

**DECREE No. 105/2006/ND-CP OF SEPTEMBER 22, 2006,
DETAILING AND GUIDING THE IMPLEMENTATION OF A
NUMBER OF ARTICLES OF THE LAW ON INTELLECTUAL
PROPERTY ON PROTECTION OF INTELLECTUAL
PROPERTY RIGHTS AND ON STATE MANAGEMENT OF
INTELLECTUAL PROPERTY**

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the November 11, 2005 Law on Intellectual Property;

At the proposal of the Minister of Science and Technology,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Scope of regulation

This Decree details and guides a number of articles of the Law on Intellectual Property on protection of intellectual property rights, including identification of acts, nature and extent of infringement of intellectual property rights, identification of damage, requests for handling of infringements and settlement of those requests, handling of infringements by administrative measures, control of exports and imports related to intellectual property, assessment of intellectual property, and state management of intellectual property.

Article 2.- Subjects of application

This Decree applies to Vietnamese organizations and individuals and foreign organizations and individuals that have their intellectual property rights protected or commit acts of infringement of intellectual property rights under the Law on Intellectual Property.

Article 3.- Interpretation of terms

In this Decree, the terms below are construed as follows:

1. Act of infringement means an act of infringement of intellectual property rights.
2. Handling of an act of infringement means handling of an act of infringement of intellectual property rights.

3. Infringer means an organization or individual that commits an act of infringement of intellectual property rights.

4. Element means a product, a process or a part or a component of a product or a process.

5. Infringing element means an element created from an act of infringement.

6. Examined act means an act that is suspected to be an act of infringement and is examined to conclude whether it is an act of infringement or not.

7. Examined subject matter means a subject matter that is suspected and examined to conclude whether it is an infringing object or not.

8. Petition for handling of infringement means a written request for application of measures to handle an act of infringement.

Article 4.- Application of civil, administrative and criminal measures to protect intellectual property rights

Depending on their nature and severity, acts of infringement may be handled by civil, administrative or criminal measures in accordance with the provisions of Part Five (Protection of Intellectual Property Rights) of the Law on Intellectual Property and the following provisions:

1. Civil measures are applied to handle acts of infringement at the request of intellectual property right holders, organizations or individuals that suffer from the damage caused by those acts, even when those acts have been or are being handled by administrative or criminal measures.

The procedures for request for application of civil measures and the competence, order and procedures for application of civil measures shall comply with the provisions of law on civil procedures.

2. Administrative measures are applied to handle acts of infringement falling into one of the cases specified in Article 211 of the Law on Intellectual Property, at the request of intellectual property right holders, organizations or individuals that suffer from the damage caused by those acts, organizations or individuals that detect those acts, or when those acts are detected by competent bodies.

The sanctioning forms and levels, the competence and procedures for sanctioning acts of infringement and remedies shall comply with the provisions of the Law on Intellectual Property and the law on sanctioning of administrative violations in the domain of copyright and related rights, industrial property rights and rights to plant varieties.

3. Criminal measures are applied to handle acts of infringement that contain criminal elements in accordance with the provisions of the Penal Code.

The competence, order and procedures for application of criminal measures shall comply with the provisions of law on criminal procedures.

Chapter II

DETERMINATION OF ACTS, NATURE AND EXTENT OF INFRINGEMENT, DETERMINATION OF DAMAGE

Section I. BASES FOR DETERMINATION OF ACTS, NATURE AND EXTENT OF INFRINGEMENT

Article 5.- Determination of acts of infringement

An examined act shall be regarded as an act of infringement of intellectual property rights specified in Articles 28, 35, 126, 127, 129 and 188 of the Law on Intellectual Property when all the following bases exist:

1. The examined subject matter is a protected one.
2. The examined subject matter contains an infringing element.
3. The person that takes the examined act is neither the intellectual property right holder nor any person permitted by law or a competent agency under Articles 25, 26, 32, 33, Clauses 2 and 3 of Article 125, Article 133, Article 134, Clause 2 of Article 137, Articles 145, 190 and 195 of the Law on Intellectual Property.
4. The examined act takes place in Vietnam.

An examined act that takes place in the Internet but is targeted at consumers or information users in Vietnam shall be regarded to take place in Vietnam.

Article 6.- Bases for determination of protected subject matters

1. The determination of a protected subject matter shall be based on the examination of documents and evidence proving the bases for emergence and establishment of the rights specified in Article 6 of the Law on Intellectual Property.
2. For intellectual property rights that have been registered with competent agencies, the protected subject matters shall be determined on the basis of the registration certificates, protection titles and other documents accompanying such certificates and protection titles.

3. For copyright and rights of performers, rights of producers of phonograms or video recordings, rights of broadcasting organizations that are not registered with competent agencies, these rights shall be determined on the basis of the original exemplar of the work, the first fixation of the performance, phonogram, video recording, broadcast and relevant documents, if any.

When the original exemplar of the work, the first fixation of the performance, phonogram, video recording, broadcast and relevant documents no longer exist, copyright or rights of performers, of producers of phonograms or video recordings or of broadcasting organizations shall be deemed to be true on the basis of information that is usually shown on lawfully published copies on authors, performers, producers of phonograms or video recordings or broadcasting organizations and on the subject matters of copyright or related rights.

4. For trade names, the protected subject matters shall be determined on the basis of their using process and the sector and territory in which such trade names are used.

5. For business secrets, the protected subject matters shall be determined on the basis of documents expressing the contents and nature of the business secrets and explanations and descriptions of relevant measures to keep them secret.

6. For well-known marks, the protected subject matters shall be determined on the basis of documents and evidence expressing the reputation of the marks according to the criteria defined in Article 75 of the Law on Intellectual Property.

Article 7.- Infringing elements of copyright and related rights

1. An infringing element of copyright may take one of the following forms:

a/ Illegally made copy of a work;

b/ Illegally made derivative work;

c/ Work with the forged name and signature of the author, impersonation of the author or appropriation of copyright;

d/ Illegally recited, duplicated or incorporated part of a work;

e/ Product with an illegally deactivated technical device used for copyright protection.

Products containing an infringing element defined in this Clause shall be regarded as copyright-infringing products.

2. An infringing element of related rights may take one of the following forms:

- a/ Illegally made first fixation of a performance;
- b/ Illegally made copy of the fixation of a performance, illegally made copy of a phonogram, video recording or broadcast;
- c/ Illegally duplicated, extracted or incorporated part or whole of a fixed performance, a phonogram or video recording; illegally received, decoded and distributed part or whole of a broadcast;
- d/ Product with an illegally deactivated technical device used for related rights protection; the fixation of a performance from which related rights management information has been illegally disengaged or modified.

Products containing an infringing element defined in this Clause shall be regarded as related rights-infringing products.

3. The basis for determination of an infringing element of copyright shall be the scope of copyright protection determined according to the forms of expression of the original work. For determination of infringing elements of derivative works, the basis shall be the characters, images; ways of expression of characters' personalities, images and circumstances of the original work.

