

How to protect copyright in Lao?

1. Overview of IP related framework in Laos

Intellectual Property Rights (“IPR”) in Laos are governed by the [Law on Intellectual Property No. 038/NA](#) of 15 November 2017 (the “**Lao IP Law**”), protecting copyright and related rights, patents, petty patents, industrial designs, trade marks, trade names, layout designs of integrated circuits, geographical indications, trade secrets, and plant varieties. Lao IP Law replaces the Law on Intellectual Property No. 01/NA, dated 20 December 2011. Lao IP Law is based on the World Intellectual Property Organisation (WIPO) model law and the requirements of the Trade-Related Aspects of International Property Rights Agreement (TRIPs). Laos became a party to the Berne Convention for the Protection of Literary and Artistic Works effective from 14 March 2012.



Nguyen Vu QUAN, Partner

Major IPR treaties signed by Laos:

- Paris Convention for the Protection of Industrial Property
- Patent Cooperation Treaty
- Convention Establishing WIPO
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

2. Copyright Subsistence

2.1 What Is Copyright in Laos? What Is Related Right in Laos?

Under Lao IP Law, **copyright** means [*the right of individuals, legal entities or organizations to their creative works in the domains of art, literature, or science*]. **Related right** means [*the right of individuals, legal entities or organizations to works of performances, phonograms, broadcasts of programs or broadcasts of satellite signal carrying encrypted or unencrypted programs*].

Résumé

Nguyen Vu QUAN is working as a partner with KENFOX IP & Law Office in the Litigation Department. Since 2004, QUAN has worked in the field of intellectual property, focusing on the different aspects of obtaining, defending, and enforcing IPR in Vietnam, Laos, and Cambodia. For over a decade of litigation experience, QUAN has assisted a diverse range of clients with developing efficient, cost-effective strategies to uncover and stop third parties from illegally using or registering IPRs. He has extensive experience working and coordinating with the law enforcement agencies to ensure focused solutions for IP infringement. QUAN has coordinated with enforcement authorities to conduct raids and successfully deal with large scale infringement cases for Lacoste, Charles & Keith, Yonex, Dihon Pharmaceutical, and Engelhard Arzneimittel, among others.

2.2 What works are eligible for copyright protection in Laos?

Like national laws of other countries, various works are protected under Lao IP Law. Copyright shall be available to every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, provided it is the original creation of its author. In particular, copyright shall be available for:

2.2.1. **Artistic works** include such works as:

- (1) Drawings, paintings, carvings, lithography, tapestry or embroidery and other works of fine art;
- (2) Sculptures, engravings and other works of sculpture;

- (3) *Designs of buildings or construction, internal or external decorations designs and other architectural works;*
- (4) *Photographs using technical methods and works expressed by an analogous process;*
- (5) *Illustrations, maps, plans, sketches and three dimensional works related to geography, topography, architecture or science;*
- (6) *Dramatico-musical works, pantomimes or drama, choreographic works and other works created for performance;*
- (7) *Musical compositions with or without lyrics including edited notes or tunes;*
- (8) *Phonogram;*
- (9) *Works of applied art;*
- (10) *Film or other cinematographic works or works expressed by an analogous process, and including an audiovisual work which consist of sequence of images which can be continuously projected as moving pictures and can be recorded upon other materials so as to be also continuously projected as moving pictures including the sound tracks of such work.*

2.2.2 Works of literature include such works as:

- (1) *Books, thesis, brochures, magazines, printed matters and other writings works;*
- (2) *Lectures, speeches, addresses, discourses, sermons and other oral works recorded;*
- (3) *Dramas, stories, poems;*
- (4) *computer programs and data compilations, whether in source and object codes.*

2.2.3 Collections of literary or artistic works, such as encyclopaedias, anthologies or compilations of data by reason of the selection and arrangement of their contents, such collections or compilations constitute intellectual creations;

For purposes of copyright, a work is created when it is fixed in a tangible object.

Derivative Works: Derivative works shall be protected as original works without prejudice to the rights of the author of the original work on which the derivative work is based.

