

INTRODUCTION ON THE LEGISLATION – MANAGEMENT – ENFORCEMENT OF COPYRIGHT AND RELATED RIGHTS IN VIET NAM



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CONTENT

- **LAW SYSTEM**
- **MANAGEMENT SYSTEM**
- **ENFORCEMENT SYSTEM**

I. LEGAL SYSTEM

LEGAL DOCUMENTS OF VIET NAM:

➤ Law on Intellectual Property (amended and supplemented in 2009)

- Decree No. 22/2018/NĐ-CP dated the 23rd February 2018 (replacing the Decree No. 100/2006/NĐ-CP and No. 85/2009/NĐ-CP)
- Decree No. 105/2006/NĐ-CP and No. 119/2010/NĐ-CP
- Decree No. 131/2013/NĐ-CP and No. 28/2017/NĐ-CP (Penalties pertaining to Administrative Violation of Copyright and related rights)
- Circular No. 211/2016/TT-BTC dated the 10th November 2016 (Fee of Copyright and Related Rights Registration) – come to effect on the 1st January 2017
- Circular No. 07/2012/TTLT-BTTTT-BVHTTDL (*Liability of Intermediary Service Providers in the Protection of Copyright and Related Rights in the Digital Environment and Telecommunication Network*);
- Circular No. 15/2012/TTLT-BTTTT-BVHTTDL (*guiding assessment activity on copyright and related rights*));
- Directive No. 04/2007/CT-TTg dated the 22nd February 2007 (strengthening the management and enforcement of the protection of computer programmes)
- Directive No. 36/2008/CT-TTg dated the 31st December 2008 (*improving the management and enforcement of the protection of copyright and related rights*);
- Circular No. 02/2008/TTLT-TANDTC-VKSNDTC-BVHTTDL-BKHCN-BTP dated the 3rd April 2008 (*Guideline on the dispute settlement of copyright and related rights at the Civil Court*)

I. LEGAL SYSTEM

➤ Other specific laws:

- Law on the Press 2016
- Law on the Publication 2012
- Law on the Cultural Heritages 2001; amended and supplemented in 2009
- Law on Cinematography 2006; amended and supplemented in 2009
- Law on Customs 2014
- Law on Advertising 2012
- Law on Library 2019
- Law on Handling Administrative Violations 2012
- Criminal Code (amended and supplemented in 2017): Article 225
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I. LEGAL SYSTEM

International Treaties:

03 Bilateral Agreements

- **Viet Nam – US Agreement on the establishment of copyright relations (1997);**
- **Viet Nam – Switzerland Agreement on Intellectual Property Protection and Cooperation (1999);**
- **Viet Nam – US Trade Agreement (2000);**

05 multilateral treaties

- **Berne Convention (2004);**
- **Geneva Convention(2005);**
- **Brussels Convention(2006);**
- **Rome Convention(2007);**
- **TRIPs Agreement (2007);**

I. LEGAL SYSTEM

International Treaties:

**05
REGIONAL
FTAs**

- **ASEAN Free Trade Agreement (AFTA);**
- **ASEAN – China Free Trade Agreement (ACFTA);**
- **ASEAN – Korea Free Trade Agreement (AKFTA);**
- **ASEAN – Japan Free Trade Agreement (AJFTA);**
- **ASEAN – Australia – New Zealand Free Trade Agreement (AANZFTA).**

05 FTAs

- **Viet Nam – Japan Economic Partnership Agreement (VJEPA);**
- **Viet Nam – Korea Free Trade Agreement (VKFTA);**
- **Viet Nam – Eurasia Economic Union Free Trade Agreement (VNEAEUFTA);**
- **Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP);**
- **EU – Viet Nam Free Trade Agreement (EVFTA).**

II. MANAGEMENT SYSTEM

- **Government:** Decentralization of IP Management to 3 Ministries:
 - **Copyright, related rights**
(Copyright Office of Viet Nam - COV, MoCST)
 - **Industrial Property**
(National Office of Intellectual Property of Viet Nam- NOIP, Ministry of Science and Technology)
 - **Plant Varieties**
(Department of Corp Production, Ministry of Agriculture and Rural Development)

II. MANAGEMENT SYSTEM

- **MoCST:** responsible for the administrative management of copyright and related rights.
 - ✓ **COV:** a department of MoCST, assisting the Minister in implementing the function of administrative management of copyright and related rights and cultural industry.

- **Provincial People's Committees**
 - ✓ Provincial Departments of Culture, Sports and Tourism/Culture and Sports

(Article 11 of the Law on the IP; Article 5 of the Decree No. 22/2018/NĐ-CP; Point 8 Article 2 of the Circular No. 07/2015/TTLT-BVHTTDL-BNV)

II. MANAGEMENT SYSTEM

➤ **COV**

- ✓ To submit to the Minister the draft strategies, laws, mechanisms and policies on copyright and related rights protection and cultural industry
- ✓ To take measures to protect legal rights of the State, organizations and individuals in the field of copyright and related rights.
- ✓ To manage activities of collective management organizations on copyright and related rights; to manage the assessment activities accordance with the law.
- ✓ To grant, re-grant, change, revoke the Certificates of Copyright Registration, Certificates of Related Rights Registration.
- ✓ ...

➤ **Provincial Departments of Culture, Sports and Tourism**

- ✓ To provide protection measures to the legal rights and benefits of the State, organizations and individuals in the field of copyright and related rights;
- ✓ To guide and supervise the implementation of cooperation, order and assurance of copyright and related rights as well as the remuneration and allowance;
- ✓ To consider copyright and related right in case of disputes;
- ✓ ...