4. The basis for determining an infringing element of related rights shall be the scope of related rights protection already determined according to the forms of expression of the first fixation of the performance, phonogram, video recording or broadcast.

5. In order to determine whether a copy or a work (or the fixation of a performance, phonogram, video recording or broadcast) constitutes an infringing element of copyright or related rights, it is required to compare the copy or work with the original exemplar of the work (the first fixation of a performance, phonogram, video recording or broadcast) or the original work.

A copy of a work or the fixation of a performance, phonogram, video recording or broadcast shall be regarded as an infringing element in the following cases:

- a/ The copy is a duplicate of part or the whole of a protected work, the first fixation of a protected performance, phonogram, video recording or broadcast of another person;
- b/ The work (part of the work) is part or the whole of a protected work, the first fixation of a protected performance, phonogram, video recording or broadcast of another person;

c/ The work or part of the work contains a character, image, way of expression of the personality of a character or image or circumstances of a protected work of another person.

6. Products containing an infringing element defined at Points a and d, Clause 1, Points b and c, Clause 2 of this Article shall be regarded as pirated goods under the provisions of Article 213 of the Law on Intellectual Property.

Article 8.- Infringing elements of inventions

1. An infringing element of an invention may take one of the following forms:

a/ Product or part (component) of a product that is identical or similar to a product or part (component) of a product being protected as an invention;

b/ Process that is identical or similar to a process being protected as an invention;

c/ A product or part (component) of the product produced through a process that is identical or similar to a process being protected as an invention.

2. The basis for determination of an infringing element of an invention is the scope of invention protection stated in the invention or utility solution patent.

Article 9.- Infringing elements of layout designs of semiconductor integrated circuits

1. An infringing element of a layout design of a semiconductor integrated circuit may take one of the following forms:

a/ Layout design created through illegally copying a protected layout design;

b/ Semiconductor integrated circuit illegally created according to a protected layout design;

c/ Product or part (component) of a product in which a semiconductor integrated circuit defined at Point b of this Clause is incorporated.

2. The basis for determination of an infringing element of a lay-out design of semiconductor integrated circuit is the scope of protection of rights to lay-out designs stated in the certificates of registration of the lay-out designs of semiconductor integrated circuits.

Article 10.- Infringing elements of industrial designs

1. An infringing element of an industrial design is a product or part of a product of which the external appearance is insignificantly different from that of a protected industrial design.
2. The basis for determination of an infringing element of an industrial design is the scope of protection of the industrial design stated in the industrial design patent.
3. A product or part of a product shall be regarded as an infringing element of an industrial design in the following cases:
 - a/ The examined product or part of the examined product, even with an industrial design patent, contains a combination of design features that create an overall combination being a copy or in substance a copy (with virtually indistinguishable difference) of a protected industrial design of another owner with the permission of such owner;
 - b/ The examined product or part of the examined product contains a combination of design features that create an overall combination being a copy or in substance a copy of the protected industrial design or at least one product within a set of products of another person.
4. The industrial design of a product (part of a product) shall only be regarded as insignificantly different from a protected one defined in Clause 1 of this Article when it is a copy or in substance a copy of the protected one.

Article 11.- Infringing elements of marks

1. An infringing element of a mark is a sign affixed on goods, their packages, means of services, transaction documents, signboards, means of advertising or other means of business that is identical or confusingly similar to the protected mark.
2. The basis for determination of an infringing element of a mark is the scope of protection of the mark including the mark specimen and a list of goods and services in the mark registration certificate or the certificate of protection in Vietnam of internationally registered mark.
3. In order to determine whether a suspected sign is an infringing element of a mark, it is required to compare such sign to the mark and at the same time to compare goods or services bearing such sign to the protected products or services. An infringing element can only be confirmed if the following two conditions are fully met:
 - a/ The suspected sign is identical or confusingly similar to the mark within the scope of protection; where a sign is regarded as identical to a protected mark if it has the same composition and method of presentation (including the colors); a sign is regarded as confusingly similar to a

protected mark if it has several features identical or similar to those of the protected mark 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 signs, letters, meaning, the method of presentation and colors, thereby causing confusion to consumers in selecting goods or services bearing the mark;

b/ Goods or services bearing the suspected sign that is 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 or services.

4. For well-known marks, a suspected sign shall be regarded as an infringing element if:

a/ The suspected sign meets the condition specified at Point a, Clause 3 of this Article;

b/ Goods or services bearing the suspected sign meet the condition specified at Point b, Clause 3 of this Article or goods or services are not identical, similar or related to the goods or services bearing the well-known mark but are capable of misleading customers as to the origin of services or goods or create wrong impressions about the relationship between the producer or trader of such goods or services and the owner of the well-known mark.

5. When a product or service bears a sign that is identical to or is insignificantly different in terms of overall composition and method of presentation from the protected mark of a product or service of the same type within the scope of protection, it shall be regarded as a counterfeit mark goods as provided for in Article 213 of the Law on Intellectual Property.

Article 12.- Infringing elements of geographical indications

1. An infringing element of a geographical indication is expressed in the form of a sign affixed on goods, their packages, means of services, transaction documents, signboards, means of advertising and other means of business, which is identical or confusingly similar to the protected geographical indication.

2. The basis for determination of an infringing element of a geographical indication is the scope of protection of the geographical indication stated in the decision on registration of the geographical indication.

3. In order to determine whether a suspected sign is an infringing element of a geographical indication, it is required to compare such sign to the geographical indication and to compare products bearing such sign to products bearing the protected geographical indication on the bases:

a/ The suspected sign is identical or confusingly similar to the geographical indication under the scope of protection; where a sign is regarded as identical to a protected geographical indication if it has the same composition of words, including the way of pronunciation, the way of phonetic transcription of letters, meaning, image and symbol within the scope of protection of the geographical indication; a sign is regarded as confusingly similar to a protected geographical indication if it is confusingly similar to the protected geographical indication in terms of word composition, the way of pronunciation, the way of phonetic transcription of letters, meaning, image and symbol within the scope of protection of the geographical indication;

b/ Products bearing the suspected sign are identical or similar to those bearing the protected geographical indication, where a product is regarded as identical or similar if it is identical or similar in terms of substance, functions, utility and distribution channel to another product;

c/ For wine and spirits, apart from the provisions of Point a and Point b of this Clause, a sign that is identical to a protected geographical indication, including its expression in the form of translation or phonetic transcription or accompanied by parts of speech, types, forms, adaptations or similar words that are used for products not originated from the geographical area bearing the protected geographical indication, shall also be regarded as an infringing element of the rights to the geographical indication.

4. When a product bears a sign that is identical to or is insignificantly different in terms of overall composition and the method of presentation from the protected geographical indication of a product of the same type within the scope of protection, it shall be regarded as a counterfeit geographical indication goods as provided for in Article 213 of the Law on Intellectual Property.

