

Decree no 100-CP OF 21th September 2006

## DECREE

on detailed regulations and guidance to the implementation of  
a number of provisions in the Civil Code and the Intellectual Property Law  
on Copyright and Related Rights

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### Chapter I

#### GENERAL INFORMATION

##### **Article 1. Scope of regulations**

This Decree provides detailed regulations and the guidance to the implementation of a number of provisions of the Civil Code and the Intellectual Property Law on copyright and related rights.

##### **Article 2. Objects of application**

This Decree applies to Vietnamese organizations and individuals; foreign organizations and individuals whose activities relating to copyright and related rights.

##### **Article 3. Protection of copyright and related rights**

1. Protection of copyright means the protection of rights of authors to literary, artistic, and scientific works as stipulated in Article 738 of the Civil Code, and Articles 18, 19, and 20 of the Intellectual Property Law.

2. Protection of related rights means the protection of rights of performers (for performances); rights of producers of audio/visual records (for audio/visual programs); rights of broadcasting organizations (for broadcast programs and satellite signals of encoded programs) as stipulated in Articles 745, 746, 747, and 748 of the Civil Code, and Articles 29, 30, and 31 of the Intellectual Property Law.

##### **Article 4. Interpretation of terminologies**

In this Decree, the hereinafter terms shall be interpreted as follows:

1. A *posthumous work* is a work that is published for the first time after the death of the author.

2. An *anonymous work* is a published work on which no author's name (real or pen name) is indicated.

3. The *original exemplar* of a work is the version in a certain material form when the work is fixed for the first time.

4. A *copy of a work* is the direct or indirect reproduction of a part or the whole of the work. A photocopy of a work is understood as a "copy of a work".

5. The *fixation* is the expression in written language or other symbols, lines, shapes, layouts, colors, sounds, images, or the reproduction of sounds/images in a certain material form by which it can be recognized, copied or transmitted.

6. An *audio/visual record* is the fixation of the sounds/images of performances or different kinds of sounds/images, or the fixation by reproducing sounds/images differed from the fixation of cinematographic or visual/audio works;

7. A *copy of an audio/visual record* is the direct or indirect reproduction of a part or the whole of the audio/visual record;

8. *Publication of the fixed performances or audio/visual records* means the representation before the public of copies of the fixed performances or audio/visual records by the consent of the owner of related rights;

9. *Rebroadcasting* is the simultaneous broadcasting by one broadcasting organization of the broadcast program of another broadcasting organization. Retransmission is also understood as rebroadcasting.

10. *Satellite signals bearing encoded programs* are program-bearing signals transmitted through satellites in specific format in which audio or visual characteristics, or both, are changed in order to prevent illegal receipt of the programs.

#### **Article 5. The State's policies on copyright and related rights**

The State's policies on copyright and related rights as stipulated in paragraphs 2 and 3 Article 8 of the Intellectual Property Law include:

1. To assist the purchase of copyright for State-run agencies and organizations which are in charge of disseminating works, performances, audio/visual records, and broadcast programs, with ideological, scientific and artistic values, to serve the public and contribute to the socio-economic development.

The Ministry of Culture and Information shall supervise and collaborate with the Ministry of Finance, Ministry of Planning and Investment and relevant agencies in guiding the making of financial plans (establishment of funds) and mechanisms of copyright purchase.

The Ministry of Culture and Information shall check and approve the list of works needed assistance in copyright purchase of central-level agencies/organizations; provincial People's

Committees shall check and approve the list of works needed assistance in copyright purchase of local agencies/organizations;

2. To prioritize the investment for education and training on copyright and related rights for officials of both administration and enforcement agencies from the central government to localities.

To focus on education and training people who work for implementation of the self-protection of rights in activities of collective representation on copyright and related rights.

3. To prioritize the scientific studies on copyright and related rights with themes relating to laws, mechanisms, policies, applications of scientific and technological methods and technologies.

4. To promote the education on copyright and related rights in schools at all level.

The Ministry of Education and Training shall supervise and collaborate with the Ministry of Culture and Information in introducing the teaching content on copyright and related rights in training curricula at universities, colleges, and technical secondary schools.

