holders will not be affected.

### **Criminal remedies:**

In Vietnam, Criminal prosecutions have the authority to impose the most severe penalties for intellectual property infringement. Criminal charges can be brought against copyright infringement and IP counterfeiting. Criminal prosecution can be brought by government authorities, with penalties including fines and jail terms. Criminal enforcement authorities usually prioritise cases involving counterfeits that pose serious harm to consumers and public health (*e.g. fake pharmaceutical products, gasoline, and consumer goods*).

As regards criminal remedies, it is duly noted that the criminal liability imposed on copyright and related right violations limit only to the deliberate acts of:

- (i) *reproducing works, phonograms or video recordings; and*
- (ii) *distributing to the public copies of works, phonograms or video recordings.*

**For the infringer who is an individual**, one of the following main criminal penalties may be imposed on a copyright infringer:

- (i) a fine of from VND 50 to 300 million or a penalty of up to 03 years' community sentence in cases of infringement upon copyrights and related rights protected in Vietnam
  - ✓ on commercial scale or
  - ✓ earning an illegal profit of from VND 50 to under 300 million or
  - ✓ causing a loss of from VND 100 to 500 million to the holders of such copyrights and related rights or
  - ✓ the violating goods assessed at from VND 100 to under 500 million;
- (ii) a fine of from VND 300 million to 1 billion or a penalty of 6 – 36 months' imprisonment if the offence committed in any of the following cases:
  - a) *the offence is committed by an organized group;*
  - b) *the offence has been committed more than once;*
  - c) *the illegal profit reaped is VND 300 million or over;*
  - d) *the loss incurred by the holders of copyrights and related rights is VND 500 million or over;*
  - e) *the illegal goods are assessed at VND 500 million or over.*

Apart from the main criminal penalties, the individual offender may be additionally subjected to a fine of from VND 20 to 200 million in case the monetary fine is not applied in the main criminal penalties, be prohibited from holding certain positions or doing certain works for 1 - 5 years.

**For the infringer who is a legal entity**, criminal remedies are as follows:

- (i) a fine of from VND 300 million to 1 billion if such entity infringes copyrights and related rights
  - ✓ on commercial scale or
  - ✓ earns an illegal profit of from VND 200 to under 300 million or
  - ✓ causes a loss of from VND 300 to under 500 million to the holders of such copyrights and related rights, or
  - ✓ the violating goods assessed at from VND 300 to under 500 million;
  - ✓ earns an illegal profit of from VND 100 to under 200 million or

- ✓ causes a loss of from VND 100 to under 300 million to the holders of such copyrights and related rights, or
  - ✓ the violating goods assessed at from VND 100 to under 300 million while having incurred an administrative penalty for any of the offences or having an unspent conviction for the same offence;
- (ii) a fine from VND 1 to 3 billion or suspension of operation for 6 - 24 months if the offense committed in any of the following cases:
- a) *the offence is committed by an organized group;*
  - b) *the offence has been committed more than once;*
  - c) *the illegal profit reaped is VND 300 million or over;*
  - d) *the loss incurred by the holders of copyrights and related rights is VND 500 million or over;*
  - e) *the illegal goods are assessed at VND 500 million or over.*

Apart from the main criminal penalties, the infringing legal entity might also be liable to a fine of from VND 100 to 300 million in case the monetary fine is not applied in the main criminal penalties, be prohibited from operating in certain fields or raising capital for 1 - 3 years

#### **4. Copyright Protection of Foreign Works in Vietnam**

##### **4.1 International Conventions and Treaties**

Vietnam is currently 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 under the ownership of foreign individuals and juridical persons shall be protected in Vietnam if they fall within any of the following:

- ✓ 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;
- ✓ Works were created and expressed in a given material form in Vietnam;
- ✓ Works have been protected in Vietnam in accordance with an international treaty on copyrights to which Vietnam is a member.

##### **4.2 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 also be 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.

### **4.3 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 cooperation between the two countries in the field of IP protection. The Agreement provides that nationals and organizations of each country shall enjoy national treatment.

### **4.4 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.