

# Vietnam IP News Bulletin

Kenfox IP & Law Office

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## GUIDELINE FOR COPYRIGHT ISSUES IN VIETNAM

### 1. Copyright Subsistence

#### 1.1 What are the requirements for copyright to subsist in a work?

KENFOX: Per Article 14.3 of Vietnam IP Law, a work must be created directly by authors through their intellectual labor without copying others' works. As a matter of practice, to qualify for copyright protection in Vietnam, a work must be of originality (i.e. an author's own intellectual creation) and creativity (i.e. a sufficient amount of intellectual creativity). Copyright subsists since the time the work is fixed in a tangible medium (irrespective of its content, quality, form, mode and language and irrespective of whether or not such work has been published or registered), provided that it meets the requirement of originality (that means it is created independently, not copied from others' work, and demonstrates a modicum of creativity).

#### 1.2 On the presumption that copyright can arise in literary, artistic and musical works, are there any other works in which copyright can subsist and are there any works which are excluded from copyright protection?

KENFOX: Per Article 14 of Vietnam IP Law, works eligible for copyright protection are

categorized into two types, i.e. (i) literary, artistic and scientific works and (ii) derivative works. Under the laws, literary, artistic and scientific works eligible for copyright protection include (a) Literary and scientific works, textbooks, teaching courses and other works expressed in written languages or other characters; (b) Lectures, addresses and other sermons; (c) Press works; (d) Musical works; (e) Dramatic works; (f) Cinematographic works and works created by a process analogous to cinematography (below collectively referred to as cinematographic works); (g) Plastic-art works and works of applied art; (h) Photographic works; (i) Architectural works; (j) Sketches, plans, maps and drawings related to topography, architecture or scientific works; (k) Folklore and folk art works of folk culture; (l) Computer programs and data compilations. Meanwhile, derivative works shall be protected in Vietnam only if it is not prejudicial to the copyright to works used to create these derivative works.

However, no copyright protection shall extend, as provided under Article 15 of Vietnam IP Law, to (a) news of the day as mere items of information; (b) Legal instruments, administrative and other documents in the judicial domain, and official translations of such documents and (c) processes, systems, operational methods, concepts, principles and data.

### **1.3 Is there a system for registration of copyright and if so what is the effect of registration?**

KENFOX: Yes, there is a system for registration of copyright in Vietnam although no registration is statutorily required for a work to be protected. An authority/body which is in charge of the state administration of the copyright and related rights sector nationwide, including Collective Management of Copyright and Related Rights (CMOs), the granting and cancellation of copyright registration certificates is the Copyright Office of Vietnam (“COV”) which is the agency under Ministry of Culture, Sports and Tourism.

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

#### **1.4 What is the duration of copyright protection? Does this vary depending on the type of work?**

KENFOX: Per Article 18 of Vietnam IP Law, copyright in works shall include two types, (a) moral rights and (b) economic rights.

The moral rights, per Article 19 of Vietnam IP Law, include rights:

- (1) To give titles to their works;
- (2) to attach their real names or pseudonyms to their works; to have their real names or pseudonyms acknowledged when their works are published or used;
- (3) To publish their works or to authorize other persons to publish their works;
- (4) to protect the integrity of their works; and to forbid other persons to modify, edit or distort their works in whatever form, causing harm to the honour and reputation of the author)

The economic rights, per Article 19 of Vietnam IP Law, include rights:

- (a) To make derivative works;*
- (b) To display their works to the public;*
- (c) To reproduce their works;*
- (d) To distribute or import the original or copies of their works;*
- (dd) To communicate their works to the public by wireless or landline means, electronic information networks or other technical means;*
- (e) To lease the original or copies of cinematographic works and computer programs*

The moral rights stipulated in clauses 1, 2 and 4 of Article 19 of Vietnam IP Law shall last indefinitely.

The moral rights stipulated in article 19.3 and the economic rights stipulated in Article 20 of Vietnam IP Law shall enjoy the following terms of protection:

- (i) Cinematographic works, photographic works, works of applied art and anonymous works have a term of protection of 75 (seventy five) years from the date of first publication. For cinematographic works, photographic works and works of applied art which remain unpublished within twenty five years from the date of fixation, the term of protection is 100 (one hundred) years from the date of fixation. For anonymous works, when information on their authors is published, the term of protection will be calculated under Point b below.
- (ii) A work not specified at Point (i) is protected for the whole life of the author and for 50 (fifty) years after his/her death. For a work under joint authorship, the term of protection expires in the fiftieth year after the death of the last surviving co-author;
- (iii) The term of protection specified at Points (i) and (ii) above expires at 24:00 hrs of

December 31 of the year of expiration of the copyright protection term.

