

THE GOVERNMENT

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DECREE

Making detailed provisions and providing guidelines for implementation of certain Articles of the Law on Intellectual Property regarding Protection of Intellectual Property Rights

THE GOVERNMENT

- Pursuant to the Law on Organization of the Government dated 25 December 2001;
- Pursuant to Law 50/2005/QH11 on Intellectual Property dated 29 November 2005;
- Upon the request of the Minister of Science and Technology, the Minister of Culture and Information and the Minister of Agriculture and Rural Development,

DECREES

Chapter I

GENERAL PROVISIONS

Article 1. Scope of application

1. This Decree makes detailed provisions and provides guidelines for implementation of certain Articles of the Law on Intellectual Property regarding the requirements on dealing with intellectual property rights infringement, determination of the acts and seriousness of infringement and the seriousness of the damage, settlement of infringement of intellectual property rights by way of administrative measures and border control measures of intellectual property rights related imports and exports; intellectual property assessments and uniform State management on intellectual property rights protection activities.

2. This Decree does not provide for the settlement of unfair competition acts which shall be covered by the regulations and laws on competition.

Article 2. Interpretation

For the purpose of this Decree, the following terms shall be understood as follows:

1. "*Intellectual property rights holder*" is the owner of the intellectual property right or an organization, individual that is assigned such right by the owner;
2. "*Infringer*", "*acts of infringement*", "*settlement of infringement*" mean respectively intellectual property right infringer, acts of intellectual property right

infringement, settlement of intellectual property right infringement;

3. "*Infringing elements*" shows specific results of acts of infringement;

4. "*Infringing goods*" means products containing infringing elements;

5. "*Examined persons*", "*examined acts*", "*examined products*" mean respectively persons, acts and products suspected and put under examination in order to conclude whether they are infringers, acts of infringement, or infringing goods;

6. "*Civil Procedures Code*" means Civil Procedures Code No. 24/2004/QH11 passed on 15 June 2004;

7. "*Ordinance on Settlement of Administrative Violations*" means the Ordinance on Settlement of Administrative Violations No. 44/2002/PL-UBTVQH passed on 02 July 2002.

Article 3. Subjects to be put under settlement of infringement

1. Organisations, individuals committing one of the acts stipulated in Articles 28, 35, 126, 127, 129, 188 of the Intellectual Property Law during the relevant intellectual property right protection period shall be considered as having committed intellectual property right infringement (hereinafter referred to as Infringer).

2. An Infringer shall be dealt with in accordance with the provisions of Part Five of the Intellectual Property Law and hereof, in line with civil laws and the laws on settlement of administrative violations.

Article 4. Statue of limitations

1. The statue of limitations to request a court to take civil measures against acts of infringement shall comply with Article 159 of the Civil Procedures Code.

2. The statue of limitations to request competent authorities to take administrative measures for settlement of infringement shall comply with Article 10 of the Ordinance on Settlement of Administrative Violations.

Chapter II

REQUESTING FOR SETTLEMENT OF INFRINGEMENTS

Article 5. Requester for settlement of infringements

Organizations and individuals referred to in Article 168 of the Intellectual Property Law shall have the right to request competent authorities for settlement of infringement as follows:

1. Intellectual property right holders shall have the right to initiate lawsuits at the competent court to request for application of civil remedies to protect their legitimate rights and interest or to request competent authorities for application of administrative measures or control measures of imports and exports for the purpose of settlement of infringements.

2. Intellectual property right holder, organizations, individuals suffering losses due to acts of infringement shall have the right to request competent authorities for application of administrative measures for the purpose of settlement of infringements.

3. Organizations, individuals discovering acts of infringement that cause damages to the society or consumers shall have the right to request competent authorities for

application of administrative measures for the purpose of settlement of infringement.

Article 6. Petitions for settlement of infringement

A request for settlement of infringement must be made in writing pursuant to the provisions concerning the order and procedures for application of relevant settlement measures and in accordance with the following provisions:

1. A petition for initiation of a civil lawsuit must be made in accordance with Article 164 of the Civil Procedures Code.

2. A petition for application of administrative measures, or of control measures of imports and exports must have the following major contents:

- a) Full date of the petition;
- b) Name and address of the requester for application of measures for settlement of infringement; name of the legal representative of the requester if such request is made by the representative;
- c) Name of the agency that receives the petition;
- d) Name and address of the infringing organizations/individuals;
- d) Name(s) and address(es) of organizations/individuals with related rights and obligations (if any);
- e) Name and address of the witness(es) (if any);
- g) Brief information about the infringed intellectual property rights, including the right, bases for appearance of the right and its subject matters;
- h) Brief information about the act of infringement: date and venue of the infringement, brief description of the infringed subject matter, acts of infringement (with regard to a petition for application of control measures of imports and exports: the method of import/export, exporting country, mode of packaging), threats of circumstances when certain measures need to be applied to prevent infringements and to secure the imposition of penalties (if any);
- i) Proposed measures of settlement of infringement; measures of temporary detention of imports, exports;
- k) A list of documents and evidence accompanying the petition;
- l) Signature of the petitioner with a seal (if it is so required).

Article 7. Accompanying documents and evidence

1. A requester for settlement of infringement must submit the petition together with the following documents and evidence to prove his/her request:

- a) Evidence proving that he/she is the right holder, if the requester is the right holder or a transferee or heir of the intellectual property rights;
- b) Evidence proving the actual occurrence of the acts of infringement; or proving the suspicion of intellectual property rights infringing imports and exports (with regard to a petition for application of control measures of imports and exports);

2. A petition may also be accompanied by other documents and evidence to service the settlement of infringement.

Article 8. Evidence to prove being the right holder

1. The documents referred to in Article 203.2 of the Intellectual Property Law as detailed in clauses 2, 3, 4 and 5 of Article shall be regarded as evidence to prove the right holder status.

2. With regard to inventions, industrial designs, layout design, marks, geographical indications, plant varieties or any registered subject matter of copyrights/related rights, evidence to prove one's right holder status shall be one of the following two documents:

a) The original or a copy of the title of protection for the inventions, industrial designs, layout design, marks, geographical indications; the original or a copy of the title of protection for the plant varieties; the original or a copy of a copyright/related right registration certificate;

b) An excerpt of the National Registry of Industrial Property; an excerpt of the National Registry of Rights over Plant Varieties; an excerpt of the National Registry of Copyrights/Related Rights issued by the competent authorities that registered those subject matters.

3. For an internationally registered mark, the evidence to prove one's right holder status shall be the original or a valid copy of the Decision issued by the National Office of Intellectual Property on Acceptance of Protection in Vietnam of such internationally registered mark.

4. With regard to other intellectual property rights subject matters, evidence to provide one's right holder status shall be any documents, exhibits or information used as the basis for appearance/establishment of the relevant right as provided in Articles 6.1, 6.2, 6.3(b), 6.3(c) and 6.3(d) of the Intellectual Property Law as detailed as follows:

a) With regard to unregistered copyrights/related rights: a copy of the original work, fixation of the performance, sound/video recordings, the recording of the broadcasting program, the satellite signal together with other documents evidencing their creation, publication or dissemination accompanied by certifications or authentications of witnessing organizations, individuals (if any);

b) With regard to business secrets: a descriptions of the contents, form of storage, method of protection and method of acquisition of the secret;

c) With regard to trade names: a description of the contents, form of using and using process of the trade name;

d) With regard to well-known marks: documents evidencing the criteria of a well-known mark as set out in Article 75 of the Intellectual Property Law and explanation of the using process of a mark to become a well-known mark.

