

DECREE No. 76-CP OF NOVEMBER 29, 1996 OF THE GOVERNMENT
GUIDING THE IMPLEMENTATION OF A NUMBER OF PROVISIONS
ON COPYRIGHT IN THE CIVIL CODE

THE GOVERNMENT

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

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

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

At the proposal of the Minister of Culture and Information.

DECREES

Chapter I

GENERAL PROVISIONS

Article 1. This Decree provides guidance for the implementation of a number of provisions on copyright in Chapter I, Part VI of the Civil Code, or the Code for short.

Article 2. Author:

1. An author is person who personally creates the whole or part of a literary, artistic or scientific work.
2. A person who collects already published works of another or other person(s) to make a selection or anthological work, arranged under a certain topic and bearing a creative character, shall be acknowledged as the author of such selection or anthological work. These authors' rights shall not affect the rights of the author of the original work(s).
3. To be acknowledged as author(s), the person(s) defined in Clause 1 and 2 of this Article shall have to put their real names or pen names on their works when they are published or publicized.
4. A person who translates, re-creates, compiles, adapts or transforms a work shall have to write down clearly the name of the author of the original work and must not put his/her name on the same line as the name of the author of the original work.
5. An organization or individual that supports, contributes opinions or supplies materials for another person to create a work shall not be acknowledged as a author of the work.

Articles 3. Owner of a work:

1. The owner of a work shall have the right to transfer part or the whole of his/her ownership right over the work to another individual or legal person, but such a transfer must be done through a written contract. The transfer of part of the ownership right over the work shall not affect the ownership right over the remaining parts of that work.

2. An individual or organization that is responsible for providing funds or creating decisive conditions for the development of a computer software, except otherwise agreed upon by the parties.

Article 4. The genres of protected works stipulated in Article 747 of the Code shall be construed as follows:

1. Works written in characters or signs such as novels, stories, short stories, notes, travelogues, essays, memoirs, poems, epics, dramas, pieces of music, cultural, literary and artistic studies and other writings.
2. Lectures, speeches which are prepared in writing or orally presented but recorded and circulated as written documents.
3. Theatrical works and the other forms of artistic performances which are presented on stage, such as: plays, songs, dances, circus, puppetry and others.
4. Cinematographic and video works with or without sounds recordings.
5. Radio and Television works created for transmission by radio waves to the public.
6. Press works, including printed, spoken and visual press in Vietnamese, languages of ethnic minorities in Vietnam or in foreign languages.
7. Musical works, including vocal and instrumental music expressed through singing or musical instruments.
8. Architectural works, including designs with creative ideas on houses, constructions or space planning already or not yet materialized.
9. Plastic art works and applied fine art works including painting, graphics, sculptures, applied fine art works and others.
10. Photographic works which record images of objects on photosensitive materials.
11. Scientific works, text books, teaching materials in the fields of research, teaching and training.
12. Graphics, drawings, diagrams and maps related to topography, architecture or scientific projects.
13. Translated, re-created, adapted, transformed, compiled, annotated, selected and anthological works:
 - a. Work translated form one language into another, from “Nom” (Chinese transliteration of the Vietnamese language) into “Quoc ngu” (romanized Vietnamese).
 - b. Work re-created on the basis of the contents of an existing work.

- c. Transformed work created on the basis of an original work by changing the form of expression.
- d. Work transformed from one artistic genre into another.
- e. Compiled work selected according to a certain topic, which may contain comments and appreciations.
- f. Annotated work clarifying the meanings of a number of works, sentences or place names of places in an existing work.
- g. Selection gathering works or writings by one or many authors.
- h. Anthological work compiles from many works of many authors according to a certain intention.

14. Computer software, including computer programs, documents describing programs, supportive documents, databases.

Article 5. Publishing and Publicizing:

The publication and dissemination of a work is the presentation of that work before the public in the forms of lecture, exhibition, publication, performance, radio or television broadcasting and other forms.

Article 6. The moment at which the copyright arises:

The copyright over a work shall arise at the moment when the created work is expressed in a certain material form, whether the work has been published or not, registered for copyright protection or not.