#### **Article 6. Responsibilities and State management of copyright and related rights**

1. The Government shall exercise the uniform State management of copyright and related rights.

2. The Ministry of Culture and Information, on behalf of the Government, has the following responsibilities for the State management of copyright and related rights:

a) To make and direct the implementation of strategies, laws, mechanisms and policies on copyright and related rights;

b) To enact, organize and guide the implementation of legal documents on copyright and related rights in accordance with the law;

c) To carry out measures of protection of legal rights of the State, organizations and individuals in the field of copyright and related rights;

d) To manage the copyright to works (including computer programs, data collections), related rights to performances, audio/visual records, broadcast programs under ownership of the State in accordance with the law;

dd(\*)) To regulate the provision, cooperation, ordering and ensurance of copyright and related rights to performances, audio/visual records, and broadcast programs;

e) To build up and manage the copyright and related rights system; to train and educate the human resources on copyright and related rights;

g) To manage activities of collective representative organizations on copyright and related rights;

h) To grant, re-grant, change, revoke the Copyright/Related Rights Registration Certificates, and to carry out other procedures relating to the Copyright/Related Rights Registration Certificates;

i) To establish and administer the National Register of Copyright and Related Rights;

k) To publish and disseminate official gazettes on copyright and related rights;

l) To organize and direct the implementation of activities of education, propaganda, dissemination of knowledge, laws, mechanisms, and policies as well as activities of information and statistics on copyright and related rights;

m) To organize and manage assessment activities on copyright and related rights;

n) To inspect, examine, and deal with legal infringement on copyright and related rights; to settle appeals and denunciations on copyright and related rights.

o) To be responsible for international cooperation in the field of copyright and related rights.

3. The Ministry of Culture and Information shall be responsible before the Government in supervise and collaborate with ministries, organs at ministerial level, organs under the Government, People's Committees of provinces and centrally-administered cities (hereinafter referred to as *provincial People's Committees*) in State management of copyright and related rights.

The Copyright Office that is an agency administered by the Ministry of Culture and Information, shall be responsible for assisting the Minister of Culture and Information in carrying out the State management in the field of copyright and related rights. The Minister of Culture and Information shall define in details the functions, tasks and competences relating to the State management of copyright and related rights of the Copyright Office.

The Ministry of Culture and Information shall collaborate with the Ministry of Science and Technology in drafting policies and legal documents on intellectual property protection in general, collecting general information on intellectual property, implementing co-share projects on intellectual property, and implementing other activities directed by the Government.

4. The Ministries, the organs at ministerial level, the organs under the Government, provincial People's Committees, within the scope of their competence, shall be responsible to collaborate with the Ministry of Culture and Information in State management of copyright and related rights.

#### **Article 7. Competences of State management of provincial People's Committees**

1. Provincial People's Committees shall have the following tasks and competences:

a) To guide the implementation of legal provisions on copyright and related rights at localities;

b) To issue documents, within their competence, on guidance and direction of the implementation of legal regulations and policies on copyright and related rights in line with their local conditions;

c) To organize activities on copyright and related rights protection at localities; to take measures protecting the legal rights and interests of the State, organizations, and individuals concerning copyright and related rights;

d) To inspect, examine and settle, within their competence, appeals, denunciations and infringements of legal regulations copyright and related rights at localities;

dd) To guide and receive applications for copyright/related rights registration, in accordance with the law and within their competence;

e) To collaborate with the Ministry of Culture and Information, other ministries and provincial People's Committees in carrying out activities on State management of copyright and related rights protection.

2. The Departments of Culture and Information shall be responsible for assisting the provincial People's Committees in carrying out the function of State management of copyright and related rights.

Presidents of provincial People's Committees shall define in details the functions, tasks and competences relating to the State management of copyright and related rights of Departments of Culture and Information, and People's Committees of districts and communes.

## **Chapter II**

### **COPYRIGHT**

#### **Article 8. Author**

1. Authors are persons who directly create a part or the whole of literary, artistic, or scientific works. They shall include:

a) Vietnamese citizens whose works are copyright protected;

b) Foreign citizens whose works are created and expressed in a certain material form in Vietnam;

c) Foreign citizens whose works are first published in Vietnam;

d) Foreign citizens whose works are protected in Vietnam under international treaties in which Vietnam is a member.

2. Individuals and organizations who assist and contribute their ideas or provide materials for others to create works shall not be recognized as authors.

### **Article 9. Works expressed in other characters and symbols**

The works expressed in other characters/symbols as stipulated in Point a Paragraph 1 Article 14 of the Intellectual Property Law are the works expressed in symbols, rather than scripts, such as Braille for the blind, shorthand characters and other similar symbols which can be copied in different ways by the users.

### **Article 10. Lectures, presentations and other speeches**

Lectures, presentations and other speeches as stipulated in Point b Paragraph 1 Article 14 of the Intellectual Property Law are the works expressed in spoken languages and must be fixed in a certain material form.