Article 13.- Infringing elements of trade names

1. An infringing element of a trade name is expressed in the form of a sign affixed on goods, their packages, means of services, transaction documents, signboards, means of advertising or other means of business that is identical or confusingly similar to the protected trade name.

2. The basis for determination of an infringing element of a trade name is the scope of protection of the trade name that is determined on the basis of evidence of the lawful use of the trade name, specifying the business owner, business establishment, business activities and products or services bearing the trade name.

3. In order to determine whether a suspected sign is an infringing element of a trade name, it is required to compare the sign to the protected trade name and to compare goods or services bearing this sign to the protected products or services on the following bases:

a/ The suspected sign is identical or confusingly similar to the protected trade name; where a sign is regarded as identical to a protected trade name if it has the same composition, including the way of pronunciation, the way of phonetic transcription of letters; a sign is regarded as similar to a protected trade name if it similar in terms of composition, the way of pronunciation, the way of phonetic transcription of letters, thereby misleading consumers as to the business owner, business establishment or business activities bearing the protected trade name;

b/ Goods or services bearing the suspected sign shall be regarded as identical or similar to those bearing the protected trade name if they are identical or similar in terms of substance, functions, utility and distribution channel.

Article 14.- Infringing elements of plant varieties

1. An infringing element of a plant variety may take one of the following forms:

a/ Use of a sapling or propagative material of a protected plant variety to commit acts specified in Clause 1, Article 186 of the Law on Intellectual Property without the permission of the protection title holder;

b/ Use of a sapling or propagative material or any plant variety specified in Clause 1 or Clause 2, Article 187 of the Law on Intellectual Property;

c/ The process of producing plant varieties specified in Clause 3, Article 187 of the Law on Intellectual Property;

d/ Use of the name of a plant variety of the same species or a species close to the species of a protected plant variety that is identical or confusingly similar to the name of the protected plant variety;

e/ The provisions of Point a and Point b of this Clause shall also apply to harvested materials if the protection title holder has no reasonable conditions for exercising his/her rights to the propagation material of the same plant variety.

2. Bases for determination of an infringing element of the rights to a plant variety:

a/ Written description of the plant variety, with the certification of a plant variety protection agency;

b/ Plant variety protection title.

Article 15.- Bases for determination of the nature and extent of infringement

1. The nature of infringement provided in Clause 1, Article 199 of the Law on Intellectual Property is determined on the following bases:

a/ Circumstances and motive of infringement: unintentional infringement, intentional infringement, infringement due to control or dependency, first-time infringement, recidivism;

b/ Manners of commission of acts of infringement: isolated infringement, infringement in an organized manner, self-commission of acts of infringement, bribery, deception or compelling of other persons to commit acts of infringement.

2. The extent of infringement provided in Clause 1, Article 199 of the Law on Intellectual Property is determined on the following bases:

a/ Scope of territory, time, volume and scale of commission of acts of infringements;

b/ Influence and consequences of acts of infringement.

Section 2. DETERMINATION OF DAMAGE

Article 16.- Principles for determination of damage

1. Damage as a result of intellectual property right infringement provided in Article 204 of the Law on Intellectual Property is actual losses including both physical and spiritual losses directly caused to the intellectual property right holder by acts of intellectual property right infringement.

2. Actual losses shall be regarded as having been occurred when all of the following bases exist:

a/ The physical or spiritual benefit is real and belongs to the aggrieved person;

b/ The aggrieved person could achieve the benefit referred to at Point a of this Clause;

c/ There is a decrease in or loss of the benefit of the aggrieved person after the act of intellectual property right infringement is committed as compared to the possibility of achieving such benefit if such act of intellectual property right infringement would not happen and it constitutes the direct cause of such decrease in or loss of the benefit.

3. The level of damage is determined in accordance with the infringing elements of the intellectual property right subject matters.

The determination of the level of damage is based on the evidence of the damage furnished by the parties, including the assessment results and damage declarations that clearly state the bases for determination and calculation of the level of damage.

Article 17.- Loss in property

1. Losses in property are 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 is determined in accordance with the following bases:
 - a/ The price of transfer of the ownership right or the price of assignment of the use right of the intellectual property right subject matter;
 - b/ The value of the business capital contributed in the form of intellectual property rights;
 - c/ The ratio of the value of intellectual property rights to the total assets of an enterprise;
 - d/ The value of investment in the creation and development of the intellectual property right subject matter, including marketing, research, advertising and labor costs, taxes and other expenses.

Article 18.- Decrease in income, profits

1. The income, profits referred to at Point a, Clause 1 of Article 204 of the Law on Intellectual Property include the following:
 - a/ The income, profits gained from directly using and exploiting the intellectual property right subject matter;
 - b/ The income, profits gained from leasing the intellectual property right subject matter;
 - c/ The income, profits gained from assigning the right to use the intellectual property right subject matter.
2. The level of decrease in income, profits is 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 specified in Clause 1 of this Article;
 - b/ Comparison between the yields or volumes of products, goods or services actually consumed or supplied before and after the acts of infringement are committed;

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

Article 19.- Losses in business opportunities

1. Business opportunities specified at Point a, Clause 1 of Article 204 of the Law on Intellectual Property include the following:

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

b/ Actual possibility of leasing the intellectual property right subject matter to other persons;

c/ Actual possibility of assigning the use right of or transferring the intellectual property right subject matter to other persons;

d/ Loss of other business opportunities directly caused by the acts of infringement.

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 20.- Reasonable expenses for prevention and remedy of damage

Reasonable expenses for prevention and remedy of damage referred to at Point a, Clause 1, Article 204 of the Law on Intellectual Property include expenses for temporary custody, maintenance, storage of infringing goods, costs of implementation of provisional urgent measures, reasonable expenses for hire of the assessment service, prevention and remedy of consequences of acts of infringement, and cost of notification and correction in the mass media relating to acts of infringement.

Chapter III

REQUEST FOR HANDLING OF INFRINGEMENTS AND SETTLEMENT THEREOF

Article 21.- Exercise of the right to self-protection

1. Organizations and individuals shall exercise the right to self-protection under the provisions of Article 198 of the Law on Intellectual Property and the specific provisions of this Article.

2. Technological measures provided at Point a, Clause 1, Article 198 of the Law on Intellectual Property include:

a/ Displaying indicative information on the origin of emergence, protection title, owner, scope and period of protection and other information on intellectual property rights on products, means of services, the originals and copies of works, fixations of performances, phonograms, video recordings or broadcasts (collectively referred to as products in this Article) in order to inform that the products are protected intellectual property right subject matters and warn that they should not be infringed upon;

b/ Using technical means or measures to mark, identify, distinguish and protect the protected products.

3. Intellectual property right holders shall request termination of acts of infringement specified at Point b, Clause 1, Article 198 of the Law on Intellectual Property by sending written notices to the infringes. Such a written notice shall contain indicative information on the origin of emergence, protection title, owner, scope and term of protection and fix a reasonable period of time for the infringer to terminate the act of infringement.