II. MANAGEMENT SYSTEM

COV

- The Bureau
- The Division of Copyright and Related Right Management
- The Division of Copyright and Related Rights Registration
- The Division of Cultural Industry Management
- The Division of Information and International Cooperation
- The Expertise Center of Copyright and Related Rights

III. ENFORCEMENT SYSTEM

- Inspection
- Market Management
- Customs
- Public Security
- Border Guards
- Civil Court at all levels...

III. ENFORCEMENT SYSTEM

- **Supporting Enforcement Organizations:**

CMOs on copyright and related rights:

1. Viet Nam Center for the Protection of Music Copyright (VCPMC);
2. Recording Industry Association of Viet Nam (RIAV);
3. Viet Nam Literary Copyright Center (VLCC);
4. Viet Nam Reproduction Right Organization (Viettro);
5. Viet Nam Association for Rights Protection of Music Performing Artists (APPA);
6. The Vietnam Association for Copyright protection Movies and TV films (VAFC).

III. ENFORCEMENT SYSTEM

- Self-protection measures: application of technical measures;
- Request of terminating the infringements, apology, public rectification, compensation;
- Request State authorized agencies to handle violations;
- Proceed lawsuit at the Court or Arbitration.

III. ENFORCEMENT SYSTEM

- **Civil Measures:** The Court shall apply the following civil measures:
 1. Request for termination of violation acts;
 2. Request for apology, public rectification;
 3. Request for fulfilling civil liability;
 4. Request for compensation;
 5. Request for demolishing or distributing or using for non-profit purposes of goods, ingredients, material and facilities in the production and business of goods that infringe IP so as not to affect the capability of rights exploitation of the IP rights holders.

III. ENFORCEMENT SYSTEM

- **Administrative Penalties:**

- ✓ **Warning**

- ✓ **Monetary Penalty**

- ✓ **Supplementing Penalties**

- Seizure of violating goods, facilities used in the administrative violation;
- Terminable deprivation of the right of using license and practicing certificate or terminable operation suspension.

- ✓ **Solutions to consequences**

- Request for moving outside the territory of Viet Nam or re-exporting the violated goods, products and facilities; request for demolishing violating proofs/removing violating elements.
- Request for rectification of information and correction of the names of the author, work and performer.
- Request for deprivation of the Registration Certificate of Copyright, Related Rights.
- Request for removal of copies of works, performances, phonograms, video recordings and broadcasting programs violating in the form of electronic, in the digital environment and on the Internet.
- Request for compensation of remuneration, allowance and physical benefits from the infringements to the rights holders.

III. ENFORCEMENT SYSTEM

- **Criminal:**

- **Criminal Code 2015, amended 2017 (Article 225)**

- *Deliberate Reproduction/Distribution*
- *Business Scale/Illegal Benefits > 50 million VND/damage > 100 million VND/Value of violating goods > 100 million VND*
- *Commercial Legal Entities*



III. ENFORCEMENT SYSTEM

- **Enforcement in the Digital Environment:**
 - Circular No. 07/2012/TTLT-BTTTT-BVHTTDL dated the 19th June 2012 of the MIC and MoCST constitutes the liability of intermediary service providers in the protection of the copyright and related rights on the Internet and the telecommunication network.
 - Come into effect on the 6th August 2012.
- Urgency:
 - ✓ More severe violations to copyright and related rights on the Internet;
 - ✓ Requirements of economic and commercial integration;
 - ✓ Order of the Prime Minister (Directive No. 36)



CIRCULAR NO. 07/2012/TTLT-BTTTT-BVHTTDL

- **Intermediary Service Providers (ISPs):**

- ✓ ISPs;
- ✓ Telecommunication enterprises;
- ✓ Providers of hosting digital information, including hosting electronic information websites;
- ✓ Online Social Network Providers;
- ✓ Digital Information Search Service Providers.

Digital Content:

Works, performances, phonograms, video recordings digitalized and processed, transmitted and provided on the Internet and the telecommunication network



CIRCULAR NO. 07/2012/TTLT-BTTTT-BVHTTDL

Rights of ISPs:

- Establishing the systems of checking, supervising and processing information that is given, hosted and transmitted on the Internet and the telecommunication network to prevent infringements to copyright and related rights.
- Unilaterally rejecting the supply of illegal copyright and related rights services.



CIRCULAR NO. 07/2012/TTLT-BTTTT-BVHTTDL

Liability of ISPs:

- To host the digital information content in its service providing system in a transmission – intermediary, temporary, automatic and terminable way, meeting the technical requirements of transmission of digital information content.
- To execute the action of inspection and supervision of State authorized agencies in accordance with provisions of copyright and related rights.
- To remove and delete digital content violated to copyright and related rights, as well as to cut, stop or temporarily stop the Internet and telecommunication transmission line when receiving the written request from the Inspection Division of the MIC, MoCST or other State authorized agencies according to the current legislation.

CONCLUSION

- **FOR LEGAL SYSTEM:** To supplement, timely regulate the new legal relationship in accordance with the international practices, to accede to international treaties, etc.
- **FOR MANAGEMENT SYSTEM:** To consolidate the organizational structure, strengthen the activities of supervision and management, apply the model of electronic government, etc.
- **FOR ENFORCEMENT SYSTEM:** To improve capability, expand management area, cooperate with specialized management authorities, etc.



Thank you for your attention!

Copyright Office of Viet Nam

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