

CIRCULAR

No 27/2001/TT-BVHTT OF 10th MAY 2001 OF THE MINISTRY OF CULTURE AND INFORMATION on Guidance to the Implementation of Decree No 76/CP of 29th November 1996 and Decree No 60/CP of 6th June 1997 of the Government on Guidance to the Implementation of a Number of Provisions on Copyright in the Civil Code

Pursuant to the Decree No 81/CP of 8th November 1993 of the Government on Functions, Duties, Powers, and Organizational Structure of the Ministry of Culture and Information;

Pursuant to the Decree No 76/CP of 29th November 1996 of the Government on Guidance to the Implementation of a Number of Provisions on Copyright in the Civil Code (hereinafter referred to as Decree No 76/CP); pursuant to the Decree No 60/CP of 6th June 1997 of the Government on Guidance to the Implementation of the Provisions on Civil Relations Involving Foreign Elements of the Civil Code (hereinafter referred to as Decree No 60/CP),

The guidance of the Ministry of Culture and Information to a number of provisions on copyright is as follows:

I. Interpretation of terminologies

A number of terminologies as used in the provisions on copyright shall be understood as follows:

1. "To create" in literature, art, and science is an act of thinking by an author who personally makes a part or the whole of a work that is expressed in a certain material form.

The "original exemplar" of a work is the first exemplar of the work, which is created by the author.

2. "Protectable works shall be the original exemplars" is understood to mean that works are

fixed in a certain material form and have features of originality.

3. An "original work" is a work which is used for creating a translated, adapted, compiled, modified, transformed, selected, anthological, or annotated work.
4. "To copy" a work is to re-express a substantial part or the whole of the work in any material forms.
5. "To photocopy" a work is understood as to make an identical copy of a part or the whole of the work by applying a process of photocopy, photography, or the like.
6. A "copy" of a work is a production obtained by copying or photocopying a part or the whole of the work.
7. An "owner of work" is an individual or organization that owns the author's rights which are transferable under the provisions of law.
8. A "work of co-authorship" is a work created by two or more persons.
9. An "anonymous work" is a published work on which no author's real or pen name is indicated.
10. A "work of unidentified author" is a published work of which the author has not been ascertained.
11. A "posthumous work" is a work that is published for the first time after the death of the author.
12. "To publish or disseminate a work":

"To publish or disseminate a work" means the representation of the work before the public in the form of an oral speech, display, publication, performance, radio broadcast, television broadcast, or in any other forms.

The forms of products of publication include books, documents, pictures, photographs, posters, catalogues, pamphlets, plied

pamphlets, calendars, maps, atlas, sheet music, flags, propaganda leaflets, slogans, couplets, scroll ornamental writings; audio tapes, audio discs, video tapes and video discs that substitute or accompany books.

“A work is published or disseminated for the first time in Vietnam” is a work of a foreign person or organization, which has not been published or disseminated in any foreign country prior to being published or disseminated in Vietnam.

A work is considered as being published or disseminated first in Vietnam if that work is published or disseminated in Vietnam within a period of 30 days counted from the date of its first publication or dissemination in any countries.

II. Protected Works

1. Works protected in Vietnam:
 - a. Works of authors who are nationals of Vietnam;
 - b. Works owned by Vietnamese nationals or legal persons or organization;
 - c. Works of foreign persons or legal persons, which are created and expressed in a certain material form in Vietnam;
 - d. Works of foreign persons or legal persons, which are first published or disseminated in Vietnam;
 - e. Works of foreign persons or legal persons, which are protected in Vietnam under international treaties signed or acceded to by Vietnam;
2. Works protected in Vietnam shall belong to the genres of work stipulated in Article 4 of Decree No 76/CP, shall not belong to the subject-matters of protection of industrial property,

and shall not have a content such as stipulated in paragraph 1 Article 749 of the Civil Code.

iii. Rights of Author and RIGHTS OF owner Of work

1. An author who creates a work in the execution of a commissioned duty shall be entitled to the rights provided for in Article 752 of the Civil Code.