Article 7. The right to request copyright protection:

The author or owner of a work described in Article 747, the performers, organizations producing audio tapes and disks, video tapes and disks, radio and television broadcasting organizations specified in Article 775, 777 and 779 of the Code shall have the right to request the competent State agency to protect their copyrights if they are infringed upon.

Chapter II

AUTHOR'S RIGHTS AND RIGHTS OF THE OWNER OF A WORK

Article 8. Rights of the author who is also owner of a work:

1. The personal rights of an author stipulated in Points c, d, Clause 1 of Article 751 of the Code may be transferred to another person. Such a transfer must be carried out through a written contract.
2. The author's rights to publicize, disseminate or allow others to publicize or disseminate his/her work as prescribed in Point c, Clause 1, Article 751 of the Code, shall be exercised in the following forms:
 - a. Publishing, editing or copying the work.

- b. Performing or displaying the work before the public.
 - c. Disseminating the work to the public by any means or in any form.
 - d. Distributing the works or its copies by selling, leasing or in other ways.
 - e. Importing copies of his/her work from overseas into Vietnam.
3. The author's rights to permit or not to permit another person to use his/her work, as stipulated in Point d, Clause 1, Article 751 of the Code, shall be exercised in the following forms:

- a. Copying the work in any form.
- b. Translating, re-creating, compiling, adapting or transforming the work.

4. The payment of the author's royalties or remuneration or other material benefits which he/she is entitled to in under Clause 2, Article 751 of the Code shall be determined based on the basis of the contract between the author and the individual or organization using his/her work.

Article 9. Rights of the owner who is not author of the work:

1. The provisions in Clauses 1, 2, 3 Article 8 of this Decree shall also apply to the personal rights of the owner who is not author of the work as provided for in Clause 1, Article 753 of the Code.
2. The provisions in Clause 4, Article 8 of this Decree shall also apply to the property rights of the owner who is not author of the work as provided for in Clause 2, Article 753 of the Code.

Article 10. Rights of co-authors:

With regard to co-authored works stipulated in Clause 1, Article 755 of the Code, the use and disposal of the works must be agreed upon by all the co-authors; if one of the co-authors dies, there must be the consent of the heir of that co-author.

Article 11. Rights of an author who translates, re-creates, compiles, adapts or transforms a work.

Individuals or organizations that base themselves on the translated, re-created, compiled, transformed or adapted works of other persons to create new works, must obtain permission from the authors or owners of the work.

The request for permission and payment of remuneration to the author or owner of the translated, re-created, compiled, transformed or adapted work must be made into a contract.

Article 12. Forms of using a works without having to obtain permission and paying remuneration:

1. The copying of a work for personal use as stipulated in Point a, Clause 1, Article 761 of the Code shall not exceed one copy.

2. The quoted part(s) of an already publicized work of other person(s) as stipulated in Points b, c, d, Clause 1, Article 761 of the Code shall not become the main part(s) of the new work; the quoted part(s) shall be used only as an introduction, comment or illustration in the new work and the name of the author as well as the origin of the quoted work must be clearly recorded.

3. The translation of a work from Vietnamese into languages of ethnic minorities in Vietnam and vice versa as stipulated in Point e, Clause 1, Article 761 of the Code shall apply only to the original works in Vietnamese or in languages of ethnic minorities in Vietnam.

4. Public performances stipulated in Point g, Clause 1, Article 761 of the Code shall apply only to performances without admission money in any form.

Article 13. Inheritance of copyright:

1. In case the copyright can be inherited by law, the heirs of the same rank shall have equal rights in the use and disposal of the work. The use and disposal of the work must be agreed upon by all the heirs; if they fail to reach an agreement, they may request the Court to settle the case.

In case the copyright can be inherited by a lawful testaments, if there are many testamentary heirs, they shall be entitled to the use and disposal of the work according to the scope specified in the testament. Where the testament fails to state clearly the scope of use and disposal of the work for each of the heirs, the use and disposal of the work must be agreed upon by all the testamentary heirs; if they fail to reach an agreement, they may request the Court to settle the case.

2. In case where the author or co-author has no heir or the heir refuses to receive the legacy or is not entitled to enjoy the legacy, the property rights of that author or co-author shall belong to the State.