4. Requests for competent state agencies to handle acts of infringement provided at Point c, Clause 1, Article 198 of the Law on Intellectual Property shall comply with the provisions of Articles 22, 23, 24, 25, 26 and 27 of this Decree.

Article 22.- Petition for handling of infringement

1. A petition for handling of infringement must contain the following major details:

a/ Date of the petition;

b/ Name and address of the requester for handling of infringement; full name of the 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 infringer; name and address of the suspected infringer in the case of request for temporary cessation of customs clearance for exports or imports suspected of infringement;

e/ Name(s) and address(es) of organizations and individuals with related rights and interests (if any);

f/ Name(s) and address(es) of the witness(es) (if any);

g/ Brief information about the infringed intellectual property rights: type of the right, bases for emergence of the right and its subject matter;

h/ Brief information about the act of infringement: date and place of occurrence of the infringement, brief description of the infringing product, acts of infringement and other information (if any).

For a petition for temporary cessation of customs clearance for imports or exports suspected of infringement, it is required to contain additional information on the mode of import or export, country of exportation, mode of packaging, the lawful importer or exporter, features of lawfully imported or exported goods for distinction from infringing goods; risks of occurrence of circumstances when certain measures need to be applied to prevent infringements and to secure the imposition of penalties, and other information (if any);

i/ Proposed measures to handle infringement;

j/ A list of documents and evidence accompanying the petition;

k/ Signature of the petitioner with a seal (if any).

2. A petition for handling of infringement must be accompanied with documents and evidence to prove the request.

Article 23.- Accompanying documents, evidence and exhibits

1. A requester for handling of infringement must submit the petition together with the following documents, evidence and exhibits to prove the request:

a/ Evidence proving that the requester is the right holder, if the requester is the right holder or an assignee, heir or successor of the intellectual property rights;

b/ Evidence proving the actual occurrence of the acts of infringement; proving the suspicion of infringing imports or exports (for a petition for temporary cessation of customs clearance for imports or exports suspected of infringement);

c/ Copy of the notice sent by the intellectual property right holder to the infringer, which allows a reasonable period of time for the infringer to terminate the acts of infringement, and evidence proving the infringer's failure to terminate the acts of infringement in the case of filing a petition for handling of infringement under the provisions of Point b, Clause 1, Article 211 of the Law on Intellectual Property;

d/ Evidence proving the damage caused by the infringing products to consumers or society, including food, foodstuffs, preventive and curative medicines, livestock feeds, fertilizers, veterinary drugs, plant protection drugs, plant varieties and animal breeds that are harmful to the health of humans or animals or to the environment, in the case of filing a petition

for handling of infringement under the provisions of Point a, Clause 1, Article 211 of the Law on Intellectual Property;

e/ Evidence and exhibits related to the intellectual property counterfeit goods or products, parts of products, decals, labels, marks, goods packages, materials and means chiefly used for the production of intellectual property counterfeit goods; documents proving the acts of assignment, ordering, production or trading of products, parts of products, decals, labels, marks, goods packages, materials and means used for the production of intellectual property counterfeit goods in the case of filing a petition for handling of infringement under the provisions of Point c or d, Clause 1, Article 211 of the Law on Intellectual Property;

f/ Evidence proving the request for the application of measures to prevent infringement and to secure the imposition of penalties (in the case of concurrently requesting the application of those measures).

2. When a request for handling of infringement is made through an authorized representative, the petition must be enclosed with the paper or contract of authorization notarized by public notary or certified by the local administration; if it is made by a representative at law, the petition must be enclosed with a paper proving the representative-at-law status.

Article 24.- Evidence to prove the right holder status

The documents referred to in Clause 2, Article 203 the Law on Intellectual Property and specified in this Clause shall be regarded as evidence to prove the right holder status.

1. For inventions, industrial designs, lay-out designs, marks, geographical indications, plant varieties, copyright, rights of performers, rights of producers of phonograms or video recordings or rights of broadcasting organizations already registered, evidence to prove the right holder status may be one of the following two documents:

a/ The original of the protection title for inventions, industrial designs, layout design, marks or geographical indications; the original of the protection title for plant varieties; the original of a copyright/related right registration certificate or a copy thereof notarized by a public notary or certified by the original-issuing agency;

b/ An excerpt of the National Register of Industrial Property; an excerpt of the National Register of Copyright/Related Rights; an excerpt of the National Register of Rights to Plant Varieties, issued by the competent agencies that have registered those subject matters.

2. For an internationally registered mark, the evidence to prove the right holder status shall be the original or the certificate of protection in Vietnam of such internationally registered mark issued by the state

management agency in charge of industrial property, a copy of the International Mark Official Gazette of the World Intellectual Property Organization that is certified by the state management agency in charge of industrial property or a copy of or the certificate of protection in Vietnam of such internationally registered mark or the Industrial Property Official Gazette that is notarized by public notary or certified by the state management agency in charge of industrial property.

3. For other intellectual property rights subject matters, evidence to prove the right holder status shall be any documents, exhibits or information used as the basis for emergence and establishment of the relevant right as provided in Clause 1, Clause 2, at Point b and Point c, Clause 3 of Article 6 of the Law on Intellectual Property and specified as follows:

a/ For unregistered copyright, rights of performers, rights of producers of phonograms or video recordings or rights of broadcasting organizations: the original or a copy of the work, fixation of the performance, phonogram, video recording, the broadcast, the satellite signals carrying encoded programs together with other documents evidencing their creation, publication or dissemination of those subject matters and accompanying documents and evidence (if any);

b/ For business secrets: a description of the contents, form of storage, method of protection and method of acquisition of the secret;

c/ For trade names: a description of the contents, mode of use and using process of the trade name;

d/ For well-known marks: documents evidencing the criteria of a well-known mark provided in Article 75 of the Law on Intellectual Property and explanations on the process of using a mark to make it well-known.

4. If the requester for handling of infringement is a transferee of the ownership of the intellectual property right subject matter, a transferee of the right to use the intellectual property right subject matter, a heir or successor of the intellectual property right subject matter, in addition to those documents referred to in Clauses 1, 2 and 3 of this Article, the requester shall also produce the original or a valid copy of the contract for transfer of the ownership of the intellectual property right subject matter or for the use of the intellectual property right subject matter or a document of certification of the inheritance or succession of the intellectual property right subject matter. When the transfer has been entered in the protection title or the certificate of registration of the contract for transfer of the ownership of the intellectual property right subject matter or for the use of the intellectual property right subject matter, these documents shall be also regarded as evidence to prove the right holder status.

Article 25.- 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 or related exhibit expressing the protected subject matter;

b/ The specimen, related exhibit, photos or recorded images of the examined products;

c/ The written explanation and comparison between the examined products and protected subject matter;

d/ Minutes, testimonies and other documents evidencing acts of infringement.

2. A list of the documents and exhibits referred to in Clause 1 of this Article must be made, certified with the signature of the requester.