An author who creates a work under a contract shall be entitled to the rights provided for in Article 752 of the Civil Code on the basis of the signed contract.

2. The enjoyment of the property rights of authors who simultaneously are not owners of work, as stipulated in paragraph 2 Article 752 of the Civil Code, shall be based on the contracts made by the authors and owners of work.
3. According to the provisions in Article 11 of the Decree No 76/CP, a person or organization that creates a new work on the basis of a translated, adapted, compiled, modified or transformed work of another person shall obtain the permission of the author (and the owner, if the owner simultaneously is not the author) of the translated, adapted, compiled, modified or transformed work and the permission of the author of the original work unless the author of the translated, adapted, compiled, modified or transformed work and the author of the original work have agreed otherwise.
4. In case a work is a posthumous work and the heir has not been identified, the person who lawfully possesses the posthumous work shall be entitled to the personal rights provided for in points c and d paragraph 1 Article 751 and the property rights provided for in points a, b, and c paragraph 2 Article 751 of the Civil Code, for a period of 50 years counted from the date of the first publication of the work. If the heir is identified within the period of 50 years counted from the date of the first publication of the work, he or she shall be entitled to the said

rights for the remaining duration of protection unless the law provides otherwise.

5. The rights and obligations arising out of relations between performers and individuals or organizations that make the financial investment for performing programmes shall be determined on the basis of contracts.

iv. Use of Works

1. The Copyright Office shall be responsible for the administration over works that belong to the State in case there is no heir, the heir refuses to receive the legacy or the heir is not entitled to the legacy, as stipulated in point b paragraph 1 Article 764, Article 765 of the Civil Code, and in paragraph 2 Article 13 of the Decree No 76/CP, for the administration over works whose authors are not identified and works which are anonymous, as stipulated in paragraph 5 Article 766 of the Civil Code, and for the collection and administration of royalties in relation to the above-mentioned works.

Individuals or organizations that use the above-mentioned works shall comply with the following provisions:

- To obtain the permission of, and to pay the royalty to, the Copyright Office;
 - To put the real or pen name of the author (if any) on the work, to correctly indicate the title of the work, and to ensure the integrity of the content of the work.
2. The Copyright Office shall be responsible for the administration of personal rights in respect of works whose duration of protection stipulated in Article 766 of the Civil Code has expired. Individuals or organizations that use such works shall comply with the following provisions:
 - To notify the Copyright Office of the use of work;

- To put the real or pen name of the author (if any) on the work, to correctly indicate the title of the work, and to ensure the integrity of the content of the work.
 - To furnish to the Copyright Office a copy of the work, within a period of 30 days counted from the date of its dissemination or circulation.
3. Persons or organizations that use published works for commercial purposes and persons or organizations that use published works not for commercial purposes but in a manner affecting the normal exploitation by the authors or owners of work, shall obtain the permission of and pay the royalty to the authors or owners of work in accordance with contracts for use of work;

Where works are used in the field of publication, the using parties shall also comply with the provisions of Law on Publication and other related legal provisions;

Where published songs or pieces of music are used in performances for commercial purposes, the using parties shall pay the royalty to the authors or owners of work in accordance with agreements;

Persons or organizations that use works may make contracts for use of work with the authors or owners of works, or with the lawful representative organizations empowered by the authors or owners of work.

The use of works without the permission of and payment of remuneration to the authors or owners of work shall be in accordance with the provisions in Articles 760 and 761 of the Civil Code.

V. Registration of Copyright and Ownership Right Over Work

1. Pursuant to the provisions in Articles 23, 24 and 27 of the Decree No 76/CP, the authors and owners of work shall have the right to apply,

either personally or through empowered copyright service organizations, to the Copyright Office, or to the Department of Culture and Information of the province or city subordinated to the Central Government where the applicants reside, for Copyright Certificates.

Foreign individuals or legal persons who own works that are protected under the provisions in points 1(c), 1(d) and 1(e) Section II shall have the right to apply, either personally or through empowered copyright service organizations, to the Copyright Office or to the Departments of Culture and Information of provinces or cities subordinated to the Central Government for Copyright Certificates.