The Ministry of Culture and Information shall be responsible for providing guidance on the use of the above-mentioned work as well as the mode of remuneration payment.

Article 14. Time limit for copyright protection:

1. The date on which the 50-year period for copyright protection as prescribed in Clauses 2 and 3, Article 766 of the Code terminates is December 31 of the 50th year.

2. The date on which the 50-year period for the copyright protection of a cinematographic work, a radio or television broadcasting work, a video work or a work published posthumously; and for the protection of the rights of the organization producing audio tapes and disks, video tapes and disks, radio and television broadcasting organizations stipulated in Clause 4, Article 766, Articles 777 and 779 of the Code is December 31 of the 50th year, counting from the day the work is publicized for the first time.

3. For any transfer of personal rights stipulated in Points c and d, Clause 2, Article 751 of the Code, the time limit for copyright protection must not exceed the time limit provided for by law.

Chapter III

CONTRACT FOR THE USE OF A WORK

Article 15. Contract for the use of a work:

1. A contract for the use of a work must be made in accordance with the provisions of Article 767 and 768 of the Code and must conform to the form of contract for the use of works issued by the Ministry of Culture and Information.
2. The signing of a contract for the use of a work of co-author must be agreed upon between the co-authors or the persons entitled to transfer the co-author's rights and the work user on the contents stipulated in Article 768 of the Code. The co-authors or persons entitled to transfer the co-author's rights and the work user shall have to sign to the contract.

Article 16. Obligations of the author and/or owner of a work:

1. To transfer the work to the work user for publication and dissemination of the work within the time limit agreed upon in the contract.
2. When the contract remains valid, the author and/or owner of a work shall not be allowed to transfer the whole or part of the work to another individual or organization for the publication and dissemination of such work without a written consent of the work user, except otherwise agreed upon by the two parties.

Article 17. Obligations of the work user:

1. Within 30 days after the author and/or owner of the work transfers it to the work user, the work user shall have to notify in writing the author and/or owner of whether the work is accepted or not, except otherwise agreed upon by the two parties.

In cases where the work needs to be amended and perfected at the author's and/or owner's request, the time for the transfer of the final copy of the work shall be agreed upon by the two parties.

2. Unless there is a written consent of the author, the work user shall not be allowed to change the author's name, the work's contents as well as the preamble, epilogue, notes or illustrations in the work.
3. The work user shall have to strictly abide by the agreements in the contract concerning the time for the publication and dissemination of the work, the forms and scope of its use, the amount of royalties and remuneration and the time and mode of payment of royalties or remuneration.

Article 18. Cancellation of the contract:

1. The author and/or owner of a work shall have the right to cancel the contract and request the work user to compensate for damage in the event that the latter fails to

comply with provisions of Clauses 1, 2, 3, Article 771 of the Code and provisions of Clauses 2 and 3 of Article 17 of this Decree.

2. The work user shall have the right to cancel the contract and request the author and/or owner of the work to compensate for damage in the following cases:

- a. The work is not protected by the State as stipulated in Article 749 of the Code.
- b. The author or owner of the work does not transfer it within the time limit already provided for in the contract.
- c. The author or owner of the work refuses to fulfill the agreements of the two parties in the contract.

Chapter IV

RIGHTS AND OBLIGATIONS OF PERFORMERS, ORGANIZATIONS PRODUCING AUDIO TAPES AND DISKS, VIDEO TAPES AND DISKS, RADIO AND TELEVISION BROADCASTING ORGANIZATIONS

Article 19. The obligations of performers stipulated in Article 774 of the Code are further clarified with respect to the following cases:

In cases where an unpublicized work of another person is used for performance, there must be a written consent from the author or owner of the work. The payment of remuneration must be made in accordance with the contract agreed upon by the performer and the author or owner of the work.

Article 20. The rights of performers stipulated in Article 775 of the Code are further clarified with respect to the following cases:

1. A performer is entitled to remuneration by allowing another person to use his/her performance program to produce an audio or video product for commercial purposes or to produce radio or television programs in accordance with the provisions of Clauses 3 and 4, Articles 775 of the Code.
2. In cases where the performer's rights stipulated in Article 775 of the Code are infringed upon by an organization or individual, he/she shall have the right to send a request to the competent State agency for consideration and settlement.