5. If the requester for settlement of infringement is a transferee or heir of the intellectual property rights, in addition to those documents set out in clauses 2, 3, 4 of this Article, he/she must produce the original or a valid copy of the contract for transfer of the ownership right over the intellectual property object or of the contract for using the intellectual property object or a document of certification of the inheritance.

Article 9. Evidence to prove infringements

1. The following documents and exhibits shall be regarded as evidence to prove an infringement:

- a) The original or a valid copy of the descriptive documents or specimen exhibit expressing the protected subject matter;
- b) The specimen exhibit, photos or recorded images of the examined products;
- c) The document of explanation and comparison between the examined products and protected subject matter;
- d) Minutes, testimonies and other documents evidencing acts of infringement.

2. If the requester for settlement of infringement succeeds in proving that any appropriate evidence necessary to prove the act of infringement is under control of the Infringer and therefore cannot be approached, the requester must provide evidence of this and shall have the right to request competent authorities to compel the Infringer to provide such evidence.

Article 10. Evidence to prove damages

1. Evidence to prove damages comprises a list or an explanatory document of the method of determination of damages which needs to specify the bases for determination and calculation of damages.

2. Evidence to provide damages may also be the results of a call for examination or appraisal in accordance with the provisions of the law.

Article 11. Filing petitions for settlement of infringement

1. A petition for settlement of infringement may be filed either directly or through the legal representative of the requester for settlement of infringement.

2. A petition for initiation of a legal lawsuit shall be filed with the local competent court where the infringement occurs as provided for in Article 33.1(a) and Article 34.2 of the Civil Procedures Code.

3. A petition for application of administrative measures shall be filed with one of the local competent authorities where the infringement occurs as provided for in Article 200.3 of the Intellectual Property Law as detailed in Article 29 of this Decree.

Where an act of infringement occurs in different localities, the petition for application of administrative measures is only filed with one of the competent authorities in those localities.

4. A petition for control of imports and exports shall be filed with the competent customs authority as referred to in Article 42 of this Decree.

Article 12. Responsibilities of requesters for settlement of infringement

1. A requester for settlement of infringement must be held liable for the truthfulness of the information, documents and evidence that he/she supplied; and shall be subject to administrative penalties and must pay damages for untruthfulness during the process of request for settlement of infringement.

2. It is strictly prohibited to take advantage of the right to request for settlement of infringement in order to obstruct business activities or restrain competition or for other unhealthy purposes and therefore causing damages to other organizations and individuals.

Chapter III

DETERMINATION OF ACTS, NATURE AND SERIOUSNESS OF

INFRINGEMENTS AND DETERMINATION OF DAMAGES

Section 1

General bases for determination of acts, nature and seriousness of infringements

Article 13. Bases for determining acts of infringement

Examined acts shall be regarded as acts of infringement in accordance with Articles 28, 35, 126, 127, 129 and 188 of the Intellectual Property Law on the following bases:

1. The infringed subject matter is a protected one;
2. The examined products contain infringing elements;
3. The person committing the examined act is neither the intellectual property right holder nor anyone who is permitted either by laws or by any competent authorities under Articles 25, 26, 32, 33, 125.2, 125.3, 133, 134, 137.2, 145, 190 and 195 of the Intellectual Property Law;
4. The examined act is committed in Vietnam and during the period of the intellectual property right protection.

Article 14. Determination of protected subject matters

1. The determination of a protected subject matter under Article 13.1 of this Decree shall be carried out by way of considering all the documents and evidence to prove the bases for appearance or establishment of the right as set out in Article 6 of the Intellectual Property Law, in order to determine whether or not there are bases for determination of the act of infringement.

2. A subject matter shall be regarded as a protected one if all the relevant conditions for intellectual property right protection set out in Sections 1 and 2 of Chapters I, VII and XII of the Intellectual Property Law and detailed in clauses 3, 4, 5 and 6 of Article are met in full.

3. With regard to the intellectual property rights that have been registered with the competent authorities, the protected subject matter shall be determined under the registration certificates, titles of protection and other documents accompanying such certificates and title of protection.

4. With regard to the subject matters of copyrights and related rights which are not registered with the competent authorities, the protected subject matter shall be determined on the basis of the original copy of the work, fixation of the subject matter and relevant documents, if any.

5. With regard to trade names, the protected subject matter shall be determined on the basis of documents of expression, explanations and descriptions of the trade names and of their using process and the sector and territory where such trade names are used.

6. With regard to business secrets, the protected subject matter shall be determined on the basis of documents expressing the contents and nature of the business secrets and explanations and descriptions of relevant measures of their protection.

Article 15. Determination of infringing elements

1. The determination of infringing elements as referred to in Article 13.2 of this Decree shall be carried out by way of reference and comparison of the protected subject

matter which has been determined under Article 14 of this Decree to the examined products in order to determine whether or not there are bases for determination of the act of infringement.

2. An examined product shall be regarded as containing infringing elements if the following conditions are met in full:

a) The examined product contains at least one part (or component) being identical or similar to an independent part under the scope of intellectual property right protection;

b) The part (component) of the examined product is the result of an examined act.

Article 16. Bases for determination of natures and seriousness of infringements

1. The nature of an infringement as referred to in Article 199.1 of the Intellectual Property Law shall be determined on the following bases:

a) The circumstance and motivation of the infringement: innocent infringement, willful infringement, infringement under constrain or due to dependence, first infringement or repeated infringement;

b) Manner on which the act of infringement is committed: individual infringement, organized infringement, self-committed act of infringement, or bribery, deceit or inducement of other people to commit the act of infringement.

2. The nature of an infringement as referred to in Article 199.1 of the Intellectual Property Law shall be determined on the following bases:

a) The scope of territory, timing, volume and scale of the act of infringement;

b) Influence and consequences of the act of infringement.

Section 2

Specific provisions on certain acts of infringement

Article 17. Acts of appropriation of copyrights and related rights

1. An act of appropriation of copyrights and related rights as provided for in Articles 28.1 and 35.1 of the Intellectual Property Law means an act of using any method to make the whole or part of the copyright or related right of another person become one's without such another person's voluntary consent.

2. The following acts shall be regarded as acts of appropriation of copyrights and related rights:

a) Stealing, coercing, bribing or compelling other people to hand over the whole or part of a work, fixation of a performance, a sound/video recording or a broadcasting program under protection;

b) Bribing, deceiving or compelling other people to transfer the whole or part of the copyright or related right;

c) Other acts committed for the purposes set out in clause 1 of this Article.

Article 18. Acts of assuming authors' names and performers' names

1. An act of assuming authors' names and performers' names referred to in Articles 28.2, 28.15 and Article 35.2 of the Intellectual Property Law means act of using any method conducted by a person rather than the author or performer to mislead the public

about him/her or a another person being the author of the whole or part of a work or being the performer of the whole or part of a performance

2. The following acts shall be regarded as acts of assuming authors' names and performers' names:

a) Putting the name of a person who is not the author in the copies of a work or putting the name of a person who is not the performer in the copies of the fixation of a performance;

b) Putting the name of a person who is not the author or the performer in the documents of advertising, notifications or other similar types of information;

c) Putting the whole or part of another person's work in one's works or products without notes and therefore misleading other people about one being the author of such part;

d) Putting the whole or part of another person's performance in the recording of one's performance and therefore misleading other people about him/her being the performer of such part;

dd) Other acts committed for the purposes set out in clause 1 of this Article.

