

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

No. 76-CP

Hanoi, 29 November 1996

DECREE ON COPYRIGHT

**Providing guidelines for
the implementation of a number
of the provisions of the Civil Code
with respect to copyright**

The Government

Pursuant to the *Law on the Organization of the Government* dated 30 September 1992;

Pursuant to the *Civil Code* of the Socialist Republic of Vietnam dated 28 October 1995;

Pursuant to the Resolution of the National Assembly on the implementation of the *Civil Code* dated 28 October 1995;

On the proposal of the Minister of Culture and Information;

Decrees:

CHAPTER I

General Provisions

Article 1

This Decree provides guidelines for the implementation of a number of provisions with respect to copyright stipulated in Chapter I of Part VI of the *Civil Code*, hereinafter referred to as *the Code*.

Article 2 Authors

1. An author is a person who creates personally all or part of a literary, artistic or scientific work.
2. A person who arranges the published works of other persons in a selection or anthology according to a certain theme of a creative nature shall be acknowledged as the author of the selection or anthology. The rights of such author shall not affect the rights of the authors of the original works.
3. In order to be acknowledged as an author, any person mentioned in clauses 1 and 2 of this article must state their real names or pseudonyms in their works when they are published or disseminated.
4. A person who translates, rewrites, compiles, adapts or transforms a work must specify the name of the author of the original work and may not put his or her own name on the same line as the name of the author of the original work.
5. An organization or individual supporting, contributing opinions to, or supplying materials for another person to create a work shall not be acknowledged as the author.

Article 3 Owners of Works

1. The owner of a work may transfer the whole or part of his or her ownership rights with respect to a work to another individual or legal person provided that the transfer is carried out by way of a written contract. The transfer of a part of the ownership rights with respect to a work shall not affect the other parts of the ownership rights with respect to that work.
2. An individual or organization responsible for providing funds or essential conditions for the development of computer software shall be the owner of the computer software, unless otherwise agreed by the parties.

Article 4

The forms of works which are protected as stipulated in article 747 of the *Code* shall be construed as follows:

1. Written works which are expressed in written words or characters, such as novels, stories, short stories, notes, travelogues, essays, memoirs, poems, epics, dramas, musical pieces, cultural, literary and artistic studies, and other writings.
2. Lectures and speeches which are prepared in writing, or orally presented and subsequently recorded and disseminated in written form.

3. Theatrical works and other forms of artistic performances which are presented on stage, such as: plays, songs, dances, circuses, puppetry, and similar forms of performance.
4. Cinematographic and video works with or without sound recordings.
5. Radio broadcasting and television broadcasting works which are created for transmission by radio waves to the public.
6. Press works, including printed, oral and visual press, in Vietnamese, in ethnic minority languages of Vietnam or in foreign languages.
7. Musical works, including vocal and instrumental music, expressed by way of singing or musical instruments.
8. Architectural works, including designs showing creative ideas for houses, construction works or spatial planning, already or not yet constructed.
9. Sculptural works and applied fine art works, including paintings, graphics, sculptures, applied fine art works, and works of similar forms.
10. Photographic works which show images of objects on photosensitive materials.
11. Scientific works, textbooks and teaching materials in the fields of research, teaching and training.
12. Sketches, drawings, diagrams and maps related to topography, architecture or scientific projects.
13. Translated, rewritten, adapted, transformed, compiled, annotated, selected and anthological works:
 - (a) Works translated from one language into another and from "Nom" (Chinese transliteration of the Vietnamese language) into "Quoc ngu" (romanized Vietnamese).
 - (b) Rewritten works based on the contents of an existing work.
 - (c) Transformed works created on the basis of an original work by changing the form of expression.
 - (d) Works transformed from one form into another.
 - (e) Compiled works are selected according to a certain theme and contain comments and appraisals.

- (f) Annotated works clarify the meanings of a number of words, sentences or place names in an existing work.
 - (g) Selected works contain works or writings selected from one or more author.
 - (h) Anthological works are compiled from many works of many authors according to a certain intent.
14. Computer software, including computer programs, documents describing programs, back-up documents, and databases.

Article 5 Publication and Dissemination of Works

The publication and dissemination of a work is the presentation of the work to the public by way of presentation, exhibition, publication, performance, radio or television broadcasting, and other forms.