2. An application file for Copyright Certificate shall include:

a. A petition for Copyright Certificate (conforming to forms).

A petition for Copyright Certificate shall be in written form in Vietnamese and signed by the author or owner of work or by the person empowered to file the petition. Where the applicant is a legal person, the signature and seal shall be placed in accordance with relevant regulations.

b. Two exemplars of the work that is intended to be registered.

In respect of works bearing special characteristics, which are attached to an architectural construction, such as a painting, statute, monument, relief, panorama painting, and the like, the work referred to in an application file means the design, sketch or photograph (black and white) that fully expresses the creative idea.

c. The personal papers (identification, passport) of the person who submits the file.

In addition to the papers mentioned above, the letter-of-power shall be required where the

applicant for Copyright Certificate is an empowered person; the applicant who is the owner of work but simultaneously is not the author shall present documents to prove that the applicant is the lawful owner. In case such documents are in a foreign language, they shall be translated into Vietnamese and notarized by a State notary.

3. The Copyright Office shall be responsible for considering application files for Copyright Certificate and deliver the results, within a period of 10 working days counted from the date of receipt of the complete and due files, at the place of receipt of the files. Refusals of issuing Copyright Certificates shall be notified in written reply and the reasons therefor explained.
4. The Departments of Culture and Information of provinces and cities subordinated to the Central Government shall be responsible for guiding applicants in completing registration procedures, for receiving application files for Copyright Certificate, for sending due application files, as stipulated in point 2 Section V of this Circular, to the Copyright Office immediately after their receipt, for collecting the registration fees prescribed by the competent authority and the expenses due to the transmission of files, and for remitting the results to the applicants immediately after the receipt from the Copyright Office.
5. The Copyright Certificates issued by the Copyright Protection Agency, the Copyright Protection Organization and the Copyright Office, prior to the effective date of the Civil Code shall remain valid. The authors and owners of work shall be entitled to the rights provided for in the Civil Code.

The authors or owners of work, who wish to have the Copyright Certificates reissued or changed, shall provide clear reasons therefor in

petitions and submit the application files in accordance with the provisions in point 2 Section V of this Circular.

6. Individuals and organizations that are granted Copyright Certificates shall pay the fees prescribed by the State.
7. The Director General of the Copyright Office shall have the right to issue Copyright Certificates, and to revoke the issued Copyright Certificates in case the grantees are found not to be the authors or owners of work or the works do not fall under the subject-matters protected by legal provisions on copyright.

VI. Copyright Service Organizations

1. A copyright service organization, as stipulated in Article 27 of the Decree No 76/CP, is a lawfully established business that has the function to provide services and legal advices in copyright issues.
2. Conditions for practicing in copyright services
 - The head, the deputies of the head, and persons who personally practice in copyright services shall have the nationality of Vietnam, permanent residential address in Vietnam, full capacity to perform civil actions, and bachelor degree in law;
 - The head, the deputies of the head, and persons who personally practice in copyright services shall possess a certificate, issued by the Copyright Office, of the completion of courses on enhancement of knowledge of copyright.
3. Copyright service organizations shall have the following tasks:
 - To advise on questions relating to legal provisions on copyright;
 - To represent authors or owners of work in applying for Copyright Certificates, pursuant to their mandate;

- To participate in other legal relations in regard of copyright and to protect the legal rights and interests of authors and owners of work, pursuant to their mandate.
- 4. A copyright service organization shall only be authorized to operate if it has lawfully been established and if the head, the deputy heads, and the persons practicing in copyright services of that organization have been granted a Copyright Agent Card.
- 5. Copyright service organizations shall operate pursuant to the provisions of law, the permit for establishment issued by the competent authority, and within the scope of their mandate.
- 6. Copyright service organizations shall make reports and provide information on their activities in copyright services in every six months and each year. In case there are changes in the personnel responsible for the management of copyright service organizations, or in the staff practicing in copyright services, timely reports on such changes shall be made to the Copyright Office.
- 7. The Copyright Office shall be empowered to issue and revoke Copyright Agent Cards, and make regulations on the use thereof.

