

PART SIX
INTELLECTUAL PROPERTY RIGHTS, AND TECHNOLOGY TRANSFER

Chapter XXXIV

COPYRIGHT

Section 1

Authors and owners of works; authors' rights and rights of owners of works

Article 728 Author

1. An author is a person who directly creates a literary, artistic [or] scientific work.
2. The following persons shall also be recognised as authors:
 - a. A person who translates a work from one language into another language is the author of the translated work;
 - b. A person who adapts an existing work, rewrites, [or] transforms a work from one form into another form is the author of the adapted, rewritten [or] transformed work; [and]
 - c. A person who edits, annotates [or] selects works of other persons to produce a work of a creative nature is the author of the edited, annotated [or] selected works.

Article 729 Owners of works

1. The owner of a work shall include:
 - a. An author shall be the owner of the entirety or part of a work created by him/herself, except in circumstances where a work is created under a delegated duty [or] a contract;
 - b. Co-authors shall be the joint owners of a work created by themselves, except in circumstances where a work is created under a delegated duty [or] a contract;
 - c. An authority or organisation which delegates a duty to an author shall be the owner of the entirety or part of the work created by the author under a duty delegated by the authority [or] organisation;
 - d. An individual who, [or] organisation which, enters into a contract for the creation

Article 730 Works whose copyrights are not protected by the State

1. The State does not provide copyright protection with respect to works that have content which:
 - a. Opposes the State of Vietnam [and/or] undermines the solidarity of the whole people;
 - b. Propagates violence [and/or] wars of aggression, inducing hatred among the ethnicities and peoples of all countries; disseminates reactionary ideas [and/or] cultures, prurient [and/or] degenerate life styles, inhumane acts⁽¹⁾, social vices, [and/or] superstition, [and/or] undermines fine traditions [and/or] customs;
 - c. Discloses Party [or] State secrets [or] military, security, economic, or foreign-affairs secrets, [or] secrets of private lives or other secrets stipulated by law; [and/or]
 - d. Distorts history, repudiates the achievements of the revolution, offends distinguished persons or national heroes, slanders [or] injures the reputation of an organisation, [and/or] the honour and dignity of an individual.
2. All transactions concerning circulation, use and enjoyment of benefits with respect to the works stipulated in Clause 1 of this Article shall be illegal and invalid, violators shall be punished in accordance with the provisions of the law.

Article 731 Rights of an Author

- b. Receiving remuneration when the work is used;
- c. Receiving material benefits from permitting other persons to use the work in the forms of publication, re-publication, display, exhibition, performance, sound broadcast⁽³⁾, television broadcast, audio recording, video recording, photographing, translation, adaptation, rewriting and transformation; [and] renting;
- d. Receiving awards with respect to the work of which he/she is the author, except in circumstances where the work is not protected by the State.

Article 733 Rights of author not being concurrently the owners of works

1. An author who is not concurrently the owner of a work shall have personal rights over the work of which he/she is the author, which shall include:

c. Renting.

Article 735 Point of time when the copyright arises

The copyright arises from the point of time when a work is created in a certain form.

Article 736 Rights of co-authors

Rights of Co-Authors

1. In circumstances where there is more than one person creating a work jointly, they shall be co-authors of the work. Co-authors are common owners of the work and are entitled to enjoy author's rights in accordance with the provisions of Article 732 of this Code; if the work is created under a delegated duty [or] a contract, the co-authors [thereof] are entitled to enjoy author's rights in accordance with the provisions of Article 733 of this Code.
2. In circumstances where the work created by the co-authors consists of separate parts which may be severed for independent uses, each of the co-authors shall have the right to use his/her part(s) separately and shall be entitled to enjoy the copyright

Article 745 Performer

Performers shall include individuals [and] organisations conducting performances, editors and directors of song, music or dance programs or radio, television or theatrical programs, and other forms of artistic performance.

Article 746 Obligations of performers

A performer shall have the following obligations:

1. To obtain the authorization from the author or owner of copyright to use a work not yet publicized;
2. To pay royalties to the relevant author or owner of the copyright, except for the performances of theatrical works in cultural and propagandizing activities in public places; and
3. To compensate the author or owner of the copyright in case of breach of the obligations referred to in clauses 1 and 2 of this Article.

Article 747 Rights of performers

A performer shall have the following rights:

1. To have his name mentioned;
2. To protect the performance from any misrepresentation;
3. To permit another to broadcast or prohibit another from broadcasting live his performance on radio or television, unless the radio or television broadcast relates to current affairs or to an educational issue;
4. To permit another to make or to prohibit another to from making visual or sound

3. Enter into a contract with and pay remuneration to the performer if using his/her performance programme to produce a programme of its own.