Article 6 Time At Which Copyright Arises

Copyright in respect of a work shall arise at the moment when the created work is expressed in a definite material form, irrespective of whether or not the work has been published or has been registered for copyright protection.

Article 7 Right to Request Protection

Authors or owners of works stipulated in article 747 and performers, organizations producing audio and video tapes and disks, and radio and television broadcasting organizations stipulated in articles 775, 777 and 779 of the *Code* may request the authorized State body to protect their copyright in the case of infringement thereof.

CHAPTER II

Rights of Authors and Rights of Owners of Works

Article 8 Rights of Authors Who Are Also Owners of Works

1. The personal rights of an author stipulated in sub-paragraphs 1(c) and (d) of article 751 of the *Code* may be transferred to another person. Such transfer must be carried out by way of a written contract.
2. The right of an author to publish and disseminate, or to allow others to publish or disseminate, his or her work pursuant to sub-paragraph 1(c) of article 751 of the *Code* shall be exercised in the following ways:

- (a) Publishing, duplicating or copying the work.
 - (b) Performing or displaying the work for the public.
 - (c) Disseminating the work to the public by any means or in any form.
 - (d) Distributing the work or copies of it by way of sale or rental, or otherwise.
 - (e) Importing copies of the work from overseas into Vietnam.
3. The right of an author to permit, or not to permit, another person to use his or her work pursuant to sub-paragraph 1(d) of article 751 of the *Code* shall be exercised with respect to the following:
 - (a) Copying the work in any form.
 - (b) Translating, rewriting, compiling, adapting or transforming the work.
 4. The payment of royalties, remuneration or other material benefits to which an author is entitled pursuant to paragraph 2 of article 751 of the *Code* shall be determined according to the contract between the author and the individual or organization using his or her work.

Article 9 Rights of Owners Not Also Authors of Works

1. The provisions in clauses 1, 2 and 3 of article 8 of this Decree shall also apply to the personal rights of an owner who is not also the author of a work as stipulated in paragraph 1 of article 753 of the *Code*.
2. The provisions in paragraph 4 of article 8 of this Decree shall also apply to the property rights of an owner who is not also the author of a work as stipulated in paragraph 2 of article 753 of the *Code*.

Article 10 Rights of Co-Authors

In the case of the work of co-authors as stipulated in paragraph 1 of article 755 of the *Code*, all co-authors must consent to the use and disposal of such work; if one of the co-authors is dead, the heir of that co-author must consent.

Article 11 Rights of Authors Who Translate, Rewrite, Compile, Adapt or Transform

Individuals or organizations creating new works on the basis of the translated, rewritten, compiled, transformed or adapted works of other persons must obtain permission from the authors or owners of such works.

Any request for permission from, and payment of remuneration to, the author or owner of the work to be translated, rewritten, compiled, transformed or adapted must be made by way of contract.

Article 12 Forms of Using Works Not Requiring Permission or Remuneration

1. The duplication of a work for personal use as stipulated in sub-paragraph 1(a) of article 761 of the *Code* shall not exceed one copy.
2. The quoted parts of an already published work of another person as stipulated in sub-paragraphs 1(b), (c) and (d) of article 761 of the *Code* may not constitute the main parts of the new work; any such quotation shall be used only for the purposes of introduction, commentary or illustration in the new work and the name of the author as well as the source of the quotation must be stated.
3. The translation of a work from Vietnamese into an ethnic minority language of Vietnam and *vice versa* as stipulated in sub-paragraph 1(f) of article 761 of the *Code* shall apply only to original works in Vietnamese or in an ethnic minority language of Vietnam.
4. Public performances stipulated in sub-paragraph 1(g) of article 761 of the *Code* shall apply only to performances to which entry is absolutely free.

Article 13 Inheritance of Copyright

1. Where copyright is inherited at law, heirs of the same level shall have equal rights with respect to the use and disposal of a work. All heirs must consent to the use and disposal of the work; if they fail to reach an agreement, they may request a court to resolve the matter.

Where copyright is inherited under a lawful will and there are a number of heirs according to the will, they shall be entitled to the use and disposal of the work according to the scope specified in the will. Where the will fails to state clearly the scope of use and disposal of the work by each individual heir, all heirs must consent to the use and disposal of the work; if they fail to reach an agreement, they may request a court to resolve the matter.