Within a period of three months counted from the effective date of this Circular, those copyright service organizations that are in operation shall undergo procedures for issuance of Copyright Agent Cards. The Copyright Office shall reissue Copyright Agent Cards every two years.

VII. Supervision, Inspection, Settlement of Complaints and SETTLEMENT OF Denunciations Relating to Copyright

1. According to the provisions in Articles 33 and 36 of the Decree No 76/CP:
 - a. Authors or owners of work, when finding that their copyright or ownership right over work is infringed upon by a third party, shall

have the right to request the infringer to discontinue the act of violation, to make public apology and rectification, and to pay compensation for damages, or to make a request or complaint to the State Inspectorate of culture and information (Inspectorate of the Ministry of Culture and Information, Inspectorate of the Departments of Culture and Information) or the People's courts for settlement pursuant to their competence.

b. Individuals or organizations, when discovering acts of infringement on copyright or ownership rights over work, shall have the right to present a resolution or denunciation to the Ministry of Culture and Information (the Copyright Office), the Departments of Culture and Information or other competent State organizations for settlement in accordance with the provisions of law.

2. The Copyright Office, as the competent organization of the Ministry of Culture and Information exercising the State management on copyright protection, shall have the following duties:

a. To guide and supervise the implementation of the legal provisions on copyright over the country;

b. To response to letters of complaint or denunciation relating to copyright protection, or to forward such letters to the Inspectorate of the Ministry of Culture and Information, the Inspectorate of the Departments of Culture and Information or the competent State authorities for settlement in accordance with the provisions of law.

c. To co-operate with the Departments of Culture and Information, the Inspectorate of the Ministry of Culture and Information and the related organizations for the purpose of

timely settlement of violations of legal provisions on copyright.

3. The Departments of Culture and Information or the Departments of Culture-Information-Sport shall be the competent organizations responsible for assisting the People's Committees of provinces or cities subordinated to the Central Government to exercise the State management on copyright protection, and have the following duties:
 - a. To guide and supervise the implementation of legal provisions on copyright in their locality;
 - b. To response to letters of complaint or denunciation relating to copyright protection or to request the competent State authorities for settlement in accordance with the provisions of law;
 - c. To co-operate with the Copyright Office, the Inspectorate of the Ministry of Culture and Information and the related organizations for the purpose of timely settlement of violations of legal provisions on copyright.
4. The Inspectorate of the Ministry of Culture and Information and the Inspectorate of the Departments of Culture and Information shall carry out the function of specialized inspectorate pursuant to the provisions in Article 34 of the Decree No 76/CP.

VIII. Organization of Implementation

The Copyright Office, the Departments of Culture and Information of provinces or cities subordinated to the Central Government, the Inspectorate of the Ministry of Culture and Information, the Inspectorate of the Departments of Culture and Information and the organizations and individuals involved in copyright matters shall be responsible for the implementation of this Circular.

This Circular shall take effect 15 days after the date of its signature.

This Circular shall be promulgated together with the Annex No 1, Annex No 2 Annex No 3, Annex No 4, and Annex No 5.

**On behalf of the Minister of Culture and Information
Vice Minister**

Signed Tran Chien Thang

Annex No 1

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom- Happiness

PETITION FOR COPYRIGHT CERTIFICATE

To: THE COPYRIGHT OFFICE

1. Petitioner

Full name of petitioner

Is:

(Author; owner of work; heir; empowered person)

Date of birth: day month year

Nationality:

Address:

Telephone number:

Fax number:

Hereby submits the application file for Copyright Certificate for:

(If the person submitting the file is an empowered person, indications shall be required to make it clear that the file is submitted either on behalf of the author or on behalf of the owner of work)

2. Work to be registered

Title of work:

Genre of work:

(If the work is a translated, compiled, modified or transformed work, clear indications shall be required as to the name of the author of the original work and the title thereof)

