

The Civil Law - Copyright

Part six
INTELLECTUAL PROPERTY AND TECHNOLOGY TRANSFER

Chapter I **COPYRIGHT**

SECTION 1 - GENERAL PROVISIONS

Article 745. Author

1. An author is a person who personally creates all or part of a literary, artistic or scientific work.
2. The following persons shall also be recognised as authors of various types of works:
 - a. Persons who translate a work from one language into another are authors of the translation;
 - b. Persons who modify an existing work, or transform a work from the original form into another form are authors of the derivative works;
 - c. Persons who compile, comment or collect the works of others and thereby form new, creative works are the authors of the compilations, commentaries and collections.

Article 746. Owners of Works

1. Owners of works shall be determined as follows:
 - a. The authors are the owners of a work or its parts except in cases where such authors create works in the performance of assigned duties or a contract;
 - b. Co-authors are the co-owners of work created jointly by themselves except in cases where they create the work in the performance of assigned duties or a contract;
 - c. Organizations or bodies who assign other persons to create a work in accordance with the latter's duties are the owners of the work;
 - d. Organizations or individuals who enter contracts with other persons to create a work for them are the owners of the work;
 - e. The testamentary or intestate heir of the author is the owner of the inherited work in cases where the author is simultaneously the owner of the work;
 - f. Individuals and organizations to whom the owners of works mentioned in Points a, b, c, d, and e of this Article transfer their rights to the work by a contract are the owners of the transferred rights.
2. Authors who create works under a contract or under the assigned duties in accordance with Points c and d of Paragraph 1 of this Article shall have the rights provided in Article 752 of this Code.

Article 747. Works Protected by the State

1. Literary, artistic, and scientific works protected by the State include:
 - a. Written works;
 - b. Lectures and speeches;
 - c. Dramatic works and other works of performing art;
 - d. Motion pictures and video films;
 - e. Radio and television works;
 - f. Press articles;
 - g. Musical works;
 - h. Architectural works;
 - i. Fine art works and works of applied fine arts;
 - j. Photographic works;

- k. Scientific works and textbooks;
 - l. Geological maps, drawings, charts, and sketches relating to topography or architectural or scientific projects;
 - m. Translations, adaptations, compilations, transformations, commentaries;
 - n. Computer software;
 - o. Other works as per the law.
2. Only original works are protected.
 3. The State protects the works designated in Paragraph 1 of this Article regardless of their genre, quality, or language of expression.

Article 748. Works Protected by Special Law Provisions

The following works and documents are protected by special law provisions:

1. Folk art and folk literature;
2. Acts issued by state bodies and by political, socio-political, and social organizations, and by socio-professional and economic organisations and the translations thereof;
3. News just for information purposes.

Article 749. Works Not Protected by the State

1. The State shall not protect the copyright of works of the following kinds:
 - a. Works which are against the State of Vietnam and which are detrimental to national unity;
 - b. Works which constitute propaganda that encourages violence, aggressive wars, or which provoke hatred among nations and peoples, or which spread reactionary ideologies and cultures, obscene life-styles, crime, social evils, or superstitions that damage good social morals and fine customs;
 - c. Works which disclose Party, State, Army, national security, economic or diplomatic secrets, as well as confidential information concerning individual privacy and other secrets as per the law;
 - d. Works which falsify history, deny revolutionary achievements, defame national heroes and great persons, or slander or damage the reputation of organisations or the dignity and honour of individuals.
2. Any transactions relating to the circulation, use of or benefiting from the works provided in Paragraph 1 of this Article shall be illegal and violators shall be held liable under the law.

SECTION 2 - THE RIGHTS OF AUTHORS AND OWNERS OF A WORK

Article 750. The Rights of an Author

The rights of an author include property rights and personal rights on the works he/she has created.