Article 19. Infringing elements of inventions

1. Infringing elements of an invention may fall within one of the following forms:

a) A product or part (component) of the product is identical to a product or part of a product being protected under an invention;

b) A process being uniform (identical) to a process being protected under an invention;

c) A product or part of the product being produced through a process being identical to a process being protected under an invention.

2. The basis for determination of infringing elements of an invention is the scope of invention protection which is determined in accordance with each of the requirements for invention protection attached to the invention patent or a utility solution patent. In case all the signs falling within at least one bullet point of the requirements for invention protection are present (used) in the product, part of the product, the process or part of the process being suspected, either in a uniform manner or in form of a similar variant, such product, part of the product, process or part of the process shall be regarded as infringing elements; where:

a) Two signs are regarded as being identical if they have the same characteristics, utility purpose and have the same relationships with other signs;

b) A sign is regarded as a similar variant to another sign if the characteristics of the former sign have been known in a relevant technical sector, if it has the same utility purpose and if the method of their creations is basically the same.

Article 20. Infringing elements of industrial designs

1. Infringing elements of an industrial design mean a product or part of such product of which the external appearance is identical to or is insignificantly different from the protected industrial design.

2. The basis for determination of infringing elements of an industrial design is the scope of protection of the industrial design which has been determined in the industrial design patent. In the following cases, a product or part of the examined product shall be regarded as an infringing element:

a) The product or part of the examined product contains all the features falling within the scope of protection of the industrial design;

b) The product or part of the examined product contains a combination of features that create an overall combination which is insignificantly different from the combination of the features under the scope of protection of the industrial design.

Article 21. Infringing elements of marks and geographical indications

1. Infringing elements of a mark including a well-known mark, and a geographical indication may be one of the following:

a) A sign that plays a role of a mark or a geographical indication affixed on goods, their packaging, services, transaction documents, signboards, means of advertising and other business vehicles including electronic means, is identical or confusingly similar to the protected mark or geographical indication;

b) Information in form of indications, notes, symbols or other signs that plays a role as a trade indication displayed on goods, their packaging, services, transaction documents, signboards, means of advertising and other business vehicles including electronic means misleads consumers as to the origin or relation of goods/services with the goods and services bearing the protected mark or geographical indication.

2. Basis for determination of infringing elements:

a) The basis for determination of infringing elements of a mark is the scope of protection of such mark including the mark specimen and a list of goods and services listed in the mark registration certificate or decision on acceptance of protection of internationally registered mark.

b) The basis for determination of infringing elements of a geographical indication is the scope of protection of such geographical indication as stated in the decision on registration of such geographical indication in the National Registry.

3. In order to determine whether a suspected sign is an infringing element of a mark or geographical indication, it is required to compare such sign to the [protected] mark and geographical indication and at the same time to compare goods/services bearing such sign to the protected products/services. An infringing element can only be confirmed if the following two conditions are met in full:

a) The suspected sign is identical or similar to the mark or geographical indication under the scope of protection; where a sign is regarded as identical to a protected mark or geographical indication if it has the same composition (including the way of pronunciation, the way of phonetic transcription of letters and meaning), and the method of presentation (including the colors); a sign is regarded as similar to a protected mark or geographical indication if it has several features being identical or similar [to the protected mark or geographical indication] to such an extent that it is not easy to distinguish between them in terms of composition, the way of pronunciation, the way of phonetic transcription of letters, meaning, the method of presentation and colors;

b) Goods and services bearing the suspected sign are identical or similar in substance to, have a relationship in terms of functions and utility with, and have the same distribution channel with, the protected goods and services; or any goods and services bearing a sign that meets all the conditions set out in point (a) of this clause with regard to a well-known mark, and therefore create wrong impression about the user of such sign being the owner of the mark or having a relationship with the owner of the mark.

Section 3

Determination of damages

Article 22. Scope of application

1. The provisions of this Section shall be applied to implement the provisions on the principles of determination of damages due to intellectual property right infringements as set out in Article 204 of the Intellectual Property Law.

2. The provisions of this Section shall not be applied to determine the losses caused by acts of infringement to consumers and the society.

Article 23. Principles for determination of damages

1. Damage as a result of an intellectual property right infringement referred to in Article 204 of the Intellectual Property Law and in this Section shall be actual losses including both physical and spiritual losses directly caused to the intellectual property right holder by such acts of intellectual property right infringement.

2. Actual losses shall be regarded as having been occurred on the following bases:

- a) The physical and spiritual losses are real and belong to the aggrieved person;
- b) The aggrieved person could achieve the interest referred to in point a of this clause.
- c) There is a decrease in or loss of income of the aggrieved person after the act of intellectual property right infringement is committed as compared to the possibility of achieving such profits if such act of intellectual property right infringement would not happen and such decrease or loss is really caused by such act of intellectual property right infringement.

3. The level of loss shall be determined in accordance with the infringing elements as provided for in Articles 24, 25 and 26 of this Decree.

Article 24. Loss in property

1. Losses in property shall be determined in accordance with the level of decrease in or loss of the in-cash value of the protected intellectual property right subject matters.

2. The in-cash value of an intellectual property right subject matter referred to in clause 1 of this Article shall be determined in accordance with the following bases:

- a) The price of transfer of the ownership right or the licensing price of the intellectual property right subject matter;
- b) The value of business capital contribution by way of intellectual property right;
- c) The ratio of the value of intellectual property right to the total assets of an

enterprise.

Article 25. Decrease in income, profits

1. The income, profits referred to in Article 204.1(a) of the Intellectual Property Law and in this Article include the following:

a) The income, profits gained from directly using and exploiting the intellectual property right subject matters;

b) The income, profits gained from leasing the intellectual property right subject matters;

c) The income, profits gained from licensing the intellectual property right subject matters.

2. The level of decrease in income, profits shall be determined on the following bases:

a) Direct comparison between the levels of actual income, profits before and after the acts of infringement are committed, applicable to each type of income set out in clause 1 of this Article, or

b) Comparison between the productions and volumes of products, goods and services actually consumed or supplied before and after the acts of infringement are committed; and

c) Comparison between actual sales price of the products, goods and services before and after the acts of infringement are committed.

Article 26. Losses in business opportunities

1. The business opportunities set out in Article 204.1(a) of the Intellectual Property Law and in this Article include the following:

a) Actual possibility of directly using or exploiting intellectual property right subject matters in the business course;

b) Actual possibility of leasing intellectual property right subject matters to other people;

c) Actual possibility of licensing or transferring the intellectual property right subject matters to other people.

2. A loss in business opportunities means loss of the in-cash value of the income that the aggrieved person would have achieved in any of the cases referred to in clause 1 of this Article but fails to do so due to the acts of infringement.

Article 27. Reasonable expenses for prevention and restoration of damages

Reasonable expenses for prevention and restoration of damages referred to in Article 204.1(a) of the Intellectual Property Law include expenses of temporary custody, maintenance, storage of intellectual property right infringing goods, costs of implementation of provisional measures and cost of notification and correction in the mass media relating to acts of intellectual property right infringement.

Chapter IV

SETTLEMENT OF INFRINGEMENT BY ADMINISTRATIVE AND

MEASURES AND BORDER CONTROL OF IMPORTS AND EXPORTS

Section 1

Settlement of Infringement By Administrative Measures

Article 28. Basis for application of administrative measures

Administrative measures shall be taken by competent authorities as stipulated in clauses 1, 3 and 4 of Article 200 of the Intellectual Property Law and Article 29 of this Decree for the purpose of settlement of infringement (hereinafter referred to as an infringement settlement agency) on the following basis:

1. The results of consideration of an application for infringement settlement stipulated in Article 30 of this Decree;
2. Notice requesting settlement of infringement from another infringement settlement agency in accordance with Article 31 of this Decree;
3. Results of inspection, or results of consideration of complaints and denunciations.