Date of publication or statement of unpublished status:

Place of publication:

Form of publication (publication, performance,...):

Article 1: The Party A agrees to deliver the work it owns to the party B to perform at

Title of work:

(If the work is a translated, compiled, modified or transformed work, clear indications shall be required as to the name of the author of the original work and the title thereof; if more than one work are to be delivered, they may be put on a list attached to the contract)

Full name of author:

Owner of copyright:

Number of Copyright Certificate (if any) date
of issuance

Article 2: The Party A shall have the duty to deliver the work to the Party B before day month
year at place If a
dispute arises as to the copyright in the work or the Party A does not deliver the work to the Party B within the time limit, the Party A shall pay to the Party B full compensation of damages and the Party B may terminate the contract.

Article 3: Within the period of performance of the contract, the Party A shall not be permitted to deliver the work to a third party to perform *(for cases where a performance is made in respect of a work of classical opera, popular opera, renovated theatre, theatrical drama, puppetry...)* unless the two Parties have agreed otherwise.

Article 4: The Party B shall respect the form of use in accordance with the provisions of law on copyright. Any amendment made to the work and any use in a form other than that stipulated in Article 1 shall be subject to the written consent of the Party A. The two Parties shall have the obligation to co-operate in the execution of the contract.

Article 5: The Party B shall pay the Party A the amount of money for the use of the work in the following manner:

(Amount to be paid, payment in lump sum or in installment; time of payment; place of payment...)

The Party B shall invite the Party A to view the performance prior to the public performance unless the Parties have agreed otherwise.

Article 6: Any disputes arising in the execution of the contract or relevant to the content thereof shall be settled through direct agreements between the Parties. If no agreement is reached, a Party shall have the right to bring the case to the people's court of...

Article 7: To be valid, any amendment of, or supplement to, the contract shall be subject to the written consent of the two Parties.

Article 8: This contract shall be effective from the date of its signature and until the end of ...

Article 9: This contract is done in two exemplars with the same authenticity and each Party has one exemplar in custody.

(Note: Subject to circumstances, the two Parties are supposed to flexibly apply the form contract and may agree on additions to or subtractions from the content of the contract, provided that such additions or subtractions are not contrary to the provisions of law)

The Party A

The Party B

Signature

Signature

(Full name and signature)

(Full name and signature)

(If the work is a translated, compiled, modified or transformed work, indications shall be required as to the name of the author and the title of the original work)

Number of draft pages:

Size:

Full name of author:

Owner of copyright:

Number of Copyright Certificate (if any) date
of issuance

Quantity of prints:

Article 2: The Party A shall have the duty to deliver the work to the Party B before day month
year at place If a dispute
arises as to the copyright in the work or the Party A does not deliver the work to the Party B within the time limit, the Party A shall pay to the Party B full compensation of damages and the Party B may terminate the contract.

Article 3: Within the period of performance of the contract, the Party A shall not be permitted to deliver the work to a third party unless the two Parties have agreed otherwise.

Article 4: The Party B shall respect the form of use in accordance with the provisions of law on copyright. Any amendment made to the work and any use in a form other than that stipulated in Article 1 shall be subject to the written consent of the Party A. The two Parties shall have the obligation to co-operate in the execution of the contract.

Article 5: The Party B shall pay the Party A the amount of money for the use of the work in the following manner:

(Amount to be paid, payment in lump sum or in installment; time of payment; place of payment...)

The Party B shall provide as a gift to the Party A books at the time of the payment of money for use of work unless the Parties have agreed otherwise.

Article 6: To be valid, any amendment to or supplement to the contract shall be subject to the written consent of the two Parties.

Article 7: In the execution of the contract, the Party B shall submit to the Party A the documents relating to the quantity of printed books, for the purpose of checking, if the Party A so requests. If the Party B made extra-contract printing, it shall pay, in addition to the amount of money for use of work due to the extra prints, the damages of percent of the total money value of the extra printing and the reasonable monetary expenses for conducting the check. If, however, no extra printing is confirmed after the check, the expenses of carrying out the check shall be borne by the Party A.