Article 751. The Rights of an Author who is Simultaneously the Owner of a Work

1. The personal rights of an author who is simultaneously the owner of his/her work shall include the following:
 - a. The right to name his work;
 - b. The right to place his name or pseudonym on the work and to have his name or pseudonym acknowledged when his work is published, disseminated or used;
 - c. The right to publish or disseminate his work personally or to authorise other persons to publish or disseminate his works;
 - d. The right to authorise or not authorise other persons to use his work;
 - e. The right to protect the integrity of his works from any alteration and to authorise or not authorise other persons to change the contents of his work.
2. An author who is simultaneously the owner of his work shall have the following property rights

regarding the work:

- a. The right to receive royalties;
- b. The right to receive remuneration when his work is used;
- c. The right to receive remuneration when his work is used by other persons with his permission in any of the following forms:
 - Publications, republications, displays, exhibitions, public performances, radio or television broadcasts, audio or video recordings or photos;
 - Translations, adaptations or transformations;
 - Sub-licenses.
- d. The right to receive the award granted for the work if the work is protected by the State.

Article 752. The Rights of an Author who is Not the Owner of a Work

1. An author who is not the owner of his work shall have the following personal rights regarding the work:
 - a. The right to name the work;
 - b. The right to place his name or pseudonym on the work and to have his name or pseudonym acknowledged when his works are published, disseminated or used;
 - c. The right to protect the integrity of his works from any alteration and to authorise or not authorise other persons to change the contents of his work.
2. An author who is not the owner of his work has the following property rights regarding the work:
 - a. The right to receive royalties when his work is used by others;
 - b. The right to receive remuneration when his work is used;
 - c. The right to receive the awards granted for the work if the work is protected by the State.

Article 753. The Rights of an Owner who is not the Author of a Work

1. An owner who is not the author of the work shall have the following personal rights:
 - a. The right to publish or disseminate the work or to authorise other persons to publish or to disseminate it if the owner and the author have not agreed otherwise;
 - b. The right to authorise or not authorise other persons to use the work under his ownership if the author and the owner have not agreed otherwise.
2. An owner who is not the author of the work is entitled to receive material benefits from the use of his work in the following forms:
 - a. Publications, republications, displays, exhibitions, public performances, radio or television broadcasts, audio and video recordings, and photographs;
 - b. Translations, adaptations or transformations;
 - c. Sub-licenses.

Article 754. The Moment of the Commencement of the Copyright

The copyright of a work shall arise when the work is created in a definite form.

Article 755. The Rights of Co-Authors

1. Where several persons jointly create a work, they shall be the co-authors of the work. The co-authors are the co-owners of their work and they have the rights of an author as stipulated in Article 751 of this Code. Where the work is created by co-authors fulfilling their assigned duties or the performance of a contract, the co-authors shall have the rights of authors stipulated in Article 752 of this Code.
2. Where the work created by co-authors consists of different parts, each of which can be used separately, then each co-author may freely use his part and enjoy the rights of an author in respect of this part unless the co-authors have agreed otherwise.

Article 756. The Copyright of an Author of the Work Created in Fulfillment of the Assigned Duty or the

Performance of a Contract

1. Where a work is created by an author in fulfillment of the assigned duties or the performance of a contract, the author shall have the rights stipulated in Article 752 of this Code.
2. Persons who assign such a duty to, or concludes the contract with, the author shall have the rights stipulated in Article 753 of this Code.

Article 757. The Rights of Authors of a Translation, Adaptation or Transformation of a Work

1. The author of a translation, adaptation or transformation of a work shall enjoy an author's rights as stipulated in Article 751 or Article 752 of this Code, provided that he has the permission of, and pays remuneration to, the author or owner of the original work. Any change in the contents of the original work shall be made only with the permission of the author, and the name of the author and the title of the original work must be acknowledged.
2. The authors of translation works have the rights provided in Article 751 or Article 752 of this Code with the exception of the right to name the work.

Article 758. The Copyright in Respect of Audio-Visual Works, Video Works, Radio and Television Broadcasting Programs, Theatrical Performances and other Forms of the Performing Arts

1. In respect of audio-visual films, video works, radio and television broadcasting programs, and theatrical works and other forms of performing art, the directors, cameramen, stage managers, composers, and painters shall have the rights stipulated in Article 752 of this Code.
2. Individuals and organisations producing audio-visual films, video works, radio and television works, and theatrical works and other forms of performing art shall enjoy the rights stipulated in Paragraph 1, item c of Paragraph 2 of Article 751 of this Code.