Article 29. Authority of agencies authorized to deal with administrative offences

1. Authority of an infringement settlement agency stipulated in clauses 1, 3 and 4 of Article 200 of the Intellectual Property Law shall be stipulated in details as follows:

a. Market management agencies shall be competent to give administrative sanctions against acts of infringement arising in the circulation of goods and trade and business activities in the market.

b. Customs authorities shall be competent to deal with administrative offences regarding acts of importing and exporting intellectual property right infringing goods.

c. People's Committees of provinces and cities under central authority shall have the power to impose administrative sanctions against acts of infringement committed in the relevant localities under their management and acts of infringements beyond the authority of applying sanctions of other agencies.

d. The Police is competent to verify and collect information and evidence about the acts of infringement and to provide them to the infringement settlement agencies set out in paragraphs a, b and c of this clause.

dd. Specialized inspectorate in science and technology, culture and information, agriculture and rural development shall be competent to impose administrative sanctions on relevant acts of infringement in industrial property, copyrights and related rights and plant varieties.

2. The competence to apply administrative measures of infringement settlers is stipulated as follows:

a) The persons competent for infringement settlement working at infringement management agencies stipulated in clause 1 of this Article shall be authorised to apply forms and measures of settlement stipulated in Article 214 of the Intellectual Property Law, as further clarified in Articles 33, 36, 37, 38 of this Decree and in accordance with Articles 30, 34 and 37 of the Ordinance on Settlement of Administrative Violations.

b) The persons competent for infringement settlement at the highest level of any

infringement settlement agency stipulated in paragraphs a, b and c clause 1 of this Article shall be authorised to apply money fines under Article 214 of the Intellectual Property Law where the money fines sought exceed the amounts under Articles 30, 34 and 37 of the Ordinance on Settlement of Administrative Violations.

Article 30. Receipt and consideration of an application for infringement settlement

1. Receipt of applications for infringement settlement:

Upon receipt of an application for infringement settlement, the infringement settlement agency shall be liable to act as follows:

a) determine the competence for settlement of infringement under Article 29 of this Decree. Where the application for settlement of infringement is under the authority of receipt by another agency, the infringement settlement agency shall advise the applicant to go to the relevant competent authorities;

b) inspect and make a list of documents and evidences attached to the application;

c) issue to the applicant a receipt which specifies the names of the documents and evidences submitted together with the name and signature of the officer that receipts the application;

Where there are not sufficient documents and evidences as stipulated, the infringement settlement agency shall fix a period of 10 working days for the applicant to supplement the application.

2. Consideration of an application for infringement settlement:

a) During 15 working days as of the date of receipt of the application, the infringement settlement agency shall be liable to consider the legitimacy of the documents and evidences in the application;

b) Where the documents and evidences submitted by the applicant are not sufficient to prove who is the intellectual property right holder and that there exists an infringement, then the agency that receives the application shall issue a notice to the applicant to supplement documents, evidences and written assessment results or clarification on the acts of infringement within no more than 30 days, since the date of such notice. Infringement settlement agencies may verify, request assessment by themselves or request the police to verify or gather evidence where necessary;

c) Where there are sufficient evidence to prove who is the intellectual property right holder and that there exists an infringement, the infringement settlement agency shall issue a document on results and give a written notice to the Infringer to request the acts of infringement stopped within a fixed period;

d) If upon expiry of the fixed period under the notice requesting acts of infringement stopped as mentioned above, if the Infringer fails to stop such acts of infringement, then the infringement settlement agency shall prepare minutes on infringement, apply preventive measures and impose sanctions where necessary, in accordance with Chapter V of the Ordinance on Settlement of Administrative Violations.

3. In the following cases, the infringement settlement agency shall issue a notice refusing the application for settlement of infringement:

a) Upon expiry of clause 2.b of this Article, if the applicant for settlement of infringement fails to satisfy the request of the infringement settlement agency on supplementing or explaining on the evidence to prove who is the intellectual property right holder and that there exists an infringements;

b) Verification of the infringement settlement agency or the police shows that there is no infringement as described in the application for infringement settlement;

c) there exists written conclusions of competent authorities on not to settle the infringement as requested under 1.c Article 31 of this Decree.

4. Dealing with applications for infringement settlement involving dispute or not within the receiver's competence:

a) Where dispute exists as to the right holder, possibility of protection, or scope of intellectual property right protection, the agency that has received the application for infringement settlement shall provide guidelines for the litigants to carry out procedures to have the dispute settled by a competent court;

b) Where acts of infringement are under the competence of settlement of other competent infringement settlement authorities, then the agency which has received the application for infringement settlement shall forward the dossier of the case to such competent agency;

c) Where the acts of infringement show signs of a crime, the agency which has received the application for infringement settlement shall forward the dossier of the case to the competent authorities to invest and prosecute a criminal case.

Article 31. Coordination in settlement of infringement

1. Notice requesting settlement of infringement:

a) If any act of infringement is found to be related to different fields or in different localities or relate to different intellectual property right subject matters, the agency which has received the application for infringement settlement shall be responsible to send a notice requesting settlement of infringement to relevant competent authorities to request their co-ordination in settlement;

b) Notice requesting settlement of infringement must contain the following major contents: the name of the agency that sends the notice; summary of the request on settlement of infringement; summary of the acts of infringement and the scope of infringement in the localities or in the fields of management of the agency that will receive the notice; summary of the results after reviewing an application for infringement settlement; and proposed contents to be dealt with by the agency which will receive the notice;

c) The agency which will receive the notice shall be responsible to reply to the notice requesting settlement of infringement within 15 days since the date of receipt of the same, stating clearly the reasons for not to perform the settlement of infringement as requested, if it is the case.

2. Use of the results of consideration of an application for infringement settlement of another agency:

a) An infringement settlement agency shall have the right to use the results of determining on acts of infringement; on infringing goods and on the level of damage of

other competent authorities, if any, in order to secure uniformity in terms of the level and the measures for dealing with acts of infringement which are similar or all relate to the same intellectual property subject matter of the same the right holder.

b) Where an infringement settlement agency disagrees with the way, method, and level of settlement of infringement of another agency, then it must report to the National Committee for Securing Intellectual Property Law Enforcement.

Article 32. Issuance of a decision on penalties

1. After having considered the dossier of the case or received the replies or if receiving no replies from relevant agencies upon expiry of the stipulated period, the infringement settlement agency shall have the right to:

a) issue a decision on penalties and administrative decisions as appropriate in accordance with the Ordinance on Settlement of Administrative Violations, if the case falls under its competence;

b) forward the dossier of the case to the competent authorities or those of the competent level for infringement settlement, if the case is beyond its competence;

2. The procedures for enforcing the decisions on penalties shall comply with the provisions of Chapter VI of Ordinance on Settlement of Administrative Violations.

3. Settlement of complaints and denunciations relating to decisions, notices during the process of dealing with applications for infringement settlement and applying administrative measures shall comply with the laws on complaints and denunciations.

Article 33. Principles for application of measures for infringement settlement

1. A warning shall apply to the first time acts of infringements with one of the mitigating circumstances as set out in Article 34.1(a) or (b) of this Decree.

