

JOINT CIRCULAR No 01/2001/TANDTC-VKSNDTC-BVHTT OF 5th DECEMBER 2001 OF THE SUPREME PEOPLE'S COURT, THE SUPREME PEOPLE'S PROCURACY AND THE MINISTRY OF CULTURE AND INFORMATION

on Guidance to the Implementation of a Number of Provisions of the Civil Code in the Settlement of Disputes Involving Copyright at People's Courts

For the purpose of the proper and uniform application of the provisions of the Civil Code in the settlement of disputes involving copyright at the People's courts; the Supreme People's Court, the Supreme People's Procuracy and the Ministry of Culture and Information jointly provide the following guidance to a number of issues.

I. JURISDICTION OF PEOPLE'S COURTS OVER SETTLEMENT OF DISPUTES INVOLVING COPYRIGHT

1. Disputes involving copyright within the jurisdiction of the People's courts

Pursuant to the provisions in Article 759 of the Civil Code (hereinafter referred to as CC), Article 33 of 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 76/CP) and Article 10 of the Ordinance on Procedures for Settlement of Civil Cases (hereinafter referred to as OPSCC), the People's courts have the jurisdiction over the settlement of the following copyright-related disputes:

1.1. Disputes involving copyright in respect of works (disputes of who is the person that personally creates the whole or a part of a literary, artistic or scientific work) between:

- a. Individuals and other individuals; individuals and organizations; organizations and other organizations;
- b. Co-authors themselves; a co-author, co-authors and individuals, organizations;

1.2. Disputes involving copyright in respect of computer software between persons responsible for providing funds, determinant conditions for the creation, development of computer software and persons who design and develop computer software.

1.3. Disputes involving personal or property rights in copyright, between:

- a. Authors (co-authors) who simultaneously are not owners of work and owners of work who simultaneously are not authors (in relation to assigned duties or contracts of creation).
- b. Authors (co-authors), owners of work and persons who translate, adapt, compile, modify or transform works; authors (co-authors), owners of work and persons who use translated, adapted, compiled, modified or transformed works, for creating new works.
- c. Authors (co-authors) of published work, owners of published work and persons who collect such works to make selections or anthologies.
- d. Authors (co-authors), owners of work and cinematographic, radio broadcasting, television broadcasting, theatrical or other performing organizations.

(*dd. Authors (co-authors), owners of work and persons who use works in performances.

(*dd is to substitute for the letter following d and preceding e in Vietnamese

- e. Authors (co-authors), owners of work and organizations producing audio tapes, audio discs, video tapes or video discs.
- f. Authors who simultaneously are owners of work, owners of work who simultaneously are not authors and organizations, individuals using works for commercial purposes.
- g. Organizations producing audio tapes, audio discs, video tapes, video discs (containing programmes) and other organizations, individuals, in relation to the making of copies and distribution of such products.
- h. Radio, television broadcasting organizations and other organizations, individuals, in relation to the broadcasting or making copies of programmes.
- i. Performers and individuals, organizations.

1.4. Disputes involving contracts for use of work or contracts for copyright services.

1.5. Disputes involving copyright inheritance.

1.6. Other disputes involving copyright.

2. Jurisdiction of People's courts over settlement of disputes involving copyright under first instance procedures

The Ordinance on Copyright Protection ceased to be effective as from 1st July 1996 (the date on which the CC entered into force). The CC does not provide for the jurisdiction of the People's courts of any levels over the settlement of disputes involving copyright; therefore the determination of the jurisdiction of the People's courts of all levels over the settlement of disputes involving copyright under first instance procedures is based on the OPSCC. Disputes involving copyright are, however, cases of a nature of complexity. Therefore, in addition to disputes involving copyright under the provisions in point a paragraph 2 Article 11 of the OPSCC, the People's courts of provinces and cities subordinated to the Central Government have the first instance jurisdiction over all other disputes that involve copyright, as cases taken by themselves under the provisions in point c paragraph 2 Article 11 of the OPSCC.

II. RIGHT TO INITIATE SUITS AND PROSECUTIONS RELATING TO DISPUTES INVOLVING COPYRIGHT

1. Right to initiate suits relating to disputes involving copyright

Pursuant to the provisions of the CC, the following persons and organizations have the right to initiate suits at the competent courts to protect their copyright-related rights and lawful interests:

- a. Authors;
- b. Owners of work;
- c. The lawful heirs of authors or owners of work;
- d. Individuals or organizations that are the transferees of the rights of owners of work;
- e. Individuals or organizations that use works under contracts;
- f. Performers;
- g. Publishing houses and organizations producing audio tapes, audio discs, video tapes or video discs;
- h. Radio, television broadcasting organizations;
- i. Other individuals or organizations, as provided by law.