**1.5 Is there any overlap between copyright and other intellectual property rights such as design rights and database rights?**

KENFOX: Yes. There are overlaps between copyright and other IPRs. An ornamental design or model or a product label may be registered as an industrial design, a trademark and/or a work subject to copyright protection in Vietnam. The unfair competition legislation in **Vietnam** affords enforcement against infringement over a good packaging design which is eligible for protection as a copyrighted work and an industrial design.

In respect of database rights, data compilation is provided under Article 14 of Vietnam IP Law to be eligible for copyright protection. Data compilation means a set of data selected or arranged in a creative way and expressed in electronic or other forms. Copyright protection of data collections shall not extend to protection of the data itself, and must not be prejudicial to copyright in the data itself.

**1.6 Are there any restrictions on the protection for copyright works which are made by an industrial process?**

KENFOX: No explicit regulations on copyright works which are made by an industrial process are set out in Vietnam IP Law. Thus, this is not applicable.

## **2. Ownership**

**2.1 Who is the first owner of copyright in each of the works protected (other than where questions 2.2 or 2.3 apply)?**

KENFOX: Generally, copyright holder means an organization or individual who holds one, several or all of the economic rights. Per Article 37 of Vietnam IP Law, the author is the copyright owner when he/she uses his/her own time, finance and material or technical facilities to create works.

**2.2 Where a work is commissioned, how is ownership of the copyright determined**

## **between the author and the commissioner?**

KENFOX: Under Article 39 of Vietnam IP Law, any organization which assigns the task of creating a work to an author who belongs to such organization shall be the holder of the rights stipulated in Articles 19.3 (i.e. rights to publish the works or to authorize other persons to publish the works) and Article 20 (i.e. economic rights), unless otherwise agreed.

Any organization or individual who enters into a contract with an author for the creation of a work shall be the holder of the rights stipulated in articles 19.3 (i.e. rights to publish the works or to authorize other persons to publish the works) and Article 20 (i.e. economic rights)

### **2.3 Where a work is created by an employee, how is ownership of the copyright determined between the employee and the employer?**

KENFOX: Under Article 39 of Vietnam IP Law, where any organisation assigns the task of creating a work to an author who belongs to such organisation, the organisation shall be the owner of the copyright entitled to hold all economic rights under Article 20, plus one of the four moral rights under section 19, being the right to publish his or her works or to authorise other persons to publish his or her works, unless otherwise agreed.

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

KENFOX: Yes, there is a concept of joint ownership under Vietnam IP Law. It is generally construed that joint ownership arises in a work jointly created by two or more persons. The copyright of the work will be co-owned by the co-authors. Article 38.1 of Vietnam IP Law provides that co-authors who use their time, finance and material or technical facilities to jointly create works shall share the rights to such works stipulated in Article 19 (moral rights) and Article 20 (economic rights). Article 38.2 further defines that co-authorship means two or more than two authors that jointly create a work and this provision also ascertains the rule that each of the joint authors who own their joint moral and economic rights may exploit or use independently his or her rights on the condition that such independent use may be detachable and does not prejudice the parts of the work of the other co-authors

### 3. Exploitation

#### 3.1 Are there any formalities which apply to the transfer/assignment of ownership?

KENFOX: Per Article 45 of Vietnam IP Law, assignment of copyright and related rights means the transfer by copyright holders or related right holders of the ownership of the rights stipulated to other organizations and individuals pursuant to a contract. Under Article 46, a contract for the assignment of copyright or related rights must be made in writing and include the following principal contents:

- (a) Names and addresses of the assignor and the assignee;
- (b) Grounds for the assignment;
- (c) Price and method of payment;
- (d) Rights and obligations of the parties;
- (dd) Liability for contractual breach.

Kindly note that all of the economic rights pertaining to copyright or related rights are transferrable/assignable. For moral rights, only one of four rights under Article 19 is transferrable/ assignable, this being the right to publication or to permit others to publish.