Article 8: Any disputes arising in the execution of the contract or relevant to the content thereof shall be settled through direct agreements between the Parties. If no agreement is reached, a Party shall have the right to bring the case to the people's court of

Article 9: This contract shall be effective from the date of its signature and until the end of

Article 10: This contract is done in two exemplars with the same authenticity and each Party has one exemplar in custody.

(Note: Subject to circumstances, the two Parties are supposed to flexibly apply the form contract and may agree on additions to or subtractions from the content of the contract, provided that such additions or subtractions shall not be contrary to the provisions of law)

The Party A

The Party B

Signature

Signature

(Full name and signature)

(Full name and signature)

Annex No 5: *Form contract for use of work (in production of audio tapes, audio discs, video tapes, video discs, films, radio or television programmes)*

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom- Happiness

CONTRACT FOR USE OF WORK

This day month year

At:

Mr. (Ms):

Is:

*(The author who simultaneously is the owner of work;
the owner of work; the heir; or the lawfully
empowered person)*

(Hereunder referred to as Party A)

Address:

Telephone number: Fax
number:

And the other Party that is Mr. (Ms):

Position:

(Director, Deputy Director...)

Representing the party using the work

(Hereunder referred to as Party B)

Address:

Telephone number: Fax
number:

The two Parties have agreed and signed this contract with the following terms:

Article 1: The Party A agrees to deliver the work it owns to the party B to produce *(audio tapes, audio discs, video tapes, video discs, films, radio or television programmes)* at

Title of work:

(If the work is a translated, compiled, modified or transformed work, clear indications shall be required as to the name of the author and the title of the original work; if more than one work are to be delivered, they may be put on a list attached to the contract)

Full name of author:

Owner of copyright:

Number of Copyright Certificate (if any) date of
issuance

Production quantity:

Article 2: The Party A shall have the duty to deliver the work to the Party B before day month year at place If a dispute arises as to the copyright in the work or the Party A does not deliver the work to the Party B within the time limit, the Party A shall pay to the Party B full compensation of damages and the Party B may terminate the contract.

Article 3: Within the period of performance of the contract, the Party A shall not be permitted to deliver the work to a third party unless the two Parties have agreed otherwise.

Article 4: The Party B shall respect the provisions of law on copyright. Any amendment made to the work and any use in a form other than that stipulated in Article 1 shall be subject to the written consent of the Party A. The two Parties shall have the obligation to cooperate in the execution of the contract.

Article 5: The Party B shall pay the Party A the amount of money for the use of the work in the following manner:

(Amount to be paid, payment in lump sum or in installment; time of payment; place of payment...)

Within a period of days after the production has been completed, the Party B shall make the payment to the Party A and provide as a gift to the Party A (or invite the Party A to view) unless the two Parties have agreed otherwise.

Article 6: To be valid, any amendment of or supplement to the contract shall be subject to the written consent of the two Parties.

Article 7: In the execution of the contract, the Party B shall submit to the Party A the documents relating to the quantity of production, for the purpose of checking, if the Party A so requests. If the Party B made extra-contract production, that Party shall pay, in addition to the amount of money for use of work due

to the extra production, the damages of percent of the total money value of the extra production and the reasonable monetary expenses for conducting the check. If, however, no extra production is confirmed after the check, the expenses of carrying out the check shall be borne by the Party A.

Article 8: Any disputes arising in the execution of the contract or relevant to the content thereof shall be settled through direct agreements between the Parties. If no agreement is reached, a Party shall have the right to bring the case to the people's court of

Article 9: This contract shall be effective from the date of its signature and until the end of

Article 10: This contract is done in two exemplars with the same authenticity and each Party has one exemplar in custody.

(Note: Subject to circumstances, the two Parties are supposed to flexibly apply the form contract and may agree on additions to or subtractions from the content of the contract, provided that such additions or subtractions are not contrary to the provisions of law)

The Party A
The Party B
(Full name and signature)
name and signature)

(Full