Article 759. The Rights of Protection

The authors and owners of works whose copyrights of the works or whose ownership of the work are violated by others shall be entitled to demand that the competent authority force the violators to cease their violations, to publicly apologize, rectify, and pay compensation for the damage caused.

Article 760. Limitations of Copyrights

Individuals and organizations are entitled to use the works of others which have already been published or disseminated, provided that copying and taking pictures of such works is not banned, and also provided that such use is not for business purposes, will not affect their normal use, and does not cause damage to their authors and owners. Under such circumstances, individuals and organizations shall be entitled to use the works without permission from the authors or owners of the works, and shall not be bound to pay remuneration to the authors or owners of the works. However, they must acknowledge the authors' name and the source of the works used.

Article 761. The Use of Works Which Does Not Require the Users to Gain the Authors' Permission or to Pay Remuneration

1. The use of works as stipulated in Article 760 of this Code shall cover the following:
 - a. Copying works for personal use only;
 - b. Quoting works without alteration of their contents for commentary or for illustration in one's own works;
 - c. Quoting from a work without alteration of the author's concepts for use in Articles, periodic journals, radio and television programs and documentary films;
 - d. Using a work without alteration of the contents for teaching and testing activities in schools;
 - e. Archival and library use;
 - f. Translating, disseminating works from Vietnamese into the languages of ethnic minorities in

- Vietnam and vice versa;
 - g. Performing theatrical works and other forms of performing arts in cultural gatherings or in promotional campaigns held in public;
 - h. Direct recording and reporting performances for public information and educational purposes;
 - i. Taking pictures of or televising objects of fine art, or architectural, photographic, and fine applied art that have already been publicly displayed for introduction purposes;
 - j. Translating a work into Braille.
2. The right to use works as stipulated in Paragraph 1 of this Article shall not apply to copying architectural works, works of fine art or computer software.

Article 762. Registrations and Applications for Protection

1. An author or owner of a work is entitled:
 - a. To register the work under his ownership with the competent State authorities;
 - b. To apply to the competent State authorities for protection of his copyrights or ownership rights of the work when these rights are encroached upon by others.
2. Authors and owners who have registered their works with the competent state authorities shall not be responsible to prove their authorship or ownership of the works in case of a dispute.

Article 763. The Transfer of Copyrights

1. The personal rights of an author cannot be transferred except in the case of the personal rights of an author who is simultaneously the owner of the work stipulated as in Item "c" and Item "d" of Paragraph 1 of Article 751 of this Code.
2. An author or owner of a work shall be entitled to transfer all or part of his property rights regarding the work as stipulated in Paragraph 2 of Article 751 and in Paragraph 2 of Article 752 and in Paragraph 2 of Article 753 of this Code to other persons by contracts or by the provisions of the law of inheritance.

Article 764. The Inheritance of Copyrights

1. If an author dies his heir(s) shall have the following rights:
 - a. The personal rights stipulated in Points "c" and "d" of Paragraph 1 of Article 751 of this Code except in the case where the author is not the owner of his work;
 - b. The property rights of an author as stipulated in Paragraph 2 of Article 751 and Paragraph 2 of Article 752 of this Code. Where the deceased author has no heir or where the heirs of the deceased author renounce the inheritable estate or are disinherited, the rights set forth above shall belong to the State.
2. If the heir(s) of the deceased author have died prior to expiration of the term of protection, their heir(s) in turn shall have the rights stipulated in Paragraph 1 of this Article until the term of protection expires.
3. The heirs of an author who inherits the property rights stipulated in Paragraph 2 of Article 751 and in Paragraph 2 of Article 752 of this Code shall be the owners of such inherited rights and therefore shall be entitled to transfer all or part of such rights to other persons.