Article 26.- Responsibilities of requesters for handling of infringement

1. A requester for handling of infringement shall ensure and be held liable for the truthfulness of the information, documents and evidence that he/she supplied.

2. A requester for handling of infringement who takes advantage of the right to request for handling of infringement for other unhealthy purposes and thereby causing damage to other organizations and individuals shall be liable for compensation.

Article 27.- Filing and settlement of petitions for handling of infringement

1. A petition for handling of infringement shall be filed with agencies with competence to handle infringements defined in Article 200 of the Law on Intellectual Property.

2. Upon receiving a petition for handling of infringement, if the petition-receiving agency finds that the petition falls within the settling competence of another agency, it shall either instruct the requester to file the petition with the agency with the settling competence or forward the petition to the agency with settling competence within ten days after the date of receipt of the petition.

3. If a petition for handling of infringement lacks documents, evidence or exhibits as required, the infringement-handling agency shall request the requester to submit supplementary documents and evidence and fix a reasonable time limit not exceeding thirty days for the requester to do so.

4. The infringement-handling agency shall reject a petition for handling of infringement and state the reason for rejection in the following cases:

a/ At the expiration of the fixed time limit referred to in Clause 3 of this Article, the requester for handling of infringement fails to submit supplementary documents and evidence as requested by the infringement-handling agency;

b/ The statute of limitations for handling infringements as provided for by law has expired;

c/ The verification result of the infringement-handling agency or the police shows that there is no infringement as described in the petition;

d/ A competent agency's document shows that there are insufficient grounds for handling the infringement.

5. When there is a dispute over or complaint about the right holder, the possibility of protection or scope of protection of the intellectual property rights, the agency that has received the petition for handling of infringement shall instruct the requester to carry out procedures for requesting settlement of the dispute or complaint at a competent agency within ten days after the date on which the dispute arises.

Chapter IV

HANDLING OF INFRINGEMENTS BY ADMINISTRATIVE MEASURES

Article 28.- Determination of the value of infringing goods

1. Infringing goods:

a/ Infringing goods provided in Clause 4, Article 214 of the Law on Intellectual Property are components (parts or details) of products 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 infringing elements as independent product components as provided at Point a of this Clause, then the infringing goods shall be the whole products that contain infringing elements.

2. The value of infringing goods specified in Clause 4, Article 214 of the Law on Intellectual Property shall be determined by the infringement-handling agency at the time of occurrence of the acts of infringement on the following bases that are arranged in the priority order as follows:

a/ The listed prices of the infringing goods;

b/ The actual selling prices of the infringing goods;

c/ The cost of the infringing goods (if not yet delivered for sale);

d/ The market prices of similar goods with the same technical specifications and quality.

3. The value of infringing goods shall be calculated either on the basis of components (parts, details) of the infringing products referred to at Point a, Clause 1 of this Article or on the value of the whole of the infringing products referred to at Point b, Clause 1 of this Article.

4. When the application of the bases specified in Clause 2 of this Article is inappropriate or the infringement-handling agency and the finance agency of the same level cannot reach agreement on the determination of the value of the infringing goods, the valuation of these goods shall be decided by the council for determination of the value of infringing goods.

The establishment, composition and working principles of the council for determination of the value of infringing goods shall comply with the provisions of law.

Article 29.- Disposal of infringing goods

1. For intellectual property counterfeit goods, raw materials, materials and implements mainly used for producing or trading such goods, the infringement-handling agency may apply one of the following measures:

a/ Confiscation for distribution or use for non-commercial purposes in accordance with Article 30 of this Decree;

b/ Confiscation for destruction under Article 31 of this Decree;

c/ Compelling goods owners, transporters or storers to remove infringing elements and deliver out of the Vietnamese territory transit goods being goods with counterfeit marks, or to re-export imported goods being goods with counterfeit marks, being raw materials, materials and means mainly used for producing goods with counterfeit marks; if it is impossible to remove the infringing elements, then appropriate measures specified in Clause 4 of this Article may be applied.

For imported goods with counterfeit geographical indications or imported raw materials, materials and means mainly used for producing or trading goods with counterfeit geographical indications or illegally copied goods, the infringement-handling agency may apply the measure of compelling removal of infringing elements and appropriate measures specified in Clause 4 of this Article on a case-by-case basis.

2. For infringing goods that are not intellectual property counterfeit goods or materials, raw materials and means mainly used for producing or trading such goods, the infringement-handling agency shall apply measures to compel the goods owner, transporter or storer of those goods

to remove the infringing elements from the goods, then apply appropriate measures specified in Clause 4 of this Article.

For imported infringing goods that are not intellectual property counterfeit goods or materials, raw materials and means mainly used to produce or trade in such goods, the infringement-handling agency shall apply appropriate measures specified at Point c, Clause 1 of this Article.

3. Materials, raw materials and means that have the sole function of creating or commercially exploiting intellectual property counterfeit goods, infringing goods or are actually used only for that purpose shall be regarded as materials, raw materials and means mainly used for producing or trading intellectual property counterfeit goods or infringing goods.

4. On a case-by-case basis, the infringement-handling agency shall decide to apply measures specified at Point a, Point b, Clause 1 of this Article or other appropriate measures as it deems appropriate. In the process of issuing a decision to handle infringement, the infringement-handling agency may consider the related parties' proposals regarding the handling of infringement.

Article 30. - Compelled distribution or use for non-commercial purposes

1. The compelled distribution or use of intellectual property counterfeit goods or infringing goods for non-commercial purposes must satisfy the following conditions:

a/ The goods are useable;

b/ Infringing elements have been removed from the goods;

c/ Such distribution or use is for non-commercial purposes and does not unreasonably affect the normal exercise of the rights of the intellectual property right holder, where the purposes of humanity, charity and public interest shall be prioritized;

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 raw materials, materials and means for producing and trading intellectual property counterfeit goods or infringing goods.

Article 31.- Compelled destruction

The measure of compelled destruction of intellectual property counterfeit goods, infringing goods and raw materials, materials and means mainly used for producing and trading those goods 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 provided in Article 30 of this Decree are not fully met.

Article 32.- Confiscation

The measure of confiscation of intellectual property counterfeit goods, raw materials, materials and means mainly used for producing and trading those goods shall be applied in the following cases:

1. In an emergency case in order to ensure that evidence is not destroyed, dispersed or altered or to prevent the possible commission of further acts of infringement.
2. The infringing organization or individual has no capability or condition to remove infringing elements from the goods or intentionally fails to comply with the request for removal of infringing elements from the goods or fails to take other measures as prescribed by the infringement-handling agency.
3. The goods are of unknown origin or belong to unknown owner while there are sufficient bases for determining that they are intellectual property counterfeit goods.

Article 33.- Other administrative remedies and sanctioning competence and procedures

Other forms of administrative sanction and remedies, the competence and procedures for sanctioning acts of infringement shall be applied under the provisions of law on sanctioning of administrative violations in the domains of copyright and related rights, industrial property rights and rights to plant varieties.