#### 3.2 Are there any formalities required for a copyright licence?

KENFOX: Not explicitly provided. Licensing of copyright and related rights means the grant of permission by the copyright holder or related right holder for another organization or individual to use for a definite term one, several or all of the rights. In case copyright licence is made in an agreement/contract, per Article 48.1 of Vietnam IP Law, a contract for the licensing of copyright or related rights must be made in writing and include the following principal contents:

- (a) Full names and addresses of the licensor and the licensee;
- (b) Grounds for the licence;
- (c) Scope of the licence;
- (d) Price and method of payment;
- (dd) Rights and obligations of the parties;
- (e) Liability for contractual breach

#### 3.3 Are there any laws which limit the licence terms parties may agree (other than as

**addressed in questions 3.4 to 3.6)?**

KENFOX: Yes. Moral rights as provided under Article 19 of Vietnam IP Law are not permitted to be licensed, except for the right of publication. In co-owned work, performance, audio and visual fixation or broadcast, the licensing of copyright or related rights therein must be agreed upon by all co-owners. In a case of joint ownership of a work, performance, audio and visual fixation or broadcast which is composed of separate parts detachable for independent use, copyright holders or related right holders may license their copyright or related rights in their separate parts to other organizations or individuals. Sub-license of copyright or related rights is possible if organization or individual to whom copyright or related rights are licensed obtains permission from the copyright holder or related right holder (See Article 47.2, 47.3 and 47.4 of Vietnam IP Law)

**3.4 Which types of copyright work have collective licensing bodies (please name the relevant bodies)?**

KENFOX: Most common types of works have been managed and granted licences to use by the collective management of copyright and related rights which is known as collective management organisations (CMOs). In Vietnam, as far as we know, there are following collective licensing bodies: (i) Vietnam Literary Copyright Center (“VLCC”) (Website: <http://vlcc.vn/>), (ii) Recording Industry Association of Vietnam (“RIAV”) (Website: <http://riav.org.vn>), (iii) Vietnam Center for Protection of Music Copyright (“VCPMC”) (Website: [http://vcPMC.org/vcPMC/tintuc/muc/\\_2/about-vcPMC](http://vcPMC.org/vcPMC/tintuc/muc/_2/about-vcPMC)), (iv) Vietnam Reproduction Rights Organization (“VIETRRO”) (Website: <http://vietrro.org.vn>) and (v) Association for Rights Protection of Music Performing Artists (APPA) (Website: <http://appa.org.vn>). Each of the above-mentioned collective management bodies in Vietnam will manage and grant licences to types of work as basically covered by their names.

**3.5 Where there are collective licensing bodies, how are they regulated?**

KENFOX: Vietnamese collective licensing bodies such as VLCC, RIAV, VCPMC and VIETRRO conduct their work as provided in their charters and operation regulations in compliance with Article 56 of Vietnam IP Law. Accordingly, the collective licensing bodies in

Vietnam may conduct the following activities pursuant to authorization from authors, copyright holders or related right holders: (i) Manage copyright or related rights; conduct negotiations for licensing; and collect and distribute royalties, remuneration and other material benefits from the permitted exercise of authorized rights; (ii) Protect the legitimate rights and interests of its members; organize a conciliation if a dispute arises.

### **3.6 On what grounds can licence terms offered by a collective licensing body be challenged?**

KENFOX: Generally, the license terms offered by a collective licensing body may be challenged in the following circumstances:

- (a) The collective licensing bodies are unauthorized or their business is beyond the scope of authorization;
- (b) Charge or license fees of the collective licensing bodies violate the regulations;
- (c) The collective licensing bodies do not fix a specific amount for license fees according to announced rates.

## **4. Owners' Rights**

### **4.1 What acts involving a copyright work are capable of being restricted by the rights holder?**

KENFOX: A copyright holder in Vietnam may restrict the infringing acts provided under Article 28 of Vietnam IP Law as follows:

1. Appropriating copyright in a literary, artistic or scientific work.
2. Impersonating an author.
3. Publishing or distributing a work without permission from the author.
4. Publishing or distributing a work of joint authors without permission from the co-authors.
5. Modifying, editing or distorting a work in any way which prejudices the honour and reputation of the author.
6. Copying a work without permission from the author or copyright holder, except in the cases stipulated in sub-clauses (a) and (dd) of article 25.1 of this Law.
7. Making a derivative work without permission from the author or copyright holder of the work



used for making such derivative work, except in the case stipulated in sub-clause (i) of article 25.1 of this Law.

8. Using a work without permission from the copyright holder and without paying royalties, remuneration or other material benefits in accordance with law, except in the cases stipulated in article 25.1 of this Law.