Article 765. The Inheritance of the Rights of Co-Authors

Where one of the co-authors who are also the co-owners of a work dies without any heir(s), or with heir(s) who have renounced the inheritable estate or have been disinherited, the property rights of the deceased co-author shall go to the State.

Article 766. The Terms of Copyright Protection

The terms of protection of copyrights shall be determined as follows:

1. An author's personal rights as provided for in Points a, b and d of Paragraph 1 of Article 751 and of Paragraph 1 of Article 752 of this Code shall be protected forever;
2. An author's personal rights as stipulated in Points c, b and d of Paragraph 1 of Article 751, and the author's property rights as stipulated in Paragraph 2 of Article 751 and in Paragraph 2 of Article 752 of this Code shall be protected during the life of the author and for fifty years following the year of his death;
3. In respect of the works of co-authors, the personal rights stipulated in Points "c" and "d" of Paragraph 1 of Article 751, and the material rights stipulated in Paragraph 2 of Article 751 and Paragraph 2 of Article 752 of this Code shall be protected during the life of the co-author and for fifty years following the year of death of the last surviving co-author;
4. In respect of audio-visual works, radio and television programs, video works and posthumous works, the personal rights stipulated in Points "c" and "d" of Paragraph 1 of Article 751, and the property rights stipulated in Paragraph 2 of Article 751 and in Paragraph 2 of Article 752 of this Code shall be protected for fifty years following the day of the first publication of the works.
5. In respect of the works whose authors are unknown or unclear, the copyright for such works shall belong to the State. Where such an author is identified during the 50-year period beginning from the first publication of the works, the copyrights shall be protected according to Paragraphs 1, 2, 3 and 4 of this Article and the term of protection shall run from the moment when the author has been identified.

SECTION 3 - THE CONTRACTS FOR THE USE OF A WORK

Article 767. The Contract for the Use of a Work

1. A contract for the use of a work is an agreement between an author or an owner of a work (hereinafter referred to as a 'licenser') and another individual or organization (hereinafter referred to as a 'licensee') by which the former transfers the work under his/her ownership to the latter for use.
2. A contract for the use of a work must be in writing unless otherwise agreed by the parties or provided by the law.

Article 768. The Contents of a Contract for the Use of a Work

Subject to the specific type of contract employed for the use of a work, the parties may agree on the following terms:

1. The manner the work is used in;
2. The limits on, and duration of, the use of the work;
3. The royalty or remuneration and mode of payment for the use of the work;
4. The liabilities of the parties for any breach of contract;
5. Other terms as deemed necessary.

Article 769. The Obligations of an Author or Owner of a Work

Under a contract for the use of a work an author or owner shall have the following obligations:

1. To transfer the work to the user at the agreed time and place and to pay for damages caused to the user by delay in transferring the work or by transferring it at the wrong time and place;
2. To refrain from transferring the work to any other individual or organization during the term of the contract without the user's consent, and to cease any violation that causes damage to the user, and to pay compensation for the damages caused.

Article 770. The Rights of an Author or an Owner

Under a contract for the use of a work, an author or owner shall have the following rights:

1. The right to demand that the user put his name or pseudonym on the work while using it;
2. The right to demand that the user pay the stipulated royalty in full, on time, and according to the agreed mode of payment;
3. The right to transfer the work covered by the contract to other individuals or organizations for use unless the parties have agreed otherwise.

Article 771. The Obligations of the User

The user of a work has the following obligations:

1. The obligation to use the work in accordance with the manner and limits and within the term stipulated in the contract;
2. The obligation to refrain from transferring the work to others without the consent of the author/owner;
3. The obligation to pay the stipulated royalty to the author or owner of the work fully, on time and in the stipulated mode of payment;
4. The obligation to pay compensation for damages caused to the author/owner by the breaches of the obligations stipulated in Paragraphs 1, 2 and 3 of this Article.