2. A fine shall apply to the acts of infringement that do not fall within the governing scope of the provisions of clause 1 of this Article and that is not yet of a nature to be dealt with by criminal channel

3. The money finds in administrative sanctions stipulated in Article 214.4 of the Intellectual Property Law shall be applicable to each act of infringement and each intellectual property right subject matter being infringed upon.

If an act of infringement is committed simultaneously with regard to several intellectual property subject matters, the fine rate shall be determined in respect of each intellectual property subject matter being infringed upon. If an organization or individual simultaneously commits various acts of infringement with regard to one and the same intellectual property subject matter, the fine rate shall be determined for the group of acts of infringements, specifically:

a) The group of production acts including the production and application of certain processes to manufacture right infringing goods or to provide right infringing services; reproduction of works and performances already fixed, sound/video recordings or broadcasting programs without permission of the copyright/related right holders; production or propagation of protected plant varieties without permission of the holders of the titles of protection of plants varieties;

b) The group of trading acts including importation, exportation, transportation and

trading in right infringing goods.

4. The measure of suspension of business activities for a definite period of time shall only apply to the business activities directly relating to the act of infringement with at least one of the aggravating circumstances as provided for in Article 34.2 of this Decree. The period of suspension of business activities shall be 15 days, which shall be increased by 10 days for each of the aggravating circumstance.

5. Measures and forms of settlement of acts of infringement which are applicable to acts of right infringements referred to in this Article shall also be applied to acts of production of and trading in materials, raw materials and equipment mainly used to manufacture and trade right infringing goods.

Article 34. Mitigating and aggravating circumstances

1. Mitigating circumstances comprise the following

a) Unintentional act of infringement is committed at the absence of knowledge of the status of intellectual property protection and such act of infringement is promptly terminated at the request of the intellectual property right holder or the competent agency;

b) Infringers have successfully taken measures to restrict or overcome the consequences or have voluntarily paid damages to the intellectual property right holders;

c) Infringer has voluntarily made declarations about his/her acts of infringement and infringing goods;

d) Infringer commits such act of infringement as a result of being deceived, misled or induced.

(d) Infringing goods are valued at less than five million dong (VND 5,000,000)

2. Aggravating circumstances comprise the following:

a) committing organized infringement;

b) committing repeated or multiple infringements upon intellectual property subject matters of the same type;

c) Abusing one's position or power or abusing the circumstances of natural calamities or other special difficulties of the society to infringe; forcing others to commit acts of infringement.

d) Committing an infringement during the period of enforcement of a penalty under a criminal judgment or during the period of enforcement of a decision on dealing with an administrative offence.

dd) Following acts of infringement, committing acts of hiding and evading from acts of infringement.

Article 35. Determining the value of infringing goods and monetary fine rates

1. Infringing goods:

a) Infringing goods under Article 214.4 of the Intellectual Property Law are a component (parts or accessories) of infringing goods, that contain infringing elements, and can be circulated as independent goods (hereinafter referred to as infringing goods).

b) If it is impossible to detach the component containing infringing elements as an independent component as specified in paragraph a above, then the infringing goods shall be the whole infringing goods.

2. The value of infringing goods specified in Article 214.4 of the Intellectual Property Law shall be determined by the agency that deals with the infringement on the following basis:

a) actual selling price or the listed prices of the infringing goods; or

b) market prices of similar goods;

Where the infringing elements form up a component or a part of the products, then the value of infringing goods shall be calculated according to [the value] of such component or part.

3. Monetary fines shall be determined as follows:

a) With respect to acts of infringement without any aggravating elements or mitigating elements, the fines shall be three times of the value of the infringing goods according to the tariff of fines stipulated in Article 214.4 of the Intellectual Property Law.

b) With respect to acts of infringement with mitigating elements, the money fines shall be lower than specified in paragraph a above, but shall not be lower than the minimum amount of the tariff.

c) With respect to acts of infringement with aggravating elements, the money fines shall be higher than specified in paragraph a above, but shall not be higher than the maximum amount of the tariff.

Article 36. Dealing with infringing goods

1. With regard intellectual property counterfeit goods, materials, raw materials and implements mainly used for manufacturing or trading such goods, one of the following measures may be applied by the agency that deals with the infringement:

a) Confiscation for distribution or use of goods and materials for non-commercial purposes in accordance with Article 37 of this Decree.

b) Confiscation for compelled destruction in accordance with Article 38 of this Decree.

c) Compelling removal of infringement elements or delivery out of the Vietnamese territory with respect to transit goods, or re-export with respect to imported goods, means, supplies or raw materials mainly used to produce intellectual property counterfeit goods; if it is impossible to remove the infringement elements, then measures specified in paragraph a or b may be applied.

2. With regard to infringing goods which are not intellectual property counterfeit goods or the materials, raw materials and equipment mainly used for manufacturing or trading such goods, the agency dealing with the infringement shall compel the goods owner, keeper or transporter of such goods to remove the infringement elements. If it is

impossible to remove the infringement elements from infringing goods, means, supplies or raw materials mainly used to produce such goods, then measures specified in clause 1 may be applied.

If any infringement element cannot be removed from the infringing goods, means, supplies or raw materials mainly used to produce such goods, the measures referred to in clause 1 of this Article may be applied.

With respect to goods in transit or imported goods which are infringing goods which are not intellectual property counterfeit goods or means, supplies or raw materials mainly used to produce such goods, the competent authorities for settlement of infringement shall apply the measures specified in clause 1.c of this Article.

3. Infringing elements shall be dealt with in accordance with the measures prescribed in clause 1.b of this Article.

Article 37. Compelling distribution or use for non-commercial purposes

1. The compelled distribution or use of infringing goods for non-commercial purposes as set out in Article 202.5 of the Intellectual Property Law must satisfy the following conditions:

- a) the goods are useable;
- b) Infringement elements have been removed from the goods, means of business or supplying services may be removed.
- c) Such distribution or use is only for non-commercial purpose where the purposes of humanity, charity and public interest shall be given priority;
- d) Persons to whom goods are distributed or delivered for use are not potential customers of the intellectual property right holder.

2. The provisions of clause 1 of this Article shall also apply to materials and means for producing and trading infringing goods.

Article 38. Compelling destruction

The measure of compelled destruction of infringing goods and materials and equipment used for producing and trading those infringing goods as referred to in Article 202.5 of the Intellectual Property Law shall be applied when all the conditions for application of the measure of compelled distribution or use of goods and materials for non-commercial purposes as set out in Article 37 of this Decree are not met in full.

Article 39. Application of preventative measures and assurance of imposition of penalties

The power to take preventative measures and assure the imposition of administrative penalties as referred to in Article 215.2 of the Intellectual Property Law and the procedures and formalities for application of such measures shall be in accordance with Chapter V of the Ordinance on Dealing with Administrative Offences.

Article 40. Fast track application with respect to acts of producing, trading intellectual property counterfeit goods

1. Upon intellectual property counterfeit goods are being found, competent infringement settlement authorities shall issue a decision on suspending the acts of infringement, prepare minutes on such acts of infringement, apply measures to prevent

and secure application of punishment under Chapter V of the Ordinance on Settlement of Administrative Violations, without having to comply with the procedures and orders specified in Article 30 of this Decree.

2. Where necessary, competent authorities when finding out intellectual property counterfeit goods may request the police to verify and gather evidences regarding such acts of infringement, request intellectual property assessment in accordance with Chapter V of this Decree.

3. Co-ordination in settlement of acts of infringement, and issuance of decisions on penalties, enforcement of decisions on penalties, and settlement of complaints and denunciations shall comply with relevant provisions under Articles 31, 32 of this Decree.