### **Article 11. Press works**

Press works as stipulated in Point c Paragraph 1 Article 14 of the Intellectual Property Law include news reports, quick notes, detailed accounts, interviews, reflection, inspection, editorials, specialized articles, chronicles and others which are expressed in paper, oral, pictorial or electronic newspapers or the like.

### **Article 12. Musical works**

Musical works as stipulated in Point d Paragraph 1 Article 14 of the Intellectual Property Law are the works expressed in musical notes in musical pieces or other musical symbols, with or without lyrics, and regardless of their performances.

### **Article 13. Theatrical works**

Theatrical works as stipulated in Point dd Paragraph 1 Article 14 of the Intellectual Property Law are the works of performance art, including dramas (spoken drama, musical opera, operetta, pantomime), circus, dances, puppetry and other theatrical genres.

### **Article 14. Cinematographic works**

Cinematographic works, and works created by the same methods, as stipulated in Point e Paragraph 1 Article 14 of the Intellectual Property Law are the works that are combined by successive images to create movement effects, with or without accompanied sounds, expressed in a specific medium and able to be transmitted to the public via technical and technological devices, including feature films, documentaries, scientific movies, cartoons and other similar genres.

### **Article 15. Works of graphic and applied fine arts**

1. Graphic works as stipulated in Point g Paragraph 1 Article 14 of the Intellectual Property Law are the works expressed in lines, colors, shapes, and lay-out, such as paintings, graphics, sculpture, assemblage art, and other similar forms, and existing as a unique copy. For graphics, a work can be reproduced in 50 copies, and all the copies must be numbered and signed by the author.

2. Works of applied fine arts as stipulated in Point g Paragraph 1 Article 14 of the Intellectual Property Law are the works expressed in lines, colors, shapes, and lay-out, with features associated with useable objects and mass-produced by hand or machine, such as logos; handicraft goods; expressions in products and packages.

#### **Article 16. Photographic works**

Photographic works as stipulated in Point h Paragraph 1 Article 14 of the Intellectual Property Law are the reproductions of images of the world on optical materials or devices which can create images by any technical method (chemical, electronic or other methods);

Still images from a cinematographic work or similar shall not be considered as photographic works, but part of that cinematographic work.

#### **Article 17. Architectural works**

Architectural works as stipulated in Point i Paragraph 1 Article 14 of the Intellectual Property Law are designs and drawings in any form expressing creative ideas for houses, buildings, spatial planning sites (construction planning) already or not yet constructed. Architectural works include drawings and designs of floor-space, front space, section, and perspective, expressing creative ideas for houses, buildings, architectural complexes, spatial complexes, landscape architecture of a region, urban areas, a system of urban areas, urban functional quarters, and rural residential areas.

Models and relief maps of houses, buildings or spatial planning sites shall be considered as independent architectural works.

#### **Article 18. Plans, diagrams, maps, drawings**

Plans, diagrams, maps, and drawings as stipulated in Point k Paragraph 1 Article 14 of the Intellectual Property Law include plans, diagrams, maps, and drawings related to terrains, scientific projects, and architectures.

#### **Article 19. Copyright of cinematographic and theatrical works**

1. Cinematographic or theatrical works are the creations of many authors. Those who take part in creating cinematographic or theatrical works as stipulated in Paragraph 1 Article 21 of the Intellectual Property Law shall enjoy moral rights over their contributions as provided for in Paragraphs 1, 2 and 4 Article 19 of the Intellectual Property Law.

Producers, directors, scriptwriters could negotiate the implementation of the rights to name a cinematographic work as stipulated in Paragraph 1 Article 19 of the Intellectual Property Law, and the right to amend the script of a cinematographic work as provided for in Paragraph 4 Article 19 of the Intellectual Property Law.

2. Organizations and individuals who spend money and material-technical facilities to produce cinematographic/theatrical works as stipulated in Paragraph 2 Article 21 of the

Intellectual Property Law shall be the right owners as provided for in Paragraph 3 Article 19 and Article 20 of the Intellectual Property Law.

Organizations and individuals who spend money and material-technical facilities to produce cinematographic/theatrical works could negotiate the implementation of the rights as provided for in Paragraph 3 Article 19 and Article 20, and the obligations as provided for in Paragraph 3 Article 21 of the Intellectual Property Law.

#### **Article 20. Use of folk literary and artistic works**

1. The folk literary and artistic works as stipulated in Points a, b, and c Paragraph 1 Article 23 of the Intellectual Property Law are protected regardless of fixation.