2.3 What are the requirements for copyright to subsist in a work under Lao IP Law?

Under Lao IP Law, a **work** means [*a creative work by an individual legal entities or organization in the domains of art, literature and science shown in any form or method*].

To qualify for copyright protection in Laos, a work must meet 2 requirements, i.e. creativity (i.e. a sufficient amount of intellectual creativity) and (i.e. an author's own intellectual creation). Per Article 92 of Lao IP Law, [*Copyright shall be available to every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, provided it is the original creation of its author*]. This means that for a work eligible for protection in Laos, it must be created directly by authors through their intellectual labor without copying others' works, and demonstrates a modicum of creativity.

Lao IP Law explicitly provides that [*copyright or related rights are the rights which arise immediately when the work is created without registration requirement*]. In a broader sense, copyright subsists since the time the work is fixed in a tangible medium (*irrespective of its content, quality, form, mode and language and irrespective of whether or not such work has been published or registered*), provided that it meets the requirements of creativity and originality.

2.4 Is there a system for registration of copyright and related rights in Laos and if so what is the effect of registration?

Yes, there is a system for registration of copyright and related rights in Laos although no registration is statutorily required for a work to be protected. An authority/body which is in charge of the state administration of the copyright and related rights sector nationwide, including Collective Management Organizations ("CMO"), the granting and cancellation of copyright registration certificates is the Department of Intellectual Property ("DIP"). DIP is an administrative agency under MOST.

Availability of a Copyright Registration Certificate constitutes prima facie evidence of the validity of the copyright in a work in support of enforcement actions, considering the Lao's limited knowledge of copyright law, lack of confidence from the enforcement authorities and increasing reluctance thereof to take actions where the copyright infringement is not straightforward. Thus, organizations and individuals who are granted certificates of registration for copyrights or related rights shall not bear the burden to prove such copyrights or related rights in a dispute, unless there is evidence to the contrary.

2.5 What is the term of copyright protection in Laos? Does this vary depending on the type of work?

Per Article 113 of Lao IP Law, the term of copyright shall begin on the date the work is created and shall continue to the end of the calendar year of the dates described below:

- Except as otherwise provided in this article, 50 years after the date of death of the author, or for a work of joint authorship, 50 years after the date of death of the last surviving author;
- For a cinematographic work, 50 years from the date the work was made available to the public with the consent of the author, or, failing such an event within 50 years from the making of such a work, 50 years from the making;
- For applied art and photography, 25 years from the date of creation.

In the case that there is an international convention, in which the Lao PDR is a party or an international agreement to which the Lao PDR is a signatory, the term of protection shall be as determined in such convention or agreement.

3. Ownership

3.1. Who is the first owner of copyright in each of the works protected in Laos?

Per Article 99 of Lao IP Law, the owner of copyright in a work of authorship shall be the author.

3.2. Is there a concept of joint ownership and, if so, what rules apply to dealings with a jointly owned work?

Yes, there is a concept of joint ownership under Lao IP Law. It is generally construed that joint ownership arises in a work jointly created by two or more persons. The copyright of the work will be co-owned by the co-authors. Article 99 of Lao IP Law provides that [*where a work is made jointly ownership shall belong jointly to the authors unless otherwise agreed*].

3.3. Where a work is commissioned, how is ownership of the copyright determined between the author and the commissioner?

Per Article 99 of Lao IP Law, where a work is made in the course of employment, the owner shall be the employer unless otherwise agreed.

Copyright ownership and any economic rights thereunder may be assigned by contract or transferred by inheritance.

Any person acquiring or holding any copyright ownership and economic rights by virtue of a contract, including employment contracts under which a work or sound recording is created, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.