Article 772. The Rights of the Users

The user of a work shall have the following rights:

1. The right to publish and disseminate the work within the agreed time;
2. The right to use the work in accordance with the manner, limits and terms stipulated in the contract;
3. The right to terminate the contract and demand that the author/owner pay compensation for damages if the latter fails to transfer the work on time and at the proper place as stipulated in the contract;
4. The right to suspend the performance of the contract and to demand that the author/owner pay compensation for damages if the latter breaches the obligations stipulated in Paragraph 2 of Article 769 of this Code.

SECTION 4 - THE RIGHTS AND OBLIGATIONS OF PERFORMERS, PRODUCERS OF AUDIO, VIDEO TAPES AND DISKS, AND RADIO AND TELEVISION BROADCASTING ORGANIZATIONS

Article 773. Performers

Performers include individuals or organizations that perform works, stage managers and directors of music, dance, radio and television broadcasting programs, and directors and actors of stage performances and other types of performing arts.

Article 774. The Obligations of Performers

Performers have the following obligations:

1. The obligation to obtain the permission of authors or owners to perform works they have not yet published;
2. The obligation to pay such authors/owners royalties for the use of their works except in the cases stipulated in Point "g", Paragraph 1 of Article 761 of this Code;
3. The obligation to compensate the authors or the owners of such works for damages caused by the breaches of obligations stipulated in paragraph 1 and 2 of this Article.

Article 775. The Rights of Performers

Performers have the following rights:

1. The right to have their names acknowledged when performing;
2. The right to protect their performance billing from any misrepresentation;
3. The right to authorize or not authorize other persons to broadcast or televise their performances at the performance place except in cases where radio or television reports are carried out for information and educational purposes;
4. The right to authorize or not authorize other persons to make recordings, take pictures or make copies of their performances of distribution;
5. The right to receive royalties when their performances are used in the manner stipulated in Paragraphs 3 and 4 of this Article or for business purposes;
6. The right to demand that any organization or individual cease violations against his rights, and to demand that the organization or individual apologize, make a public rectification and pay compensation for damages.

Article 776. The Obligations of Individuals and Organizations that Produce Audio-Visual Recordings, Tapes and Disks

Individuals and organizations that make audio-visual recordings, tapes and disks have the following obligations:

1. The obligation to make a written contract with authors or owners to use their unpublished works to produce products;
2. The obligation to acknowledge authors' and performers' names when using their works or performances to produce products, and to ensure the integrity of works and to pay authors and owners the stipulated royalty when using their published works to produce products;
3. The obligation to make contracts with performers and pay them royalties for using their performances to produce products.

Article 777. The Rights of the Organizations that Produce Audio-Visual Recordings, Tapes and Disks

1. Organizations that produce audio-visual recordings, tapes and disks have the following rights in respect of their products:
 - a. The right to authorize or not authorize the reproduction and publication of their products;
 - b. The right to receive benefits when their products are used.
2. The rights of producers of audio-visual recordings, tapes and disks shall be protected for a term of 50 years commencing from the first publication of these works.
3. During the term of protection, the successor of the protected producer shall have the rights provided for in Paragraph 1 of this Article until the expiration of that term.

Article 778. The Obligations of Radio and Television Broadcasting Organizations

Radio and television broadcasting organizations shall have the following obligations:

1. The obligation to obtain permission to use unpublished works for producing radio or television programs from their authors or owners and to pay them royalties for this use;
2. The obligation to have the authors' and performers' names acknowledged when using their published works for producing radio and television programs, to pay remuneration and to ensure the integrity of the contents of the works used;
3. The obligation to pay a royalty to the authors or owners of original and derivative works used for producing radio and television programs.

Article 779. The Rights of Radio and Television Broadcasting Organizations

1. Radio and television broadcasting organizations have the following rights in respect of their programs:
 - a. The right to authorize or not authorize other persons to use their programs;

- b. The right to authorize or not authorize other persons to make copies of their programs for business purposes.
2. The rights of radio and television broadcasting organizations shall be protected for a term of 50 years commencing from the first broadcast of the programs.
3. During the term of protection, the organization to which the rights of radio and television broadcasting organizations are transferred, shall be entitled to the rights stipulated in Paragraph 1 of this Article until the term of protection expire.