Chapter V

CONTROL OVER INTELLECTUAL PROPERTY-RELATED IMPORTS AND EXPORTS

Article 34.- Right to request control over intellectual property-related imports and exports

Intellectual property right holders may either directly or through their representatives files a petition for control or supervision for the purpose of detecting imports or exports containing signs of intellectual property right infringement or a petition for temporary cessation of customs clearance for imports or exports suspected of intellectual property right infringement.

Article 35.- Customs offices competent to receive petitions

1. District customs departments shall have the power to receive petitions for checking or supervision or temporary cessation of customs clearance at the border gates under their management.
2. Provincial/municipal customs departments shall have the power to receive petitions for checking or supervision or temporary cessation of customs clearance at the border gates under their management.
3. The General Department of Customs shall have the power to receive petitions for checking or supervision or temporary cessation of customs clearance at the border gates under the management of two and more provincial/municipal customs departments.
4. In the cases specified in Clauses 2 and 3 of this Article, intellectual property right holders may also file their petitions at each district or provincial customs department.

Article 36.- Procedures for processing petitions

1. Within thirty days after the date of receipt of a petition for checking or supervision of imports or exports, or within twenty-four working hours after the receipt of a petition for temporary cessation of customs clearance, the customs office shall be responsible for considering and issuing a notice on acceptance of the petition, if the petitioner has performed the obligations provided at Points a, b, c, Clauses 1 and 2, Article 217 of the Law on Intellectual Property. In case of rejection, the customs office shall reply in writing to the petitioner, clearly stating the reasons therefor.
2. When the General Department of Customs accepts a petition, it shall forward the petition and instruct relevant provincial/municipal customs departments for settlement.

When a provincial/municipal customs department accepts a petition, it shall forward the petition and instruct relevant district customs departments for settlement.

District customs departments shall be responsible for checking and supervising to find out goods suspected of infringement or deciding on temporary cessation of customs clearance on the basis of the petitions for temporary cessation of customs clearance and instructions of the General Department of Customs or provincial/municipal customs departments.

Article 37.- Disposal of goods suspected of infringement

1. In case the goods suspected of intellectual property right infringement are found, at the request of the intellectual property right holder or in exercising the power to impose administrative sanctions, the customs office shall issue a decision to temporarily cease customs clearance, and

notify the temporary cessation of customs clearance to the intellectual property right holder and the goods owner, stating the names, addresses, facsimile numbers and telephone numbers of the concerned parties, the reason for and the duration of the temporary cessation.

2. The customs office shall continue customs clearance for the goods shipment in question according to the provisions of Clause 3, Article 218 of Law on the Intellectual Property and in the following cases:

a/ Upon cancellation or revocation of the decision on temporary cessation of customs clearance under a decision on the settlement of the complaint or denunciation;

b/ Upon withdrawal by the requester of the petition for temporary cessation of customs clearance.

Article 38.- Procedures for controlling intellectual property-related imports and exports

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

Chapter VI

INTELLECTUAL PROPERTY ASSESSMENT

Article 39.- Contents and areas of intellectual property assessment

1. Intellectual property assessment covers the following contents:

a/ Determination of the legal status and protectability of the intellectual property right subject matter; the scope of intellectual property right protection;

b/ Determination of evidence for calculation of the level of damage;

c/ Determination of infringing elements, infringing products/services, the element serving as a basis for determination of the value of the protected intellectual property right subject matter, the infringing objects;

d/ Determination of the ability to prove the intellectual property right holder status, infringement, infringing goods or the ability to prove to the contrary of documents and evidence used in the dispute or infringement;

e/ Other circumstances of the case that need to be clarified.

2. Intellectual property assessment shall cover the following areas:

a/ Assessment of copyright and related rights;

b/ Assessment of industrial property rights;

c/ Assessment of the rights to plant varieties.

Article 40.- Competence to solicit and the right to request intellectual property assessment

1. The agencies with competence to solicit intellectual property assessment are agencies with competence to settle disputes, handle infringements and settle intellectual property-related complaints and denunciations as defined in Article 200 of the Law on Intellectual Property.

2. The following organizations and individuals are entitled to request intellectual property assessment:

a/ Intellectual property right holders;

b/ Organizations and individuals subject to a request for handling of acts of infringement or intellectual property-related complaint or denunciation;

c/ Other organizations and individuals with related rights and interests in an intellectual property-related dispute, infringement, complaint or denunciation.

3. Organizations and individuals entitled to request assessment as defined in Clause 2 of this Article may directly request or authorize other organizations or individuals to request intellectual property assessment organizations or intellectual property assessors to conduct assessment.

Article 41.- Rights and obligations of persons soliciting or requesting intellectual property assessment

1. Persons soliciting or requesting intellectual property assessment are entitled to:

a/ Request the assessment organization or assessor to make assessment conclusions according to the contents and within the time limit as requested;

b/ Request the assessment organization or assessor to explain assessment conclusions;

c/ Request additional assessment or re-assessment under the provisions of Article 50 of this Decree;

d/ Agree on the assessment charges in the case of request for assessment.

2. Persons soliciting or requesting intellectual property assessment are obliged to:

- a/ Supply fully and honestly documents, evidence and information relating to the assessed subject matter at the request of the assessment organization or assessor;
- b/ Clearly and specifically present issues of which assessment is solicited or requested;
- c/ Pay the assessment charges as agreed upon; make advance payment of assessment charges at the request of the assessment organization or assessor;
- d/ Receive back the assessed subject matter at the request of the assessment organization or assessor.

Article 42.- Intellectual property assessment organizations

1. Intellectual property assessment organizations are organizations meeting all conditions for conducting intellectual property assessment.
2. Conditions for establishing an assessment organization:
 - a/ Having at least two members who have intellectual property assessor's cards;
 - b/ Meeting other conditions under relevant provisions of law.
3. Conditions for an assessment organization to conduct intellectual property assessment:
 - a/ Meeting all conditions specified at Point a, Clause 2 of this Article;
 - b/ Having a certificate of registration of scientific and technological activity and a certificate of registration of the assessment business or practice according to current law;
 - c/ An assessment organization may practice assessment only in the area in which it has registered its activity and assessment business.

Article 43.- Rights and obligations of intellectual property assessment organizations

1. In assessment activities, intellectual property assessment organizations shall have the rights and obligations provided in Clause 4, Article 44 of this Decree; be responsible for ensuring necessary conditions for intellectual property assessors to discharge their rights and obligations; and be liable for assessment conclusions if the assessment is conducted in their names.
2. Intellectual property assessment organizations shall be responsible for taking part in the following activities:
 - a/ Scientific research into intellectual property assessment;

b/ Training assessors and fostering professional skills in intellectual property assessment.

Article 44.- Intellectual property assessors

1. Intellectual property assessors are those who have adequate knowledge and professional skills to assess and conclude on issues related to the contents of assessment and are recognized by competent state agencies under the provisions of Clause 5 of this Article.