Section 2

Control over intellectual property related imports and exports

Article 41. Requests for controlling over intellectual property related imports and exports

Intellectual property right holders may either directly or through their legally authorized persons lodge a request for control or supervision for the purpose of detecting goods containing signs of intellectual property right infringement or an application for temporary suspension of the customs procedures with respect to imports and exports suspected of intellectual property right infringement.

Article 42. Competent agencies for receipt of applications

1. The customs sub-departments shall have the power to receive requests for checking or supervision or temporary suspension of completion of customs procedures at the border gates falling under the scope of their management.

2. Provincial and municipal customs Departments shall have the power to receive requests checking or supervision or temporary suspension of completion of customs procedures at the border gates falling under the scope of their management.

3. The General Department of Customs shall have the power to receive requests for checking or supervision or temporary suspension of completion of customs procedures at the border gates falling under the scope of management of two and more customs departments of provinces and cities under central authority.

Article 43. Procedures for processing applications

1. Within 30 days since the date of receipt of the request for control of imports or within 24 working hours since the receipt of the request for temporary suspension of completion of customs procedures, the customs authority shall be liable to consider and issue a notice on accept of the request and records information in the written request, if the applicant has satisfied the requirements under Articles 30.2 and 30.5 of this Decree. In case of refusal, the customs authority must reply in writing to the applicant and specify the reasons therefore.

2. Where a request is accepted by the General Department of Customs, then the General Department of Customs shall forward and instruct relevant Customs Departments for settlement. Where a request is accepted by the Customs Departments, then the Customs Departments shall forward and instruct relevant Customs sub-Departments for settlement. The relevant customs sub-department shall be liable to

inspect and find out goods suspected of infringement or suspend customs procedures on the basis of the request and instructions of the General Department of Customs, or relevant Customs Departments.

Article 44. Dealing with goods suspected from intellectual property right infringement

1. Where the goods suspected from intellectual property right infringement are found, at the request of the intellectual property right holder or under the power to impose administrative penalties as set out in Article 29 of this Decree, the customs authority shall issue a decision to temporarily suspend the completion of customs procedures, and give a notice of the goods shipment to the intellectual property right holder and the goods owner; names, addresses, facsimile numbers and telephone number of the concerned parties, the reason for and the term of such temporary suspension.

2. The customs authority shall continue completion of customs procedures for the goods shipment in question in the cases set out in Article 218.3(a) of the Intellectual Property Law and in the following cases:

a) Upon the cancellation or revocation of the decision on temporary suspension of the customs procedures under a decision on the settlement of complaint/denunciation;

b) Upon withdrawal by the requester of the request for temporary suspension of completion of customs procedures.

Article 45. Intellectual property-related procedures for controlling imports and exports

The intellectual property-related procedures for controlling imports and exports shall comply with the provisions of this Decree and the laws on customs.

Chapter V

INTELLECTUAL PROPERTY ASSESSMENT

Article 46. Details and scope of intellectual property assessment

1. Intellectual property assessment shall comprise of the following details:

a) Determination of the legal status and possibilities of protection of the intellectual property right subject matter; the scope of intellectual property protection; and the intellectual property holder status;

b) Determination of the damage and level of the damage;

c) Determination of infringement elements, infringing goods/products, value of the protected intellectual property subject matter, the infringing subjects;

d) Determination of the ability to prove one's intellectual property right holder status, the acts of infringement or the ability to prove to the contrast of documents and evidence submitted in the dispute or infringement;

d) Determination of other issues of the case that need making clear.

2. Intellectual property assessment shall cover the following sectors:

- a) Assessment of copyrights and related rights;
- b) Assessment of industrial property;
- c) Assessment of the rights over plant varieties.

Article 47. The right to call for or request for assessment

1. The following agencies shall be competent to call for assessment:

- a) The court;
- b) Agencies authorized to deal with acts of intellectual property right infringement by way of administrative measures;
- c) Agencies authorized to settle intellectual property-related complaints and denunciations.

2. The following organizations/individuals shall have the right to request for assessment:

- a) Intellectual property right holders;
- b) Organizations and individuals being subject to a civil lawsuit in relation to disputes over intellectual property right, infringing intellectual property right or committing an act of intellectual property right infringement which has been dealt with by an administrative measure or being subject to an intellectual property related complaint or denunciation;
- c) Other organizations/individuals with related rights and interest in an intellectual property related dispute, infringement, complaint or denunciation.

Article 48. Intellectual property assessing organizations

1. Intellectual property assessing organizations shall be responsible to perform assessment when called for or to provide assessment services upon request for intellectual property assessment.

2. Intellectual property assessing organizations shall have the following rights and obligations:

a) to perform assessment when called or asked for; to refuse to assess where the assessment objects or documents are not sufficient or are not relevant to issue assessment decisions, or where they have related rights or benefits relating to the assessment objects or where there exists other reasons that may impact the objectiveness of assessment results;

b) to request agencies, organizations to provide documents and information relating to the assessment objects;

c) to select the necessary and appropriate method for assessment; to use supplemental testing results or professionals' conclusions or comments of experts for the purpose of assessment;

d) to perform assessment according to the contents of assessment as called for or asked for, and according to the time requirement on assessment; where it is necessary to have more time to perform assessment, to promptly report to the agency that calls for

such assessment or the person who requests such assessment for information;

d) to prepare assessment dossiers, to be present as required in the writ of summon of the proceedings performing agency to explain the assessment conclusions if so requested;

e) to preserve the samples and documents relating to the assessment; to keep confidential all assessment conclusions and information and documents for assessment;

g) to independently issue assessment conclusions;

h) to compensate where intentionally issuing false assessment conclusions, causing damage to relevant individuals and organizations;

i) to comply with the regulations on procedures and formalities for assessment and to perform other rights and obligations as stipulated by law.

3. The Ministry of Science and Technology, the Ministry of Culture and Information, the Ministry of Agriculture and Rural Development shall stipulate on the establishment of intellectual property assessing centres; the procedures for recognition of agencies permitted to perform intellectual property assessment; and shall make a list of assessing agencies for submission to the Ministry of Justice for announcement.

Article 49. Intellectual property assessing persons

1. Intellectual property assessing persons, including intellectual property assessors and case by case intellectual property assessing persons (hereinafter referred to as assessing persons), shall be responsible to perform assessment where called for or to provide assessment services upon request for intellectual property assessment.

2. Assessing persons shall have such duties and powers as stipulated in Article 48.2 of this Decree.

3. The Ministry of Culture and Information, the Ministry of Science and Technology, the Ministry of Agriculture and Rural Development shall stipulate the standards, conditions and procedures for recognition of intellectual property assessors and case by case intellectual property assessing persons; and shall prepare list of assessing persons for submission to the Ministry of Justice for announcement.

Those not included in the List of assessing persons but having deep experience or knowledge regarding the issues that need assessing, shall also be able to ask for or request for assessment.

Article 50. Call for assessment

1. Any call for assessment must be made in writing.

2. A minute of calling for assessment must have the following contents:

a) Name and address of the agency calling for assessment;

b) Name and address of the assessing organization or the assessing persons;

c) Details that need to be assessed;

d) Relevant evidence and documents;

d) The time limit for issuing the assessment conclusions.

2. An assessment task upon a call may be completed by an assessing persons or the

collective of assessing persons. In case of a call for re-assessment, such re-assessment shall be carried out by the Assessment Council in accordance with the Ordinance on Judicial Assessment.