2. The use of folk literary and artistic works as stipulated in Paragraph 2 Article 23 of the Intellectual Property Law is to research and collect, introduce real value of the folk literary and artistic works.

3. The user of a folk literary and artistic work as stipulated in Paragraph 2 of this Article must reach an agreement on compensation payment with the holder of the work, and shall have copyright over his/her research/collection/introduction.

4. The references of sources of folk literary and artistic works as stipulated in Paragraph 2 Article 23 of the Intellectual Property Law is to point out the locations of the communities where the folk literary and artistic works are created.

#### **Article 21. Objects not protected as copyright**

1. News that have the character of mere communication as stipulated in Paragraph 1 Article 15 of the Intellectual Property Law only are daily short press information without creative character.

2. Administrative documents as stipulated in Paragraph 2 Article 15 of the Intellectual Property Law include documents issued by State agencies, political organizations, socio-political organizations, economic entities, professional socio-political organizations, social organizations, socio-professional organizations, people's armed units and other entities stipulated by law.

#### **Article 22. Moral rights**

1. The right to name a work as stipulated in Paragraph 1 Article 19 of the Intellectual Property Law shall not be applied to a work of translation from one language into other languages.

2. The right to publish a work or allow others to publish the work as stipulated in Paragraph 3 Article 19 of the Intellectual Property Law means the distribution of the work to the public conducted by authors/copyright owners or other individuals/organizations with the consent of authors/copyright owners, in proper quantity that meets the reasonable needs of the public based on the nature of the work.

The publication of a work does not include the performance of theatrical, cinematographic or musical works; the public recitation of a literary work; the transmission of literary or artistic works; the exhibition of graphic works; the construction of architectural works.

3. The right to preserve the integrity of the work against any alteration and mutilation as stipulated in Paragraph 4 Article 19 of the Intellectual Property Law means not to allow others to modify or mutilate the work without the agreement of the authors.

4. Authors of computer programs could negotiate with investors in producing computer programs together in naming and developing their programs.

### **Article 23. Property rights**

1. The right of performance of the works before the public as stipulated in Point b Paragraph 1 Article 20 of the Intellectual Property Law shall be exclusively carried out by copyright owners, or they can allow others to perform their works directly or via audio/visual recording programs or any technical means accessible to the public.

Within the scope of this paragraph, the performance of works before the public includes the performance at anywhere, except at the family.

2. The right of reproduction as stipulated in Point c Paragraph 1 Article 20 of the Intellectual Property Law shall be exclusively carried out by copyright owners, or they can allow others to make one or many copies of their works by any means or forms, including the permanent or temporary electronic storage of the works.

3. The right of distribution of an original exemplar and its copies as stipulated in Point d Paragraph 1 Article 20 of the Intellectual Property Law shall be exclusively carried out by the copyright owner, or this person can allow others to disseminate the original exemplar or its copies through the sale, rental or other transfer manners accessible to the public.

The right of distribution of graphic and photographic works also covers the exhibition and display of the works to the public.

4. The right of public transmission via landline or wireless devices, electronic networks or any technical means as stipulated in Point dd Paragraph 1 Article 20 of the Intellectual Property Law refers to the exclusive right of the copyright owners, or they can allow others to disseminate the work or its copies to the public so that the public can access to the work any time at anywhere.

5. The right of rental of the original exemplars or copies of cinematographic works or computer programs as stipulated in Point e Paragraph 1 Article 20 of the Intellectual Property Law shall be exclusively carried out by copyright owners, or they can allow others to rent the work out for specified time use.

The right of rental is not applied to computer programs which are not rentable products primarily, for example computer programs associated with the normal operation of means of transport and other machines and technical devices.

#### **Article 24. Reasonable quotation of works and importation of copies of works**

1. A reasonable quotation of works without distorting the authors' intentions, used as commentary or illustration in one's work stipulated in Point b Paragraph 1 Article 25 of the Intellectual Property Law shall take into account the following conditions:

a) The quotation is aimed to introduce, comment or clarify the topic mentioned in one's work;

b) The quantity and nature of the quotation do not harm the copyright of the quoted work; and are appropriate to the nature and characteristics of the quoted work.

2. The importation of copy of another person's work for personal purpose as stipulated in Point k Paragraph 1 Article 25 of the Intellectual Property Law shall be applied in case of importation of only one copy.

3. The use of the work in the cases stipulated in Paragraph 1 Article 25 of the Intellectual Property Law shall not be applied to the reproduction of architectural works, graphic works and computer programs.