Article 21. Obligations of the organizations producing audio tapes and disks, video tapes and disks, and radio and television broadcasting organizations:

1. The provisions of Articles 776 and 778 of the Code shall also apply to organizations producing recorded audio and visual products in the form of tapes and disks or other technologies which are in existence or shall be developed in the future.
2. An individual or organization that use an unpublished work of another person for the production of recorded audio or visual products shall have to obtain a written consent of the author or owner of the work. The payment of royalties or remuneration to the author or owner of the work must be made in accordance with the contract already signed with such author or owner of the work.

3. Radio or television broadcasting organizations that use performance programs or recorded audio and visual products to make their own radio or television programs, shall have to pay remuneration to the performer or the organization that has produced the products.

Articles 22. Rights of organizations producing audio tapes and disks, video tapes and disks and of radio and television broadcasting organizations:

1. The rights of organizations producing audio tapes and disks, video tapes and disks stipulated in Point a, Clause 1, Article 777 and Article 779 of the Code shall include the right to permit or not to permit or not to permit the copying and distribution of their products by other persons.

2. If their rights stipulated in Articles 777 and 779 of the Code are infringed upon by an individual or organization, the organizations producing audio tapes and disks, video tapes and disks shall be entitled to send a request to the competent State agency for consideration and settlement.

Chapter V

REGISTERING COPYRIGHT AND OWNERSHIP RIGHT OVER A WORK

Article 23. An individual or organization that is the author, co-author or owner of a work shall have the right to apply for registration and protection of their copyright and ownership right over the work.

Article 24. Registration procedures:

1. The author, co-author or owner of a work who wishes to register his/her copyright and ownership right over the works shall have to file application for registration and production according to the form issued by the Ministry of Culture and Information.

2. The applicant shall have to produce necessary materials and papers to prove that he/she is the author, co-author or owner of the work and shall have to pay the prescribed registration fee. The author, co-author or owner of the work may mandate another individual or legal person to fill the registration procedures; the mandating paper must be notarized by the State Notary Office or certified by the People's Committee of the commune, ward or township where the author, co-author or owner of the work resides.

3. In case a heir comes to register, he/she shall have to produce papers evidencing that he/she is the legal heir.

Article 25. Granting the copyright certificate:

1. The Copyright Department shall consider and examine the contents of each application for protection registration.

2. After considering and being satisfied that there are all necessary conditions and valid papers as required by the provisions of Article 24 of this Decree, the Copyright

Department shall grant the copyright certificate to the author, co-author or owner of the work.

3. The registration of copyright and ownership right over a work and the granting of the copyright certificate must be recorded in the Copyright Registration Book and kept at the Copyright Department.

Article 26. Time limit for the granting of copyright certificates:

1. Within 10 days after the author or owner of the work files a registration application, the Copyright Department shall have to consider and grant the copyright certificate to that author or owner.

2. If the Copyright Department finds that the application for protection registration lacks the necessary conditions and valid papers as stipulated in Article 25 of this Decree, it shall have the right to refuse to grant the copyright certificate but shall have to inform in writing the applicant thereof.

3. If the applicant disagrees with the refusal to grant the copyright certificate by the Copyright Department, he/she shall be entitled to protest to the Minister of Culture and Information.

4. If a person with related rights and interests discovers that the copyright certificate was granted by the Copyright Department to a wrong person. He/she shall have the right to file a protest and request the Copyright Department to revoke the certificate.

Article 27. The copyright service organization is an enterprise which registers its operation in accordance with law and is allowed by the Copyright Department to provide services regarding the registration and application for the protection of the copyright and ownership rights over a work on the basis of the mandate of the author, co-author or owner of the work.

The regulations on the granting and revocation of operation licenses for a copyright service shall be set by the Ministry of Culture and Information.

Article 28. The copyright of foreign individuals and legal persons shall be provided for by the Government in another legal document.