Article 749. Rights of Organisations Which Produce Audio Tapes and Disks, Video Tapes and Disks

1. An organisation which produces audio tapes and disks [and/or] video tapes and disks shall have the following rights with respect to a product it has produced:

3. During the protection period, the organisations to which the rights of the radio and television broadcasting organisations have been transferred shall continue to enjoy the rights stipulated in Clause 1 of this Article until the expiry of the protection period.

Chapter XXXV

INDUSTRIAL PROPERTY RIGHTS

Article 752. Industrial Property Rights

Industrial property rights comprise the rights with respect to inventions, utility solutions, industrial designs, layout designs of integrated circuits, plant varieties, trade secrets, trade marks (including service marks, collective marks and certifications marks), geographical indications (including appellations of origin), trade names, rights against unfair competition and rights to other subject(s) as stipulated by laws.

Article 753. Subjects of Industrial Property Which Are Protected by the State

The subject matters of industrial property rights shall be protected by the State if they fully satisfy the conditions and qualifications for protection set out by laws and if they do not fall within any of the cases referred to in Article 787 of this Code.

Article 754. Subjects of Industrial Property Which Are Not Protected By the State

The State shall not protect subjects of industrial property which are contrary to the interests of society, public order [and/or] humanitarian principles and other subjects as provided for by laws.

Article 755. Principles of Establishment of Industrial Property Rights

1. The ownership rights to an invention, utility solution, industrial design, layout design of an integrated circuit, new plant varieties, trademark (except for well-known marks) and geographical indications shall be established on the basis of registrations with the competent State body.
2. Industrial property rights to a trade secret, well-known mark, trade name or right against unfair competition shall be automatically established without having to be registered with the competent State body when all mandatory protection conditions are met.
3. The bases for establishing the industrial property rights to other subject matters shall be provided for by laws.

Article 756. Bases for establishing industrial property rights

1. With regard to inventions, utility solutions, industrial designs, layout designs of integrated circuits, plant varieties and other subjects of industrial property of a nature of technological creativity, the right to protection shall belong to the person who makes investments in order to create or obtain that subject, [specifically]:
 - a. authors and co-authors who have created the invention, utility solution [or] industrial design by their own labour efforts and at their own expense;

- b. the employer in case a subject of industrial property was created by his employee(s) during the performance of their assigned task, unless otherwise provided in the labor contract;
 - c. persons who enter into a lease contract with the author, unless otherwise agreed to in the contract;
 - d. assignees of the rights referred to in points (a), (b) and (c) of this clause as transferred by the beneficiaries of protection as to those rights.
2. With regard to trademarks, trade names and other subjects of industrial property of a nature of trade indications, the right to protection shall belong to lawful business individuals or organizations that made investments in order to design or to obtain those trade indications for use in their business activities.
 3. With regard to the geographical indications being State property in respect of which the management right belongs to the organization assigned by the State competent body, the right to protection shall belong to the community of organizations and individuals who produce or put out to the market the products with specific characteristics as a result of bearing such geographical indications.

Article 757. Term of Protection

1. With regard to the types of industrial property rights established on the basis of a

design documentation, formulae, technical specifications, technical diagrams or drawing attached to or not attached to machinery and equipment;

- b) Production optimizing alternative.
 - c) Technical service, training of technicians and provision of information in relation to technology to be transferred;
2. In the event of technology transfer in association with the subject matter of industrial property right during its term of protection, then the transfer of

2. The quality of the technology and the contents and term of warranty for the technology;
3. The location, duration and time schedule for the transfer of the technology;
4. The scope and extent of keeping the technology confidential;
5. The price of the technology and method of payment;
6. The responsibilities of the parties with respect to protection of the technology;
7. Undertakings on training in connection with the technology transferred;
8. The obligations of the parties with respect to co-operation and information;
9. The conditions for amendment and cancellation of the contract; [and]
10. Liabilities for breach of contract and procedures for settling disputes.

Article 768. The Right to Develop the Technology Transferred

1. The technology transferee shall have the right to develop the technology transferred without informing the technology transferor, except in circumstances where otherwise agreed.
2. In circumstances where the technology transferor is interested in the results from development of the technology, it shall agree with the transferee on the transfer of the newly achieved results on the principle of mutual benefits.

Article 769. Amendment and Cancellation of a Contract

1. The parties must inform each other of new technical and scientific knowledge which shall affect the implementation of the contract and must consider the possibility of amending or cancelling the contract.
2. The contract form stipulated in Article 809 of this Code shall also apply in the case of amendment or cancellation of the contract.
3. In the event that the contract is amended or revoked due to the impact of new scientific and technological advancements that could not be foreseen by the parties at the time of signing the contract, this shall be regarded as an event of force majeure and neither party shall have to bear the incurred costs, except otherwise agreed upon.