#### **Article 25. Reproduction of works**

1. The self-reproduction of one copy as stipulated in Point a Paragraph 1 Article 25 of the Intellectual Property Law shall be applied to cases of scientific study, training of an individual itself without commercial purpose.

2. The reproduction of work for library archives with study purpose as stipulated in Point dd Paragraph 1 Article 25 of the Intellectual Property Law shall be permitted with only one copy. The libraries shall not be able to reproduce and disseminate copy of the work to the public, including the digital copy.

#### **Article 26. Term of copyright protection**

1. The term of protection of moral rights and property rights stipulated in Paragraph 3 Article 19 of the Intellectual Property Law for a posthumous work shall expire 50 years after its first publication.

2. The term of protection of moral rights and property rights stipulated in Paragraph 3 Article 19 of the Intellectual Property Law for a photographic work or an applied fine art work stipulated in Point a Paragraph 2 Article 27 of the Intellectual Property Law shall expire 50 years after the first publication of the work. If a work is not yet made available to public within the duration of 50 years, its term of protection shall expire 50 years after its fixation.

3. After the Intellectual Property Law comes into effect on 1 July 2006, the term of protection for photographic and applied fine art works shall be calculated in line with Paragraph 2 of this Article.

#### **Article 27. Copyright owners**

Copyright owners as stipulated in Article 36 of the Intellectual Property Law include:

1. Vietnamese organizations and individuals;
2. Foreign organizations and individuals whose works are created and expressed in certain material forms in Vietnam;
3. Foreign organizations and individuals whose works are published for the first time in Vietnam;
4. Foreign organizations and individuals whose works are protected in Vietnam under international conventions on copyright in which Vietnam is a member.

#### **Article 28. Copyright owners to anonymous works**

1. Anonymous works stipulated in Point a Paragraph 1 Article 42 of the Intellectual Property Law belong to the State ownership.
2. For anonymous works which are being kept by some organizations or individuals, those entities shall have the rights of the owners.
3. When the real owners of a work can be identified, they shall hold the ownership.

#### **Article 29. The use of State-owned works**

1. Organizations/individuals uses a State-owned work as stipulated in Points a and b Paragraph 1 Article 42 of the Intellectual Property Law, except cases as provided for in Paragraphs 2 and 3 Article 28 of this Decree, shall be responsible to carry out the following obligations:
  - a) To ask for permission of use;
  - b) To pay royalties, compensation, and other material interests;
  - c) To submit one copy of the work within 30 days after the date of dissemination and circulation.
2. Organizations/individuals shall carry out the obligations stipulated in Paragraph 1 of this Article at the Copyright Office.
3. The Copyright Office shall be responsible to receive the copyright transfer of organizations/individuals in any form as stipulated in Point c Item 1 Article 42 of the Intellectual Property Law in conformity with law.

The Ministry of Culture and Information and Ministry of Finance shall regulate provisions on financial management as provided for in Point b Paragraph 1 of this Article.

### **Article 30. The use of works of the public domain**

1. Organizations/individuals who want to use a work of the public domain stipulated in Article 43 of the Intellectual Property Law must observe the moral rights as provided for in Paragraphs 1, 2 and 4 Article 19 of the Intellectual Property Law.

The owners of works of the public domain have no publication right as provided for in Paragraph 3 Article 19 and property rights as stipulated in Article 20 of the Intellectual Property Law.

2. The relevant State agencies, organizations, and individuals, when discovering violations against moral rights stipulated in Paragraphs 1, 2, and 4 Article 19 of the Intellectual Property Law over the works of which the term of protection has expired shall have the right to request the violators to stop their violations, apologize, openly correct, and compensate for damages; shall have the right to complain, denounce and request competent State agencies to deal with the situation. Relying on the nature and scope of violations, administrative, civil or criminal penalties can be imposed.

Professional socio-political organizations, professional social organizations, collective management organizations of copyright and related rights shall have the right to request competent State agencies to protect their members' moral rights over the works of which the term of protection has expired.

## **Chapter III**

### **RELATED RIGHTS**

#### **Article 31. Rights of performers**

1. To directly copy performances already fixed on audio/visual records as stipulated in Point b Paragraph 3 Article 29 of the Intellectual Property Law is to make more copies from those audio/visual records.

2. To indirectly copy performances already fixed on audio/visual records stipulated in Point b Paragraph 3 Article 29 of the Intellectual Property Law is to make more copies not from those audio/visual records, such as copying from electronic networks, broadcasts, relevant post and telecommunication services, and the like.

3. To transmit to the public of unfixed performances by other means as stipulated in Point c Paragraph 3 Article 29 is to disseminate these performances by any technical means other than broadcasting.