3.4. How are moral rights and economic rights provided under Lao IP Law?

Moral and economic rights of copyright author and owner are provided under Article 101 and 102 of Lao IP Law as detailed below:

Moral rights: Moral rights are provided under [Article 101](#) of Lao IP Law. It is explicitly provided that even where an author is no longer the owner of the economic rights to a work, that author shall have the following moral rights:

1. First disclosure and first publication of the work;
2. Attribution, which shall include
 - 2.1. *To claim authorship of the work;*
 - 2.2. *To have his or her name shown and used in connection with publicity concerning the work;*
 - 2.3. *To use a pseudonym or pen name or to publish the work anonymously;*
 - 2.4. *To object to any misattribution of the work to another;*
 - 2.5. *To object to the use of his or her name in connection with a work that he or she did not in fact author or that has been modified by another;*
3. To object to any distortion, mutilation or other modification of the work, or other action in relation to the work, where such action would be prejudicial to the author's honor or integrity. A person who is not the author of a work for which his or her name is used shall have the same right as provided in item 3 of this Article. The rights of first disclosure and first publication shall be available to the author during his or her lifetime, after which such rights shall terminate unless the author has provided in writing for the exercise of such rights after the author's death. Rights under items 2.1, 2.2, 2.3 and 3 of this Article shall last until the end of the term of the economic rights of the author. Rights under items 2.4, 2.5 and paragraph 2 of this Article shall be exercisable by any interested party without limitation in time.

Economic rights: Economic rights are provided under [Article 102](#) of Lao IP Law. It is explicitly provided that the author or other copyright owner of literary or artistic works shall have the exclusive right to carry out or authorize the following acts in relation to his or her works:

1. Making a collection of such works;
2. Reproducing such work in any manner or form including distribution of copies of such works;
3. Making the translation of such works;
4. Broadcasting such works;
5. Communicating such works to the public by any wire or wireless diffusion or by rebroadcasting;
6. Communicating the broadcast of the work to the public by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images.

In the absence of any contrary stipulation, permission granted in accordance with item 4 of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast.

For **literary works**, the author or other copyright owner of literary or artistic works shall have the exclusive right to carry out or authorize the following acts in relation to his or her works:

- (1) *Recitation their works to the public by any means or process;*
- (2) *Communicating to the public of the recitation of their works.*
- (3) *Translating the recitation of their works.*

For **dramatic, dramatico-musical and musical works**, the author or other copyright owner of literary or artistic works shall have the exclusive right to carry out or authorize the following acts in relation to his or her works:

- (1) *Performing their works to the public, including such public performance by any means or process;*
- (2) *Communicating to the public of the performance of their works.*
- (3) *Translating such performance of works.*

The author or other copyright owner shall have the exclusive right to carry out or authorize the adaptation, arrangement, or other alteration of their works as follows:

- (1) *making cinematographic adaptation and reproduction of literary or artistic works, and the distribution of the works thus adapted or reproduced;*
- (2) *making the public performance and communication to the public by wire or otherwise of the works thus adapted or reproduced.*

The author or other copyright owner shall have the exclusive right to carry out or authorize or prohibit:

- (1) *The direct or indirect reproduction, in whole or in part, of a sound recording, computer programs or compilation of data or other materials;*
- (2) *The importation into the Lao PDR of copies of a sound recording, regardless of whether such copies have been placed on the market by the relevant right holder;*
- (3) *The first public distribution of the original and each copy of the sound recording by sale, rental or otherwise;*
- (4) *The rental, lease or lending of the original or a copy of an audiovisual work, a sound recording, or a musical work in the form of notation, for the purposes of direct or indirect commercial advantage.*
- (5) *For a computer program or a database, the rights provided in item 4 of this paragraph except where the copy of a computer program is not itself an essential object of the rental. Putting the original or a copy of a computer program on the market with the right holder's consent shall not exhaust the rental right.*

The author or other copyright owner shall have the exclusive right to carry out or authorize the importation or exportation of the original or any copy of the work. This right shall not extend to prevent the subsequent importation or exportation of an original or copy that was legally acquired with the authorization of the owner of copyright or related rights.

The author or other copyright owner of literary or artistic works shall have the exclusive right to carry out or authorize:

- (1) *The cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;*
- (2) *The public performance and communication to the public by wire or wireless of the works thus adapted or reproduced.*

The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall, without prejudice to the authorization of the author of the cinematographic production, remain subject to the authorization of the authors of the original works.