2. Where an author or co-author has no heir, or the heir disclaims the inheritance or is not entitled to the estate, the property rights of the author shall belong to the State.

The Ministry of Culture and Information shall be responsible for providing guidelines on the use of the above works and the method of payment of remuneration.

Article 14 Duration of Copyright Protection

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1. The date of termination of the fifty (50) year period of copyright protection as stipulated in paragraphs 2 and 3 of article 766 of the *Code* shall be 31 December of the fiftieth year.
2. The date of termination of the fifty (50) year period of protection of a cinematographic work, radio or television broadcast, video work or posthumous work; and of protection of the rights of organizations producing audio and video tapes and disks and radio and television broadcasting organizations as stipulated in paragraph 4 of article 766 and articles 777 and 779 of the *Code* shall be 31 December of the fiftieth year commencing from the date on which the work is first published.
3. Any transfer of the personal rights stipulated in sub-paragraphs 1(c) and (d) and the property rights stipulated in sub-paragraphs 2(a), (b) and (c) of article 751 of the *Code* may not occur outside the protection period stipulated by law.

CHAPTER III

Contracts for Use of Works

Article 15 Contracts for Use of Works

1. A contract for use of a work must be entered into in accordance with the provisions of articles 767 and 768 of the *Code* and must conform with the form of contract for use of works issued by the Ministry of Culture and Information.
2. A contract for use of a work of co-authors may only be entered into after the user of the work has reached an agreement with all co-authors and any transferees of the rights of co-authors with respect to the contents stipulated in article 768 of the *Code*. The contract must be signed by the co-authors or transferees of the rights of co-authors and the work user.

Article 16 Obligations of Authors and Owners of Works

1. To transfer the work to the work user for publication and dissemination within the time-limit agreed in the contract.
2. During the validity of the contract, the author or owner of a work may not transfer the whole or a part of the work to another individual or organization for publication and dissemination without the written consent of the work user, unless otherwise agreed by the two parties.

Article 17 Obligations of Work Users

1. Within thirty (30) days of the author or owner of a work transferring the work to the work user, the work user must notify in writing the author or owner of whether or not the work is accepted, unless otherwise agreed by the two parties.

Where the work needs to be amended and refined at the request of the author or owner, the time for transfer of the final version of the work shall be agreed by the two parties.

2. Unless there is written consent by the author, the work user may not change the name of the author or the contents of the works, including any preamble, epilogue, notes or illustrations in the work.
3. The work user must strictly abide by the agreements stated in the contract concerning the time for publication and dissemination of the work, the forms and scope of its use, the amount of royalties or remuneration, and the time and method of payment of royalties or remuneration.

Article 18 Cancellation of Contracts

1. The author or owner of a work may cancel the contract and demand compensation for damage in the event that the work user fails to comply with the provisions of paragraphs 1, 2, and 3 of article 771 of the *Code* and the provisions of clauses 2 and 3 of article 17 of this Decree.
2. The work user may cancel the contract and demand the author or owner of the work to compensate for damage in the following cases:
 - (a) The work is not protected by the State as stipulated in article 749 of the *Code*.
 - (b) The author or owner of the work fails to transfer the work within the time-limit provided for in the contract.
 - (c) The author or owner of the work refuses to carry out the agreements of the two parties in the contract.

CHAPTER IV**Rights and Obligations of Performers,
Organizations Producing Audio and Video Tapes and Disks,
and Radio and Television Broadcast Organizations**

Article 19

The obligations of performers stipulated in article 774 of the *Code* are further clarified with respect to the following cases:

Where an unpublished work of another person is used for the purpose of performance, the written consent of the author or owner of the work must be obtained. The payment of remuneration must be made in accordance with the contract agreed by the performer and the author or owner of the work.

Article 20

The rights of performers stipulated in article 775 of the *Code* are further clarified with respect to the following cases:

1. A performer is entitled to remuneration for permitting another person to use his or her performance for the purposes of producing an audio or video product for commercial purposes or producing radio or television programs for broadcasting in accordance with the provisions of paragraphs 3 and 4 of article 775 of the *Code*.
2. Where the rights of the performer as stipulated in article 775 of the *Code* are infringed upon by an organization or individual, he or she may lodge a written request to the authorized State body for consideration and resolution.