**Article 32. Use of related rights which does not require the users to gain the related rights owner's permission or to pay royalties and remuneration**

The following cases of using related rights without commercial purposes shall not require to gain the permission or to pay royalties and remuneration:

1. Self-reproduction of one copy for personal scientific study purpose as stipulated in Point a Paragraph 1 Article 32 of the Intellectual Property Law.

2. Self-reproduction of one copy for training purpose, except cases of performances, audio/visual records, broadcasting programs published for training purpose as provided for in Point b Paragraph 1 Article 32 of the Intellectual Property Law.

**Article 33. Reasonable quotations**

Reasonable quotation for provide information as stipulated in Point c Paragraph 1 Article 32 of the Intellectual Property Law means the use of quotations for information purposes only with following conditions:

1. The quotation is aimed to introduce, comment or clarify the topics mentioned in the provision of information;

2. The quantity and nature of quotation from the performances, audio/visual records, and broadcasting programs do not harm the rights of performers, producers of audio/visual records and broadcasting organizations to the quoted performances, audio/visual records, and broadcasting programs; and are appropriate to the nature and characteristics of the quoted performances, audio/visual records, and broadcasting programs.

**Article 34. Temporary copies**

Temporary copies of broadcasting organizations having the broadcasting rights as stipulated in Point d Paragrap 1 Article 32 of the Intellectual Property Law are the specified time fixations made by the broadcasting organizations with their own devices and facilities to serve the subsequent broadcasts of the broadcasting organizations. In some special cases, those replicas shall be kept at offical archives.

**Article 35. Use of audio/visual records**

1. The direct use of the published audio/visual records for commercial purposes to carry out the funded broadcasts, advertisements, or pay programs in any forms as stipulated in Point a Paragraph 1 Article 33 of the Intellectual Property Law is to broadcast those audio/visual records via landline or wireless devices, including satellites and digital environment.

The indirect use of the published audio/visual records for commercial purposes to carry out the funded broadcasts, advertisements, or pay programs in any forms as stipulated in Point a Paragraph 1 Article 33 of the Intellectual Property Law is to retransmit the programs broadcast already; or to convert digital programs into broadcasting waves.

2. The use of the published audio/visual records for business and commercial activities as stipulated in Point b Paragraph 1 Article 33 of the Intellectual Property Law means organizations' or individuals' use, direct or indirect, of the published audio/visual records at restaurants, hotels, shops, and supermarkets; in karaoke clubs, post and telecommunication services, digital environments; in tourist activities, aviation, public transport and other business and commercial activities.

3. The compensation for performers in case audio/visual records are used as stipulated in Article 33 of the Intellectual Property Law shall depend on agreements between the performers and producers of audio/visual records when making the audio/visual programs.

The ratio of sharing royalties, compensation and other material interests shall be negotiated by the owners of rights or the collective management organizations of copyright and related rights.

The collective management organizations of copyright and related rights can entrust the collective management organizations of copyright and related rights with the collection and distribution of royalties, compensation and other material interests. The entrusted collective management organization of copyright and related rights shall enjoy a certain fee upon agreement.

#### **Article 36. Owners of broadcasting programs**

Owners of broadcasting programs as stipulated in Paragraph 3 Article 44 of the Intellectual Property Law are broadcasting organizations who make financial, material and technical investments in broadcasts.

When using works, audio/visual records to produce broadcasting programs, broadcasting organizations shall fulfill all obligations to the owners of copyright and related rights as stipulated by law.

### **Chapter IV**

#### **COPYRIGHT/RELATED RIGHTS REGISTRATION CERTIFICATES**

#### **Article 39. Copyright/related rights registration**

1. Based on Article 50 of the Intellectual Property Law, copyright/related rights authors/owners shall directly file or empower other organizations or individuals to file applications for copyright/related rights registration at the Copyright Office, or the Departments of Culture and Information in the localities where the authors/owners of copyright/related rights reside or their offices are located.

2. Foreign individuals or legal entities having works, performances, audio/visual records, and broadcasting programs with copyright/related rights under protection as stipulated in Paragraph 2 Article 13 and Article 17 of the Intellectual Property Law shall directly file or authorize the Copyright/Related Rights Service Consulting Organizations to file applications for copyright/related rights registration at the Copyright Office or the Departments of Culture and Information in the localities where the authors/owners of copyright/related rights reside or their offices are located.