The author or other copyright owner of literary, dramatic, dramatico-musical works, musical works, choreographic works, pantomimes, and motion pictures and other audiovisual works, including the individual images of a motion picture or other audiovisual work shall have the exclusive right to authorize:

- (1) *The public performance of their works, including such public performance by any means or process; and in particular, in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission;*
- (2) *Any communication to the public of the performance of their works;*
- (3) *Translations of the performance of their works.*

3.5. How is an infringement of Moral and Economic Rights handled under Lao IP Law?

Per Article 103 of Lao IP Law, [*The author or copyright owner has the right to protect their rights under the law and regulations against infringements of their moral or economic rights by others such as right to institute court action, [and] right to compensation from damages caused by others]. Thus, upon detection of infringement over copyright or related rights, the owner is entitled to file a lawsuit to a competent court in Laos to address the alleged infringement and claim damages.*

3.6. Can a computer program and data compilation copyrightable under Lao IP Law?

Yes, but with certain conditions. In detail, per Article 104 of Lao IP Law, [*Computer program is a set of instructions or any other thing used by a computer to make it work or to generate certain results no matter what the computer language is. Computer programs shall be protected as literary works, whether in source or object code*].

[*Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitutes intellectual creations, shall be protected as literary works. Protection of such works shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material*].

3.7. Can traditional literary and artistic works copyrightable under Lao IP Law?

Yes, but with certain conditions. In detail, per Article 105 of Lao IP Law, [A work based on a traditional literary or artistic work shall be protected under copyright without prejudice to the rights of others to make original works based on the same traditional literary or artistic work and to continue to exploit the traditional literary and artistic works. A collection of traditional literary or artistic works shall be protected under copyright without prejudice to the rights of others to make a similar collection or to continue to tell the stories or otherwise reproduce, modify, or sell the traditional works included in such collection].

4. Limitations and Obligations of Copyright and Related Rights

4.1. Are there circumstances in which an owner of copyrights and related right is unable to restrain subsequent dealings in works which have been put on the market with his consent?

An owner of copyright and/or related rights in Laos is unable to restrain subsequent dealings in works which have been put on the market with his consent in some certain circumstances. In addition, under Article 115 of Lao IP Law, organization or individual in Laos may use works without having to seek permission or pay royalties or remuneration to the copyright holder in the following alleged “**fair use**” cases:

1. Making quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair use, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries;
2. Utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching or scientific research, provided such utilization is compatible with fair practice;
3. Reproducing, by photography or cinematography, images of works of fine art, photographs, and other artistic works, and works of applied art, provided such works have already been published, publicly displayed, or communicated to the public, where such reproduction is incidental to the photographic or cinematographic work and is not the object of the photographic or cinematographic work;
4. Translating literary works into Braille or other characters for visuallyimpaired persons;
5. Reproducing a computer program where such reproduction occurs in the ordinary operation of the computer program, providing the use of the computer program is consistent with terms of authorization of the copyright owner;
6. Reproducing a work embodied in electronic media for backup or archival storage, or for replacement of a legally acquired work that is lost, destroyed or fails to work.

Where use is made of works in accordance with items 1.1 and 1.2 of this Article, mention shall be made of the source and of the name of the author if it appears thereon.

The following acts shall be permissible without consent of the author, and without remuneration, provided such acts are consistent with fair use, provided the source is clearly indicated reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics.

For the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

The above acts shall not conflict with a normal exploitation of the work and shall not unreasonably prejudice the legitimate interests of the author.

A determination of whether a use as above constitutes a fair use shall take into account the circumstances as a whole as further described in a specific regulation. The provisions of this article will not apply to:

- (1) *Reproduction of architectural works, including by construction of the work;*
- (2) *Reproduction that requires circumvention of technological measures to protect copyright or related rights, or the unauthorized removal or alteration of electronic rights management information.*

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