2. Right to initiate prosecutions relating to disputes involving copyright

In respect of infringements of copyright that belongs to the State, the People's procuracies of provinces and cities subordinated to the Central Government (hereinafter referred to as provincial procuracy) have the right to initiate prosecutions.

When discovering acts of infringement upon copyright that belongs to the State, the Copyright Office (Ministry of Culture and Information) and Departments of Culture and Information of provinces and cities subordinated to the Central Government shall make suggestions to the provincial procuracies to consider the initiation of prosecutions in order to protect the interest of the State.

3. Conditions for initiating suits and prosecutions relating to disputes involving copyright

3.1. Pursuant to the provisions in Article 754 of the CC, copyright in a work arises at the moment the work is created in a certain form (irrespective of whether the work is published or not, whether the work is registered or not, in what language the work is expressed, how valuable the work is...); therefore, when disputes involving copyright arise and the interested parties initiate suits to request the courts to protect their rights and lawful interest, the courts shall not make any difference in the fact that the said parties have or have not been granted Copyright Certificates, or that the said parties have or have not filed applications for protection of copyright or ownership right over work.

3.2. The rights of authors, the rights of owners of work who simultaneously are not authors, the rights of organizations producing audio tapes, audio discs, video tapes or video discs, and the rights of radio, television broadcasting organizations are protected for the duration stipulated in Article 766 of the CC. After the expiration of the said duration, the subjects of the above-mentioned rights are not protected by the State and law, except for the personal rights of authors, provided for in points a, b, and d paragraph 2 Article 751 and paragraph 1 Article 752 of the CC; therefore, the courts shall only accept petitions for initiating suits if the rights in dispute are effective in regard of the duration of protection.

3.3. Pursuant to the provisions of the OPSCC, persons who initiate suits at court have the obligation to submit evidences to support the protection of lawful rights and interests. An evidence may be: a Copyright Certificate issued by the Copyright office (Ministry of Culture and Information); a document of the Copyright Office or a

Department of Culture and Information, which certifies that the person who initiates the suit has filed an application for protection of copyright or ownership right over work, if the work is unpublished; documents of socio-professional organizations (operating in the fields of literature, art or science), which serve as the basis for proving that the person who initiates the suit is the author, co-author or owner of work and that the work falls under the genres of work protected by the State, if the work is not registered.

In case of necessity, for the purpose of the proper trial of a suit, the court may collect additional evidences, and, upon the request of an interested party, order expert examinations by professional organizations. Persons who request the courts to make the decision on the requisition of examinations shall file petitions, clarify reasons, and deposit an amount of money to cover the expenses due to the examinations.

3.4. Authors are entitled to royalties, remunerations and other material benefits (if any) when their works are used and to the prize awarded to their works (except where the works are not protected by the State); therefore, only authors (co-authors), the lawful heirs of authors and duly authorized persons have the right to request the courts to protect the above-mentioned rights if infringed. Where an author (co-author) died and the above-mentioned rights belong to the State under the provisions in paragraph 1 Article 764 and Article 765 of the CC, the State is the owner of such rights. In case the above-mentioned rights are infringed upon and if the State, by written documents, empowers particular organizations or institutions to act on its behalf to protect the interest of the State, the empowered organizations or institutions have the right to initiate suits at court to protect the interest of the State. If the State does not issue such documents, the provincial procuracies have the right to initiate prosecutions, ex-officio or upon the recommendation of the Copyright Office (Ministry of Culture and Information) or Departments of Culture and Information or socio-professional organizations (operating in the fields of literature, art or science), to request the courts to protect the interest of the State.