**Article 38. Copies of works for copyright registration, and copies of fixations of performances, audio/visual programs, broadcasting programs for related rights registration**

1. The Copyright Office shall be responsible to keep a copy of the work for copyright registration, a copy of the fixation of the objects for related rights registration as stipulated in Point b Paragraph 2 Article 50 of the Intellectual Property Law after granting the Copyrights/Related Rights Registration Certificate.

2. The copy of the work for copyright registration as stipulated in Point b Paragraph 2 Article 50 of the Intellectual Property Law shall be replaced with 3-dimensional photos of some special works such as paintings, statues, monuments, embossments, murals associated to architectural works, and oversized works.

**Article 39. Competence to grant the Copyright/Related Rights Registration Certificates**

1. The Copyright Office shall have the competence to grant, re-grant, change, and revoke the validity of the Copyright/Related Rights Registration Certificates as stipulated in Paragraphs 1 and 2 Article 51 of the Intellectual Property Law.

a) Authors, owners of copyright/related rights who want their Certificates to be regranted or changed shall file applications clarifying the reasons and other documents as stipulated in Article 50 of the Intellectual Property Law.

b) The Copyright Office shall regrant the Copyright/Related Rights Registration Certificates in case these Certificates are lost; shall change the Certificates if they are torn, damaged or the ownership of copyright/related rights is transferred;

c) The Copyright Office shall revoke the Copyright/Related Rights Registration Certificates if the holders of the Certificates are identified not to be authors/owners, and if the registered works, audio/visual records, broadcasting programs are not subject to the protection as stipulated by law.

2. The Departments of Culture and Information, after receiving applications for registration, regranted, change of the Copyright/Related Rights Registration Certificates as stipulated by law, shall transfer all to the Copyright Office for consideration and solution within its competence.

The Departments of Culture and Information shall be responsible to deliver the results to the applicants immediately after the receipt from the Copyright Office.

3. Organizations/individuals shall have obligations to pay the prescribed fees and charges relating to copyright/related rights to the Copyright Office.

4. The Ministry of Culture and Information shall regulate forms of registration applications, and Copyright/Related Rights Registration Certificates.

#### **Article 40. Validity of the Certificates of Copyright/Related Rights Registration**

The Copyright Certificate issued by the Copyright Protection Agency, the Copyright Protection Organization and the Copyright Office prior to the effective dates of the Civil Code 2005 and the Intellectual Property Law shall remain valid.

### **Chapter V**

#### **COPYRIGHT/RELATED RIGHTS COLLECTIVE MANAGEMENT ORGANIZATIONS, SERVICE CONSULTING ORGANIZATIONS**

#### **Article 41. Copyright/related rights collective management organizations**

1. Copyright/related rights collective management organizations as stipulated in Paragraph 1 Article 56 of the Intellectual Property Law shall fulfil the following conditions during their operation:

a) Copyright/related rights collective management organizations must be empowered by the authors/owners of copyright/related rights;

b) The empowered copyright/related rights collective management organizations shall manage specific right(s) on behalf of the authors/owners of copyright/related rights;

c) The regulations on operation of the copyright/related right collective management organization shall include regulations on collection and distribution of royalties, remuneration and other material interests occurred on the exploitation of empowered right(s);

2. The Ministry of Culture and Information shall guide the distribution of royalties, remuneration and other material interests in cases of the authors/owners of copyright/related have not yet empowered to any copyright/related right collective management organization.

3. If the works, audio/visual records, broadcasts are related to rights and interests of many empowered collective management organizations, an organization shall, under the agreement of all parties, represent these parties to negotiate the license of use, collect and distribute money, and report to the Ministry of Culture and Information before implementation.

4. The copyright/related rights collective management organizations shall implement the mechanism of making periodical reports and providing information on their activities to the Copyright Office every 6 months, annually or unscheduled (if any).

#### **Article 42. Copyright/related rights service consulting organizations**

1. A copyright/related rights service consulting organization shall be established in accordance with Paragraph 1 Article 57 of the Intellectual Property Law when the head of the organization and individuals engaged in copyright/related rights services and consultancy sufficiently meet the following conditions:

- a) Vietnamese citizens with full civil capacity;
- b) Permanent residence in Vietnam;
- c) Bachelor of Arts in Laws;

2. To make periodical reports to the Copyright Office, Ministry of Culture and Information every six months or annually or unscheduled (if any) on copyright/related rights service and consultancy activities.