Intellectual property assessors may operate independently or as a member of an intellectual property assessment organization.

2. The Ministry of Science and Technology, the Ministry of Culture and Information and the Ministry of Agriculture and Rural Development shall, according to their assigned areas of state management of intellectual property, coordinate with the Ministry of Education and Training and the Ministry of Justice in issuing specific regulations on the programs on professional training in each area of assessment under their respective management.

3. Those who fully meet the following conditions shall be recognized and granted intellectual property assessor's cards:

a/ Having a university degree in the area of assessment;

b/ Possessing good moral qualities;

c/ Having full civil act capacity;

d/ Having passed a professional exam of knowledge about intellectual property law, scientific and technical capability, professional skills and experience for performing assessment of contents related to industrial property rights, copyright, related rights and rights to plant varieties.

The Ministry of Science and Technology, the Ministry of Culture and Information and the Ministry of Agriculture and Rural Development shall stipulate the contents of examination referred to at this Point in the areas under their assigned management; guide and organize those exams and grant certificates of professional eligibility for working as intellectual property assessors.

4. Intellectual property assessors shall have the following rights and obligations:

a/ To perform assessment when solicited or requested; to perform assessment according to the contents of assessment as solicited or requested, and according to the time requirement on assessment; when it is necessary to have more time for assessment, to promptly report it to the person who solicits or requests such assessment;

b/ To refuse to perform assessment when the subject matters of assessment or documents are insufficient or are irrelevant to make assessment conclusions, or when they have rights or benefits relating to the subject matters of assessment or the cases in which assessment is required or where there exist other reasons that may influence the objectiveness of assessment conclusions while they also act as representatives to protect the interests of one of the parties involved in the case in which assessment is required;

c/ To request agencies, organizations to supply documents, exhibits and information relating to the subject matters of assessment;

d/ To select the necessary and appropriate method for assessment; to use test results or conclusions of professionals or comments of experts in service of assessment;

e/ To prepare assessment dossiers, to be present as required in the writ of summon of the assessment-soliciting agency; to explain the assessment conclusions if so requested;

f/ To preserve the exhibits and documents relating to the assessment; to keep confidential all assessment results and information and documents for assessment;

g/ To independently make and be responsible for assessment conclusions;

h/ To compensate for damage when intentionally making false assessment conclusions, causing damage to concerned individuals and organizations;

i/ To comply with the regulations on the order and procedures for assessment and to discharge other rights and obligations provided for by law.

5. The Ministry of Culture and Information, the Ministry of Science and Technology and the Ministry of Agriculture and Rural Development shall stipulate the procedures for recognition of intellectual property assessors, grant and withdrawal of intellectual property assessor's cards; and publish lists of intellectual property assessors in the areas under their respective management corresponding to copyright and related rights, industrial property rights and rights to plant varieties.

Article 45.- Solicitation of assessment

1. Any solicitation of assessment must be made in writing.

2. A document on solicitation of assessment must have the following principal contents:

a/ Name and address of the agency soliciting assessment; name and position of the person competent to solicit assessment;

- b/ Name and address of the assessment organization or the assessor;
- c/ Subject matter and details that need to be assessed;
- d/ Relevant evidence, documents and exhibits;
- e/ The time limit for notifying the assessment conclusions.

Article 46.- Assessment request

1. A request for assessment must be made in the form of an assessment service contract between the person requesting assessment and an assessment organization or an assessor.

2. An assessment service contract must contain the following principal details:

- a/ Name and address of the organization or individual requesting assessment;
- b/ Name and address of the assessment organization or the assessor;
- c/ Contents of the assessment request;
- d/ Relevant evidence, documents and exhibits;
- e/ Time limit for notifying assessment conclusions;
- f/ Rights and obligations of the parties;
- g/ Liabilities for breach of the contract.

Article 47.- Delivery, receipt and return of objects for intellectual property assessment

Where the assessment solicitation or request is enclosed with an assessment object, the handing, receipt and return of the object must be recorded in writing. Such a record must have the following principal details:

1. Time and place of delivery, receipt and return of the assessment object;
2. Names and addresses of the deliverer and recipient of the assessment object or of their representatives;
3. Name of the assessment object; related documents or items.
4. Conditions and method of preservation of the assessment object upon delivery, receipt and return.
5. Signatures of the deliverer and recipient of the assessment object.

Article 48.- Taking of samples for intellectual property assessment

1. The assessment organization or assessor may directly take samples for assessment (particular exhibits that are infringing elements or intellectual property subject matters) or request the assessment solicitor or requester

to supply samples for assessment. The taking of samples for assessment must be recorded in writing to the witness of the involved parties who shall sign this record for certification.

2. The delivery, receipt and return of assessment samples shall comply with the provisions of Article 47 of this Decree.

Article 49.- Performance of intellectual property assessment

1. Intellectual property assessment may be performed by one or several intellectual property assessors. Individual assessment means assessment performed by a single assessor. Collective assessment means assessment performed by two or more assessors.

2. In case of individual assessment, the assessors shall perform the whole of the assessment and be responsible for their assessment conclusions. In case of collective assessment of issues in the same professional area, the assessors shall jointly perform the assessment, sign the common assessment conclusion document and be jointly responsible for assessment conclusions; if the assessors hold different opinions, each assessor shall write his/her own opinion in the common assessment conclusion document and be responsible for that opinion. In case of collective assessment of issues in different professional areas, each assessor shall perform his/her assessment job and be responsible for his/her assessment conclusion.

Article 50.- Additional assessment, re-assessment

1. Additional assessment shall be performed when the assessment conclusion is insufficient and unclear regarding the contents that need assessment or when new circumstances arise and need to be made clear. The request for additional assessment and the performance of additional assessment shall comply with the provisions applicable to first-time assessment.

2. Re-assessment shall be performed when the assessment solicitor or requester disagrees with the assessment result or when exist contradictory assessment results on the same assessed issue. The re-assessment may be performed by the assessment organization or assessor that has performed the previous assessment or by another assessment organization or assessor as requested by the assessment solicitor or requester.

3. If the first-time assessment conclusion is contradictory to the re-assessment conclusion on the same assessed issue, it is possible to further request or solicit re-assessment by another assessment organization or assessor.

Article 51.- Written assessment conclusions

1. Written assessment conclusion shall be considered as evidence used for handling the case.
2. A written assessment conclusion must contain the following principal contents:
 - a/ Name and address of the assessment organization or assessor;
 - b/ Name and address of the agency soliciting assessment or the organization or individual requesting assessment;
 - c/ Object, contents and scope of assessment;
 - d/ Mode of assessment;
 - e/ Assessment conclusions;
 - f/ Time and place of performance and completion of the assessment.
3. A written assessment conclusion must be signed by the assessor(s) performing the assessment. When the assessment is performed by an assessment organization, the written assessment conclusion must also be signed by the head of the assessment organization and affixed with the seal of the assessment organization.