Article 21 Obligations of Organizations Producing Audio and Video Tapes and Disks and Radio and Television Broadcasting Organizations

1. The provisions of articles 776 and 778 of the *Code* shall also apply to organizations producing recorded audio and visual products in the form of tapes and disks or other technology which is currently in existence or shall be developed in the future.
2. Where an unpublished work of another person is used for the production of recorded audio or visual products, the written consent of the author or owner of that work must be obtained. The payment of royalties or remuneration to the author or owner of the work must be made in accordance with the contract entered into with the author or owner of the work.
3. Where performances or recorded audio and visual products are used to produce radio or television broadcast programs, the radio and television broadcast organizations must pay remuneration to the performers or the producers of such products.

Article 22 Rights of Organizations Producing Audio and Video Tapes and Disks and Radio and Television Broadcast Organizations

1. The rights of organizations producing audio and video tapes and disks stipulated in sub-paragraph 1(a) of article 777 and article 779 of the *Code* shall include the right to permit, or not to permit, the duplication of their products by other persons and the right to permit, or not to permit, the publication of their products by other persons.
2. If their rights stipulated in articles 777 and 779 of the *Code* are infringed upon by an individual or organization, organizations producing audio and video tapes and disks and radio and television broadcast organizations may lodge a written request to the authorized State body for consideration and resolution.

CHAPTER V

Registration of Copyright and Ownership Rights With Respect to Works

Article 23

An individual or organization being the author, co-author or owner of a work may lodge a written application for registration and protection of their copyright and their ownership rights with respect to the work.

Article 24 Registration Procedures

1. An author, co-author or owner of a work which wishes to register its copyright and ownership rights with respect to a work must file an application for registration for protection in accordance with the form issued by the Ministry of Culture and Information.
2. The applicant must produce the necessary materials and documents to prove that it is the author, co-author or owner of the work and must pay the prescribed registration fee. The author, co-author or owner of the work may authorize another individual or legal person to carry out the registration procedures; the power of attorney must be notarized by the State Notary Office or certified by the people's committee of the commune, ward or township in which the author, co-author or owner of the work resides.
3. Where registration is carried out by an heir, he or she must produce documents evidencing that he or she is the legal heir.

Article 25 Issuance of Copyright Certificates

1. The Copyright Department shall consider and examine the contents of applications for protection.

2. After considering and being satisfied that the necessary conditions are satisfied and that valid documents are available in accordance with the provisions of article 24 of this Decree, the Copyright Department shall issue a copyright certificate to the author, co-author or owner of the work.
3. The registration of copyright and ownership rights with respect to a work and the issuance of copyright certificates must be recorded in the Copyright Registration Book kept at the Copyright Department.

Article 26 Time-limits for Issuance of Copyright Certificates

1. Within ten (10) days from the date on which the author or owner of a work files a registration application, the Copyright Department must consider and issue a copyright certificate to the author or owner.
2. If the Copyright Department is of the opinion that the necessary conditions are not satisfied or that valid documents are not available in accordance with article 25 of this Decree, it may refuse to issue a copyright certificate and must so inform the applicant in writing.
3. If an applicant disagrees with the refusal to issue a copyright certificate by the Copyright Department, he or she may lodge a complaint with the Minister of Culture and Information.
4. If a person with related rights and interests discovers that a copyright certificate was issued by the Copyright Department to an illegible applicant, he or she may lodge a complaint and request the Copyright Department to revoke the certificate.

Article 27

A copyright service organization is an enterprise which has registered its operations in accordance with law and is permitted by the Copyright Department to provide services relating to the registration and application for protection of copyright and ownership rights with respect to works as authorized by authors, co-authors or owners.

Regulations on the issuance and revocation of operating licences to provide copyright services shall be issued by the Ministry of Culture and Information.

Article 28

The copyright of foreign individuals and legal persons shall be provided for by the Government in separate regulations.