Article 51. Assessment request

1. A request for assessment must be made in the form of an assessment service contract to be entered into between the person requesting for such assessment and an assessing organization or an assessing person.

2. An assessment service contract shall contain the following major details:

- a) name and address of the organization/agency requesting for such assessment;
- b) name and address of the assessing organizations or assessing persons;
- c) specific contents of the assessment request;
- d) relevant evidences and documents;
- dd) the time limit for issuing assessment conclusions.
- e) rights and obligations of the parties.
- g) liabilities for breach of the contract.

2. An assessment task upon a request may be completed by an assessing person or the collective of assessing persons. In case of a request for re-assessment, such re-assessment shall be carried out by the Assessment Council in accordance with the Ordinance on Judicial Assessment.

Article 52. Written conclusion of assessment

1. Written conclusion of intellectual property assessment shall be considered as evidence used as grounds for determining the case.

2. Written conclusion of intellectual property assessment is a document specifying the following details:

- a) Name and address of the assessing organization or intellectual property assessing persons;
- b) Name and address of the agency calling for assessment or the organization/person requesting for assessment;
- c) Objects that need assessing, and the contents and scope of such assessment;
- d) The mode of assessment;
- đ) Assessment conclusions;
- e) Time and place of performance and completion of the assessment.

2. Written conclusions of intellectual property assessment must be signed by the persons performing the assessment. Where the assessment is done by an assessing organization, then the written conclusions must also be signed by the head of the assessing organisation and sealed by the assessing organization.

Article 53. Assessment fees

1. Where an assessment is carried out upon a call of a court, then the regulations of the laws on civil proceedings on assessment fees shall apply.

2. Where an assessment is carried out upon a call of a competent authority for the purpose of settlement of complaints or denunciations regarding intellectual property, then the regulations of the Ministry of Finance shall apply.

3. Where an assessment is carried out upon a request, assessment fees shall be agreed between the parties.

4. The management and use of assessment fees by assessing organizations and persons performing intellectual property assessment shall be provided for by Ministry of Finance.

Article 54. State management of intellectual property assessment

The Ministry of Science and Technology, Ministry of Culture and Information and Ministry of Agriculture and Rural Development shall, within the scope of their respective duties and powers, be responsible to coordinate with Ministry of Justice to provide guidelines on State management of intellectual property assessment.

Chapter VI

UNIFORM STATE MANAGEMENT OF INTELLECTUAL PROPERTY RIGHT PROTECTION ACTIVITIES

Article 55. Principles for uniformed State management of intellectual property right protection activities

The performance of uniformed State management of intellectual property right protection activities shall be based on the following principles:

1. securing uniform and effective application of intellectual property right protection measures and close coordination between competent infringement settlement authorities ;

2. securing uniformed activities between competent authorities to satisfy the requirements on intellectual property right enforcement under international commitment on intellectual property;

3. All infringement settlement agencies shall be liable to appropriately perform their functions within their scope of responsibilities under Article 29 of this Decree; to coordinate with other competent infringement settlement authorities and with State management agencies for intellectual property during the process of settlement of infringement;

4. State management agencies for intellectual property and other competent authorities relating to intellectual property right protection shall be liable to coordinate and satisfy timely the requirements of agencies with functions of settlement of infringement during the process of settlement of infringement.

Article 56. The National Committee for Securing Intellectual Property Law Enforcement

1. The Prime Minister shall decide to set up the National Committee Securing for Intellectual Property Law Enforcement at the request of the Minister of The Ministry of Science and Technology and subject to an agreement with Ministry of Culture and

Information, Ministry of Agriculture and Rural Development, the Ministry of Trade, the Ministry of Public Security and the Ministry of Finance.

2. The National Committee for Securing Intellectual Property Law Enforcement shall have the function to assist the Prime Minister in giving instruction to ministries, functional sectors and people's committees of provinces and cities under central authority in carrying out the following general activities as part of the intellectual property right protection tasks:

a) organizing implementation of policies and laws on intellectual property right protection; providing guidelines for inter-branch checking and inspection on infringement and dealing with infringement;

b) assigning the contact point agencies and coordinating agencies to deal with complicated infringements or infringements within the scope of settlement of different agencies or localities; providing guidelines and instruct uniformed settlement of infringements under competence of settlement of different agencies; ;

c) Examining, urging, collecting, assessing and reporting to the Prime Minister on the settlement of intellectual property right infringements;

d) Organising annual summary meetings to assess and withdraw lessons and to make proposals on the orientations, and measures to settle issues arising in relation to intellectual property right protection activities;

đ) guiding and assigning the implementation of the project on development of general database for intellectual property;

e) developing and submitting to the Prime Minister for his approval a plan for establishment of a Center for Intellectual Property Legal and Professional Training and Enhancement for officers, civil servants and officials and other subjects involved in the intellectual property right protection activities;

g) Making proposals on the resolution of national disputes related to intellectual property right protection during foreign commercial relationships;

3. The National Committee for Securing Intellectual Property Law Enforcement shall consist of a Chairman who is one of the Deputy Prime Ministers, and other members who are representatives from the Ministry of Science and Technology, Ministry of Culture and Information, Ministry of Agriculture and Rural Development, Ministry of Trade, Ministry of Public Security, Ministry of Finance and other experienced experts in the intellectual property sector. Its standing office shall be located at the premises of The Ministry of Science and Technology.

4. The Ministry of Finance shall ensure the technical and material facilities necessary for the operations of the National Committee for Securing Intellectual Property Law Enforcement.

Article 57. Responsibilities of the Ministry of Science and Technology

The Ministry of Science and Technology shall take lead in the following activities in order to secure uniformed State management of intellectual property right protection:

1. Developing, issuing and submitting to competent authorities and providing

guidelines for implementation of strategies, policies and general legal documents on intellectual property right protection;

2. developing and providing guidelines for implementation of general programs and projects on enhancing intellectual property right protection measures;

3. doing statistical and reporting to the Government on intellectual property right protection activities on a nationwide scope, and on such basis, summarising, commenting and making proposals on specific policies and measures to improve efficiency of intellectual property right protection activities;

4. organising the development of general database of the intellectual property system;

5. negotiating accession to and organising implementation of international commitments and treaties on intellectual property right protection.

Article 58. Responsibilities of the Ministry of Culture and Information

The Ministry of Culture and Information shall have the following responsibilities in order to secure uniformed State management of intellectual property right protection:

1. Coordinating with the Ministry of Science and Technology in activities specified in Article 57 of this Decree relating to protection of authorship rights and related rights;

2. Coordinating with and timely satisfying requirements of competent infringement settlement authorities in the process of settlement of infringement;

3. performing the tasks assigned by the National Committee for Securing Intellectual Property Law Enforcement.

Article 59. Responsibilities of the Ministry of Agriculture and Rural Development

The Ministry of Agriculture and Rural Development shall have the following responsibilities in order to secure uniformed State management of intellectual property right protection :

1. Coordinating with the Ministry of Science and Technology in activities specified in Article 57 of this Decree regarding protection of rights relating to plant varieties;

2. Coordinating with and timely satisfying requirements of competent infringement settlement authorities in the process of settlement of infringement;

3. performing the tasks assigned by the National Committee for Securing Intellectual Property Law Enforcement.

Article 60. Responsibilities of other Ministries and agencies

The Ministry of Trade, Ministry of Health, Ministry of Industry, Ministry of Finance and other ministries and agencies shall be responsible for coordinating with the Ministry of Science and Technology in activities specified in Article 57 of this Decree and timely satisfying the requirements of competent infringement settlement authorities in the process of settlement of infringement.