Chapter VI

STATE MANAGEMENT OVER COPYRIGHT PROTECTION

Article 29. State management over copyright protection:

The Government shall exercise unified State management over copyright protection throughout the country. The Ministry of Culture and Information which is a Government agency responsible for State management over copyright protection, shall have the following tasks and powers:

1. To work out policies for copyright protection.

2. To promulgate legal documents on copyright protection according to its competence or submit them to the Government, The National Assembly Standing Committee or the National Assembly for promulgation.
3. To protect or coordinate with the related ministries and branches in protecting the copyright with regard to culture, artistic and scientific works.
4. To conduct by itself or coordinate with the related ministries and branches in conducting the control, inspection and settlement of protests and denunciations and handling violations of the copyright according to its competence.
5. To undertake international cooperation in the field of copyright.

Article 30. The Copyright Department shall have to assist the Ministry of Culture and Information in exerting State management over copyright protection and have the following functions and tasks:

1. To draft Bills, Ordinances, Decrees and other legal documents on copyright protection.
2. To register copyright protection for Vietnamese and foreign individuals and organizations; grant and revoke copyright certificates as well as operation/licenses of copyright services.
3. To provide guidance for the provincial/municipal Culture and Information Services in exerting State management over copyright protection in the localities.
4. To organize and carry out cooperation with foreign countries and international organizations in copyright protection.
5. To organize the education and popularization of the legislation on copyright and conduct activities regarding information on copyright protection.

To organize professional training courses on copyright protection for officials of the related central and local agencies.

Article 31. The Ministry of Science, Technology and Environment shall coordinate with the Ministry of Culture and Information in providing guidance for activities on copyright protection in the field of science, including computer software, guidance on procedures for evaluating the reliability of the copyright and ownership right over scientific works, text books, teaching materials and computer software before filing the procedures for protection registration at the Copyright Department.

Article 32. The People's Committees of the provinces and cities directly under the Central Government shall have to inspect and supervise the enforcement of the legislation on copyright protection in the localities.

The provincial/municipal Culture and Information Services shall have to assist The People's Committees of the provinces and cities directly under the Central Government in the enforcement of the legislation on copyright protection in the localities.

Article 33. The handling of disputes over and violations of copyright shall comply with the administrative, civil or criminal procedures.

Article 34. Function of the specialized Culture and Information Inspector in handling disputes over and violations of copyright.

1. The specialized culture and information inspector of the Culture and Information Service of a province or city directly under the Central Government or of the Ministry of Culture and Information shall have to handle and settle disputes over and violations of copyright.
2. The author and/or owner of a work whose rights are infringed upon by an individual or organization shall be entitled to request the specialized culture and information inspector to handle and settle the case.
3. The specialized culture and information inspector shall have the right to decide administrative sanctions in accordance with his/her competence.

Article 35. The author or owner of a work shall have the right to request protection when one of the following acts is committed without his/her consent:

1. Publicizing or disseminating a work; performing a theatrical work; broadcasting a film or video tape; making audio or visual recordings or a live broadcast from the place of performance, except for case defined in Point h, Clause 1, Article 761 of the Code.
2. Adding, reducing or amending the contents of the work.
3. Imitating plastic art works for sale or for personal use.
4. Copying the contents of another person's work to put into one's own work.
5. Duplicating, setting or assembling radio and/or television programs, audio tapes and disks, music tapes and disks, video tapes and disks, films and computer software for commercial purposes.
6. Translating, re-creating, transforming or adapting works.

Article 36. Procedures for requesting protection:

1. An individual or organization whose copyright is infringed upon shall have to file an application reporting the matter to the specialized culture and information inspector of the province or city or to the inspector of the Ministry of Culture and Information.
2. To attach to the application necessary evidences to prove the truthfulness of the complaint.
3. The specialized culture and information inspector shall have to settle the complaint and reply in writing to the complainant within 30 days after receiving the complaint.

Chapter VI

IMPLEMENTATION PROVISIONS

Article 37. The Ministry of Culture and Information shall guide the implementation of this Decree.

Article 38. The Ministry of Culture and Information shall coordinate with the concerned agencies in providing guidance for implementation of the provisions on the protection of architectural works.

Article 39. This Decree takes effect from the date of its promulgation.

Article 40. The Ministers, the Heads of the ministerial-level agencies, the heads of the agencies attached to the Government and the President of the People's Committees of the provinces and cities directly under Central Government shall have to implement this Decree.

On behalf of the Government

The Prime Minister

VO VAN KIET