CHAPTER VI

State Administration of Copyright Protection

Article 29 State Administration of Copyright Protection

The Government shall exercise unified State administration of copyright protection throughout the country. As the Government body responsible for State administration of copyright protection, the Ministry of Culture and Information shall have the following duties and powers:

1. To formulate policies in relation to copyright protection.
2. To promulgate legislation on copyright protection within its authority or submit such legislation to the Government, the Standing Committee of the National Assembly or the National Assembly for promulgation.
3. To protect, by itself or in co-ordination with related ministries and branches, copyright with respect to cultural, artistic and scientific works.
4. To carry out, by itself or in co-ordination with related ministries and branches, inspections and to deal with complaints, denunciations and copyright infringements within its authority.
5. To undertake international co-operation in the field of copyright.

Article 30

The Copyright Department shall be responsible for assisting the Ministry of Culture and Information in its exercise of State administration of copyright protection and shall have the following functions and duties:

1. To draft laws, ordinances, decrees and other legal regulations concerning copyright protection.
2. To register Vietnamese and foreign individuals and organizations for copyright protection; to issue and revoke copyright certificates as well as operating licences to provide copyright services.
3. To provide Departments of Culture and Information with guidelines in relation to State administration of copyright protection in the localities.
4. To organize and carry out co-operation with foreign countries and international organizations in the field of copyright protection.

5. To organize dissemination of and education about legislation on copyright and conduct information activities with respect to copyright protection.

To organize professional training courses on copyright protection for officials of relevant central and local bodies.

Article 31

The Ministry of Science, Technology and Environment shall co-ordinate with the Ministry of Culture and Information in providing guidelines for copyright protection in scientific fields, including computer software, including guidelines on procedures for evaluating the authenticity of copyright and ownership rights with respect to scientific works, textbooks, teaching materials and computer software prior to completing the procedures for registration for protection at the Copyright Department.

Article 32

People's Committees of provinces and cities under central authority shall be responsible for inspecting and supervising compliance with legislation on copyright protection in the localities.

Departments of Culture and Information shall assist people's committees of provinces and cities under central authority in implementing legislation on copyright protection in the localities.

Article 33

Disputes relating to, and infringements of, copyright shall be dealt with in accordance with administrative, civil or criminal procedures.

Article 34

Functions of specialized culture and information inspectors in dealing with disputes relating to, and infringements of, copyright:

1. Specialized culture and information inspectors belonging to Departments of Culture and Information of provinces and cities under central authority or to the Ministry of Culture and Information shall be responsible for resolving disputes relating to, and for dealing with infringements of, copyright.
2. The author or owner of a work the rights to which are infringed upon by an individual or organization may request specialized culture and information inspectors to resolve the matter.
3. Specialized culture and information inspectors may impose administrative penalties in accordance with their authority.

Article 35

The author or owner of a work may request protection when one of the following acts is committed without his or her consent:

1. Publication or dissemination of a work; performance of a theatrical work; broadcasting of a film or video tape; making audio or visual recordings or a live broadcast from the place of performance, except for cases defined in subparagraph 1(h) of article 761 of the *Code*.
2. Adding, reducing or amending the contents of a work.
3. Imitating sculptural works for sale or for personal use.
4. Copying the contents of the work of another person for insertion into one's own work.
5. Duplicating or producing radio or television programs, audio tapes and disks, music tapes and disks, video tapes and disks, films, and computer software for commercial purposes.
6. Translating, rewriting, transforming or adapting a work.

Article 36 Procedures for Requesting Protection

1. An individual or organization having its copyright infringed upon must file an application reporting the matter to the specialized culture and information inspector of the province or city or to the inspector of the Ministry of Culture and Information.
2. The application must be accompanied by the necessary evidence to substantiate the complaint.
3. Specialized culture and information inspectors must deal with a complaint and respond in writing to the complainant within 30 days of receipt of the complaint.

CHAPTER VI

Implementation Provisions

Article 37

The Ministry of Culture and Information shall provide guidelines for the implementation of this Decree.

Article 38

The Ministry of Culture and Information shall co-ordinate with the relevant bodies in providing guidelines for protection of architectural works.

Article 39

This Decree shall be of full force and effect as of the date of issuance.

Article 40

Ministers, heads of ministerial equivalent bodies and Government bodies, and chairmen of people's committees of provinces and cities under central authority shall be responsible for the implementation of this Decree.

On behalf of the Government
The Prime Minister

VO VAN KIET