Article 61. Responsibilities of Provincial Committees of provinces and cities under Central management

Provincial committees shall be responsible to do the followings to secure

uniformed State management of intellectual property right protection:

1. Coordinating with the Ministry of Science and Technology in activities specified in Article 57 of this Decree relating to intellectual property right protection;
2. Coordinating with other local Provincial committees and competent authorities in application of measures for settlement of infringement;
3. Performing the tasks assigned by the National Committee for Securing Intellectual Property Law Enforcement.

Article 62. Checking and inspection of intellectual property right infringements

1. Basis for checking and inspection of intellectual property right infringements:

- a) When competent infringement settlement authorities receive complaints and denunciations, notices and other information regarding acts of infringement and there are grounds that acts of infringement are taking place;
- b) When competent infringement settlement authorities find out signs of production or trade of intellectual property counterfeit goods;
- c) Upon request of competent persons or competent authorities regarding settlement of infringement;
- d) Upon instructions of heads of competent authorities for State management regarding intellectual property or of the National Committee for Securing Intellectual Property Law Enforcement.

2. Authorities to check and inspect intellectual property right infringements:

- a) Specialised inspectorates of science and technology, culture and information, agriculture and rural development, shall be competent to inspect infringements in accordance with the laws on inspection;
- b) Competent infringement settlement authorities, State management agencies for intellectual property shall be competent to check intellectual property right infringements occurring in the fields or areas under their management.

3. It is strictly prohibited to carry out inspection or check of intellectual property right infringements on basis other than those specified in clause 1 of this Article; or with inappropriate competence or beyond one's competence or outside the scope of requested inspection or check. The persons carrying out inspection or checks inappropriately causing damage to the checked or inspected subjects shall be liable to make compensations in accordance with the laws.

4. Conclusions on inspection and check of intellectual property right infringements shall be considered as basis for competent authorities to perform settlement of infringement.

Article 63. Coordination regime

1. Competent authorities when issuing documents and papers guiding the implementation of intellectual property right protection regulations shall be liable to simultaneously copy to State management agencies for intellectual property and settlement of infringement upon rights.

2. Authorities with competence to issue decisions on penalties must simultaneously

copy the same to the following agencies:

a) Specialised inspectorates of the Ministry of Science and Technology or provincial Department of Science and Technology (with respect to intellectual property subject matters); Specialised inspectorates of the Ministry of Culture and Information or provincial Department of Culture and Information (with respect to subject matters of copyrights and related rights); Specialised inspectorates of the Ministry of Agriculture and Rural Development or provincial Department of Agriculture and Rural Development (with respect to plant varieties);

b) Competent authorities for penalties of higher levels;

c) other competent authorities for penalties of the same level in the same localities.

3. State management agencies for intellectual property shall be liable to response in full and in timely manner regarding all requests for guidelines by competent authorities for penalties regarding specialised issues or issues that need to be clarified in legal documents.

4. State management agencies for intellectual property and agencies responsible for intellectual property right protection activities shall be liable to send representatives to inter-industry inspectorate and checking delegations for intellectual property, participate in activities of summarising, assessing and withdrawing lessons regarding intellectual property right protection activities and activities as delegated and assigned by the National Committee for Securing Intellectual Property Law Enforcement.

Chapter VII

IMPLEMENTATION PROVISIONS

Article 64. Transitional provisions

1. Settlement of acts of intellectual property right infringement the dossiers of which are received prior to 1/7/2006 by civil remedies shall comply with the Civil Procedures Law, Civil Code 1995 and legal documents guiding the implementation of the Civil Code 1995.

Settlement of acts of intellectual property right infringement received after 1/7/2006 by civil remedies shall comply with the Civil Code 2005, the Civil Procedures Law, the Intellectual Property Law, this Decree and other legal documents guiding the implementation of the Intellectual Property Law.

2. Settlement of acts of intellectual property right infringement before 1/7/2006 by administrative remedies shall comply with the Ordinance on Settlement of Administrative Violations, Civil Code 1995 and documents guiding the implementation of Civil Code 1995.

Settlement of acts of intellectual property right infringement after 1/7/2006 by administrative remedies shall comply with the Intellectual Property Law, this Decree and other legal documents guiding the implementation of the Intellectual Property Law.

3. Where an act of intellectual property right infringement currently given administrative sanctions in accordance with Ordinance on Settlement of Administrative Violations, Civil Code 1995 and implementing documents of the Civil Code 1995, but under the Intellectual Property Law and this Decree, the act shall not be subject to administrative sanctions, then no administrative sanctions shall be given such act.

4. Acts of IPR infringement currently given administrative remedies in accordance with the Ordinance on Settlement of Administrative Violations, the Civil Code 1995 and implementing documents of the Civil Code 1995 the money fines of which are lower than as stipulated in this Decree, shall be subject to such lower money fines; or if higher than the one under this Decree, then such lower fine under this Decree shall be applied.

5. Provisions on the rights and obligations of intellectual property right holders under Civil Code 1995 and implementing documents of the Civil Code 1995 shall be used to deal with acts of intellectual property right infringement committed from 1/1/2006 to 30/6/2006, if in line with the relevant provisions in the Part Six of the Civil Code 2005.

Article 65. Validity

1. This Decree shall take effect as of 1/7/2006.
2. This Decree shall replace the following regulations and documents:
 - a) relevant provisions on administrative sanctions on acts of infringement of authorship rights and relevant rights under Decree No. 31/2001/ND - CP dated 26/6/2001 of the Government on administrative sanctions in the field of culture and information;
 - b) relevant provisions on administrative sanctions on acts infringing upon industrial property rights under Decree No. 12/1999/ND - CP dated 06 /3/1999 of the Government on administrative sanctions in the field of industrial property;
 - c) relevant provisions on administrative sanctions on acts of infringement respect to new plant varieties under Decree No. 57/2005/ND-CP dated 27/4/2005 on administrative sanctions in the field of plant varieties;
 - d) relevant provisions on anti-production and trading of goods with counterfeit trademarks, industrial models, and names of origin under Sections I, II, III of Inter-Ministerial Circular No. 10/2000/TTLT-BTM-BTC-BCA-BKHCMNT dated 27/4/2000 of the Ministry of Trade, Ministry of Finance, Ministry of Public Security, Ministry of Science and Technology providing guidelines on implementation of Instruction No. 31/1999/CT-TTg dated 27/10/1999 of the Prime Minister on fighting against false goods production and trading;
 - dd) Inter-Circular No. 58/2003/TTLT/BVHTT-BTC dated 17/10/2003 of Ministry of Culture and Information, and Ministry of Finance providing guidelines on authorship right protection at customs agencies with respect to imports and exports;
 - e) Inter-Circular No. 129/2004/TTLT-BTC-BKHCMNT dated 29/12/2004 of Ministry of Finance and Ministry of Science and Technology providing guidelines on border control measures regarding industrial property with respect to imports and exports.
 - g) Other provisions contained in the documents issued prior to 1 July 2007 that are contrary to the provisions of this Decree.

Article 66. Responsibilities for implementing guidelines

1. Ministers, Heads of Ministerial level agencies, Chairmen of people's committees of provinces and cities under central authority shall be responsible to implement this

Decree.

2. The Ministers of Ministry of Science and Technology, Ministry of Culture and Information and Ministry of Agriculture and Rural Development shall be responsible to provide guidelines for implementing this Decree.

**FOR AND ON BEHALF OF THE GOVERNMENT
THE PRIME MINISTER**