### **Chapter VI**

#### **PROTECTION OF COPYRIGHT AND RELATED RIGHTS**

#### **Article 43. Right of self-protection**

1. The application of technological solutions to prevent the infringement of copyright and related rights as stipulated in Point a Paragraph 1 Article 198 of the Intellectual Property Law means that the entities with legal rights provide information of rights management associated with the replicas of the works, audio/visual records, and broadcasting programs; provide information of rights management arising from the public transmission of the works, in order to identify the works, authors, rights owners, information of terms and conditions for exploitation, and all data or codes, symbols expressing the information, to protect the copyright and related rights. At the same time, they shall take technological measures to protect information of rights management and prevent illegal access and exploitation of their works and ownership as stipulated by law.

2. The authors/owners of copyright/related rights can take other measures provided for in Paragraph 1 Article 198 of the Intellectual Property Law to protect their legal rights and interests.

#### **Article 44. Right to take civil proceedings on copyright and related rights**

1. The following right owners shall have the right to take legal proceedings in competent People's Courts to protect their legal rights and interests concerning copyright and related rights:

- a) Authors;
- b) Owners of copyright and related rights;
- c) Legal inheritors of the authors/owners of copyright and related rights;

d) Individuals, organizations to whom the rights of the owners of copyright and related rights are transferred;

dd) Individuals, organizations using the works under the contracts;

e) Performers;

g) Producers of audio/visual records;

h) Broadcasting organizations;

i) The empowered copyright/related rights collective management organizations;

k) Other rights entities as stipulated by laws.

2. The relevant State authorities and organizations, within their competence and obligations, shall have the right to take civil proceedings to request the Courts to protect the public and State interests in the field of copyright and related rights.

#### **Article 45. Denunciations and appeals against the registration of copyright and related rights**

1. The following entities shall have the right to file denunciations and appeals:

a) Authors, owners of copyright/related rights and empowered organizations/individuals shall have the right to appeal against the grant, regrant, change, and revocation of the Copyright/Related Rights Registration Certificates;

b) Any third entity shall have the right to denounce the grant of the Copyright/Related Rights Registration Certificates.

2. Procedures of denunciation/appeal:

a) The appellants shall submit a complaint against the grant of the Copyright/Related Rights Registration Certificates to the Copyright Office in which they clearly point out the date of the appeal; their names and addresses; the defendants' names and addresses; contents and reasons of appeal, and their requirements. The complaint must be signed by the appellants and must be attached with necessary documents, such as Copyright/Related Rights Registration Certificates, decisions of revocation of validity, written refusals of grant, regrant, or change of the Copyright/Related Rights Registration Certificates and other related documents and evidences.

b) The denouncers shall submit a complaint to the State competent authority. In the complaint, they clearly point out the date of the denunciation; their names and addresses; the defendants' names and addresses; contents and reasons of denunciation, and their requirements. The complaint must be signed by the denouncers and must be attached with necessary documents and evidences.

3. Within the term as stipulated in the Law on Appeal and Denunciation, the Copyright Office, Ministry of Culture and Information or the State competent authority shall reply to the appellers/denouncers in writing.

4. In case of disagreement with the reply from the Copyright Office, Ministry of Culture and Information or the State competent authority, the appellers/denouncers shall have the right to appeal/denounce to the competent level in accordance with the law.

## **Chapter VII**

### **IMPLEMENTING PROVISIONS**

#### **Article 46. Transitional period**

1. For copyright/related rights defined by legal documents which came into effect before the Intellectual Property Law took effect, if the term of protection did not expire on the date the Intellectual Property Law came into effect, its protection is continue as stipulated by the Intellectual Property Law.

2. Applications for copyright/related rights registration filed with the competent authorities before the Intellectual Property Law came into effect shall be solved in conformity with legal documents effective at the moment of filing.

3. Any infringement of copyright/related rights or violations of the contracts realized before the Intellectual Property Law came into effect shall be settled in line with the laws effective at the moment of violations.

#### **Article 47. Validity**

This Decree shall come into effect within 15 days after it is published in the Government Official Gazette. This Decree shall replace Decree 76/CP dated 29 November 1996 of the Government on guidance to the implementation of a number of provisions on copyright in the Civil Code.

#### **Article 48. Responsibility for the implementation of the Decree**

1. Ministers, heads of the ministerial-level agencies, heads of the agencies under the Government, Chairpersons of the People's Committees of provinces and cities subordinated to the Central Government, organizations and individuals having relevant rights and obligations shall be responsible for the implementation of this Decree.

2. The Minister of Culture and Information shall be responsible for the guidance and organization of implementation of this Decree.

**ON BEHALF OF THE GOVERNMENT  
THE PRIME MINISTER  
PHAN VAN KHAI (signed)**

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(\*) dd is used for the letter in Vietnamese that is in between the “d” and “e”.