9. Leasing out a work without paying royalties, remuneration or other material benefits to the author or copyright holder.

10. Duplicating, producing copies of, distributing, displaying or communicating a work to the public via a communications network or digital means without permission from the copyright holder.

11. Publishing a work without permission from the copyright holder.

12. Deliberately destroying or de-activating the technical solutions applied by the copyright holder to protect copyright in his or her work.

13. Deliberately deleting or modifying electronic information in a work regarding management of the rights to such work.

14. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing out equipment when knowing, or having grounds to know, that such equipment may deactivate technical solutions applied by the copyright holder to protect copyright in his or her work.

15. Making and selling a work with a forged signature of the author of such work.

16. Importing, exporting or distributing copies of a work without permission from the copyright holder.

#### **4.2 Are there any ancillary rights related to copyright, such as moral rights, and if so what do they protect, and can they be waived or assigned?**

KENFOX: Ancillary copyright is a kind of neighbouring right, or related rights as they're sometimes called. Neighbouring or related rights are a special type of copyright and are separate from the author's rights. Some examples of these related rights are the right to broadcast, performance rights, or the right to publish or distribute content. Per Article 4.3 of Vietnam IP Law, Copyright related rights (hereinafter referred to as related rights) means rights of an organization or individual to performances, audio and visual fixation, and broadcasts and satellite signals carrying coded programmes.

Moral rights, per Article 19 of Vietnam IP Law, include rights:

- (1) To give titles to their works;
- (2) to attach their real names or pseudonyms to their works; to have their real names or pseudonyms acknowledged when their works are published or used;
- (3) To publish their works or to authorize other persons to publish their works;
- (4) to protect the integrity of their works; and to forbid other persons to modify, edit or distort their works in whatever form, causing harm to the honour and reputation of the author)

For moral rights, only one of four rights under Article 19 of Vietnam IP Law is transferrable/assignable, this being the right to publication or to permit others to publish.

Related rights may be waived in some circumstances with certain restrictions. In detail, per Article 32 of Vietnam IP Law, related rights may be exercised without having to seek permission or pay royalties or remuneration in the following cases: (a) Making one copy of a work for personal scientific research purposes; (b) Making one copy of a work for teaching purposes, except for performances, audio and visual fixation or broadcasts which have been published for teaching purposes; (c) Reasonable quoting from a work in order to provide information; (d) Making of provisional copies of a work by a broadcasting organization for broadcasting purposes when such organization has the broadcasting right. Further, per Article 32 of Vietnam IP Law, organizations and individuals who exercise related rights in the following cases shall not be required to seek permission but must pay agreed royalties or remuneration to performers, producers of audio and visual fixation, or to broadcasting organizations: (a) They directly or indirectly use published audio and visual fixation for commercial purposes in making broadcasts which are sponsored, contain advertisements or which collect fees in any form; (b) They use published audio and visual fixation in business or commercial activities.

#### **4.3 Are there circumstances in which a copyright owner is unable to restrain subsequent dealings in works which have been put on the market with his consent?**

KENFOX: A copyright owner in Vietnam is unable to restrain subsequent dealings in works which have been put on the market with his consent in some certain circumstances. This mean organization or individual in Vietnam may, per Article 25 of Vietnam IP Law, use the published works without having to seek permission or pay royalties or remuneration to the copyright holder in the following cases:

- (a) Making one copy of the work of an author for scientific research or teaching purposes;

- (b) Reasonable quoting from a work in order to comment on or illustrate one's own works, without misrepresenting the author's views;
- (c) Quoting from a work in order to write an article published in a newspaper or periodical, in a radio or television broadcast or in a documentary, without misrepresenting the author's views;
- (d) Quoting from a work in school or university for lecturing purposes without misrepresenting the author's views and not for commercial purposes;
- (dd) Copying of a work by a library for archival and research purposes;
- (e) Performing a stage work or other art work in mass cultural, communication or mobilization activities without collecting fees in any form;
- (g) Audio-visual recording of a performance in order to report current events or for teaching purposes;
- (h) Photographing or televising plastic art; or an architectural, photographic, or applied art work displayed at a public place in order to present images of such work;
- (i) Transcribing a work into braille or into characters of other languages for the blind;
- (k) Importing copies of another's work for personal use

Kindly note that organizations and individuals who use the works stipulated in clause 1 of this article conduct the above act of use must neither cause prejudice to the rights of the author or copyright holder, and must provide information being the author's name and the source and origin of the work.

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