Article 52.- Prohibited acts in the performance of assessment

In the performance of assessment, the following acts are prohibited:

1. Accepting and performing assessment in the cases in which assessment must be refused according to regulations.
2. Intentionally making false assessment conclusions.
3. Disclosing confidential information known in the course of assessment without permission of the involved parties.
4. Taking advantage of the assessment status and assessment activities for self-seeking purposes.

Article 53.- Assessment charges

Charges for intellectual property assessment upon solicitation shall comply with the provisions of law on charges and fees.

Charges for intellectual property assessment upon service request shall be agreed upon by the involved parties.

Chapter VII

STATE MANAGEMENT OF INTELLECTUAL PROPERTY

Article 54.- Principle of unified state management of intellectual property

The performance of the state management of intellectual property provided in Article 10 and Article 11 of the Law on Intellectual Property shall be based on the principle of uniformity of objectives, contents and measures under the general direction of the Government, clear division of responsibilities and close coordination among ministries, ministerial-level agencies, government-attached agencies and People's Committees at all levels.

Article 55.- Responsibilities of the Ministry of Science and Technology

1. The Ministry of Science and Technology shall assume the prime responsibility for, and coordinate with the Ministry of Culture and Information, the Ministry of Agriculture and Rural Development and other ministries, ministerial-level agencies, government-attached agencies and People's Committees at all levels in, carrying out the following general activities in order to secure unified state management of intellectual property:

a/ Formulating, promulgating or submitting to competent authorities for promulgation, and organizing the implementation of, strategies, policies and general legal documents on intellectual property right protection and this Decree;

b/ Monitoring, urging and supervising the performance of the tasks by ministries, ministerial-level agencies, government-attached agencies and People's Committees at all levels, which are assigned by the National Assembly and the Government, in accordance with the provisions of Article 10 and Article 11 of the Law on Intellectual Property, and this Decree;

c/ Summing up, evaluating and reporting to the Government on intellectual property right protection activities, and making proposals on specific policies and measures to improve the effectiveness of intellectual property system and secure the unified state management of intellectual property;

d/ Formulating, and directing the implementation of, general programs and schemes on intellectual property right protection, measures of coordination among competent state agencies in the domain of intellectual property right protection;

e/ Negotiating, concluding, acceding to and organizing the implementation of, general treaties on intellectual property; proposing the settlement of national intellectual property-related disputes in the domain of international relations.

2. Apart from the prime responsibility for performing general activities specified in Clause 1 of this Article, the Ministry of Science and Technology shall have the following responsibilities:

a/ Directly performing the function of state management of industrial property and securing the consistency of industrial property policies, strategies and legal documents with general policies, strategies and legal documents on intellectual property;

b/ Performing other tasks assigned by the Government.

Article 56.- Responsibilities of the Ministry of Culture and Information

The Ministry of Culture and Information shall coordinate with the Ministry of Science and Technology in performing the tasks specified in Clause 1, Article 55 of this Decree and perform the following specific tasks:

a/ Directly performing the function of state management of copyright and related rights, securing the consistency of policies, strategies and legal documents on copyright and related rights with general policies, strategies and legal documents on intellectual property; regularly or irregularly reporting to the Ministry of Science and Technology on the state management and protection of intellectual property rights for coordination in handling emerging issues, sum-up and report to the Prime Minister.

b/ Performing other tasks assigned by the Government.

Article 57.- Responsibilities of the Ministry of Agriculture and Rural Development

The Ministry of Agriculture and Rural Development shall coordinate with the Ministry of Science and Technology in performing the tasks specified in Clause 1, Article 55 of this Decree and perform the following specific tasks:

1. Directly performing the function of state management of rights to plant varieties, securing the consistency of policies, strategies and legal documents on rights to plant varieties with general policies, strategies and legal documents on intellectual property; regularly or irregularly reporting to the Ministry of Science and Technology on the state management and protection of intellectual property rights for coordination in handling emerging issues, sum-up and report to the Prime Minister.

2. Performing other tasks assigned by the Government.

Article 58.- Responsibilities of other ministries, ministerial-level agencies, government-attached agencies and People's Committees at all levels

Ministries, ministerial-level agencies, government-attached agencies and People's Committees at all levels shall, within the scope of their respective functions and tasks, coordinate with the Ministry of Science and Technology, the Ministry of Culture and Information and the Ministry of Agriculture and Rural Development in performing the following specific tasks:

1. Performing the tasks specified in Clause 1, Article 55 of this Decree and directly performing specific tasks assigned by the Government and the National Steering Committee for Intellectual Property.
2. Securing the implementation of policies and law on intellectual property in their localities in accordance with the Law on Intellectual Property and its guiding documents.
3. Regularly or irregularly reporting to the Ministry of Science and Technology on the state management and protection of intellectual property rights for coordination in handling emerging issues, sum-up and report to the Prime Minister.

Article 59.- The National Steering Committee for Intellectual Property

The Prime Minister shall decide to set up the National Steering Committee for Intellectual Property and define specific duties and powers of this Committee

Article 60.- Coordination regime

1. The Ministry of Science and Technology shall assume the prime responsibility for, and coordinate with the Ministry of Culture and Information, the Ministry of Agriculture and Rural Development and concerned agencies in, performing the state management of, protecting, supervising, inspecting and handling infringements of intellectual property rights.
2. State management agencies in charge of intellectual property shall fully and promptly reply to requests of agencies with competence to handle infringements of intellectual property rights.
3. State management agencies in charge of intellectual property shall, upon request, participate in inspection or supervision teams to assist inspection and supervision work.
4. Concerned ministries shall report on the protection of intellectual property rights on an annual basis or upon request to the National

Steering Committee for Intellectual Property, or upon international request.

Chapter VIII

IMPLEMENTATION PROVISIONS

Article 61.- Transition provisions

1. This Decree's provisions on inventions also apply to utility solutions protected under the 1995 Civil Code and the Government's Decree No. 63/CP of October 24, 1996, stipulating in detail industrial property, which was amended under Decree No. 06/2001/ND-CP of February 1, 2001.

2. This Decree's provisions on geographical indications also apply to goods origin appellations protected under the 1995 Civil Code and the Government's Decree No. 63/CP of October 24, 1996, stipulating in detail industrial property, which was amended under Decree No. 06/2001/ND-CP of February 1, 2001.

2. The application of the provisions of this Decree to other intellectual property subject matters complies with the provisions of Clause 1 and Clause 3, Article 220 of the Law on Intellectual Property.

Article 62.- Effect of the Decree

This Decree takes effect 15 days after its publication in "CONG BAO."

Other provisions in documents promulgated before the effective date of this Decree that are contrary to this Decree are all annulled.

Article 63.- Responsibilities for implementation guidance

1. The Minister of Science and Technology, the Minister of Culture and Information and the Minister of Agriculture and Rural Development shall provide guidance on the implementation of this Decree.

2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies, and presidents of People's Committees of provinces and centrally run cities shall implement this Decree.

On behalf of the Government
Prime Minister
NGUYEN TAN DUNG