III. APPLICATION OF LAW FOR SETTLEMENT OF A NUMBER OF PARTICULAR CASES

In the settlement of cases relating to disputes involving copyright, it is necessary to pay attention to the followings:

1. Where requests relate to the protection of personal rights, the related provisions in Articles of Chapter I Part Six and Article 27 of the Civil Code are applicable to the settlement. Subject to the specificity of cases, the decision may be an order to force the violator to desist the act of violation, make public apology and rectification (including rectification on mass media), and compensate material damages and moral damages. Material and moral damages caused by the infringement of personal rights are to be determined in accordance with the provisions on extra-contract compensations in Articles 609, 610, 611 and 615 of the CC.
2. In respect of disputes, arising between individuals, of the rights of authors or co-authors, it is required that the true authors (or co-authors) of works be identified. According to the provisions in paragraph 2 Article 24 of the Decree 76/CP, persons who request the recognition of the fact that they (or their legatee) are the authors of works are required to present materials and papers necessary to prove they (or their legatee) are the authors (or co-authors). Materials and papers necessary to prove the rights of authors may be the original of works, documents relating to the original of works and documents relating to published works. If there are sufficient evidences to determine who are the creators of works (of a part or the whole of works), the rights of authors (rights of co-authors) and the ownership rights in the whole or a part of works shall be recognized for the benefit of the above-mentioned persons (or their legatee).
3. Authors who simultaneously are owners of work have all the rights in their works, as provided for in Article 751 of the CC, while authors who simultaneously are not owners of work do not have all such rights, since some personal and property rights are vested in the owners of work, under the provisions in Article 753 of the CC, such as the right: to publish or disseminate works, to authorize other persons to publish or disseminate works, to authorize or prohibit other persons to use works, and to benefit from material interests obtained by the use of works in the form of publication, re-publication, display, exhibition, performance, radio broadcast, television broadcast, audio recording, video recording, photograph, translation, adaptation, modification, transformation, or rental...

When handling cases to settle disputes involving copyright (or rights of co-authors), the courts are required to clearly identify the relations in disputes; where disputes relate to the rights of owners of work, the courts shall involve the owners of work in the proceedings, as persons having rights or interests, to protect their rights or interests.

The relationship between authors (co-authors) who simultaneously are not owners of work and owners of work who simultaneously are not authors arises where authors (co-authors) create works as assigned duties or in the performance of contracts. The rights of authors (co-authors) and the rights of owners of work are distinguished pursuant to the provisions in Article 756 of the CC. Authors (co-authors) and owners of work may, however, have agreements on a number of rights, as stipulated in points a and b paragraph 1 Article 753 of the CC; therefore, in the settlement of disputes arising from such circumstances the courts

shall rely not only on the provisions of the CC and Decree 76/CP but also on duties assigned to authors (co-authors) and contractual agreements between authors (co-authors) and owners of work.

4. The rights of co-authors are provided for in Article 755 of the CC. In the settlement of disputes involving copyright between co-authors themselves and if their reconciliation failed, the courts shall rely on the provisions in paragraph 1 Article 755 of the CC. In the case of works of co-authorship, as stipulated in paragraph 1 Article 755, the use and disposal of the works are subject to the agreement of all the co-authors, and, if a co-author died, the agreement of the heir of that co-author. Where works of co-authorship consist of individual parts that are separable for independent use, the courts shall determine the rights of each co-author, if they so request, on the basis of the provisions in paragraph 2 Article 755 of the CC.
5. The rights of authors of translations, adaptations, compilations, modifications or transformations are also protected under the provisions in Article 751 or 752 of the CC; it is, however, to be noted that such authors are required to obtain the permission of the authors or owners of the original works (if the copyright is effective in regard of the duration of protection), particularly when the content of the original works is changed during the realization of translations, adaptations, compilations, modifications or transformations. The permission of and payment of remunerations to the authors or owners of translated, adapted, compiled, modified or transformed works are made by means of contracts. Therefore, in the settlement of disputes between the authors, owners of the original works and the authors of the translated, adapted, compiled, modified or transformed works the court shall apply the provisions in Article 757 of the CC and the contractual agreements of the parties.
6. In the case of cinematographic, video, radio, television or theatrical works or works of other kinds of performing art, the rights provided for in Article 758 of the CC belong to the directors, scenario writers, cameramen, stage managers, composers, and painters. However, they are entitled only to the author's rights in works created by themselves, which are not based on the content of works of other persons or based on the content of works of other persons with the consent of the authors (co-authors) or owners of the original works (or the authors of translated, adapted, compiled, modified or transformed works, if they use the works of such authors), provided that they have properly performed the obligations under Article 778 of the CC. In the settlement of disputes between the authors (co-authors), owners of the original works (or the authors of translated, adapted, compiled, modified or transformed works) and the authors (co-authors) of cinematographic, video, radio, television, theatrical works or works of other kinds of performing art, the courts shall apply the provisions in Articles 758, 760, and 778 of the CC, if the reconciliation of interested parties failed. In a similar manner, the courts may handle and settle disputes between authors, owners of work and persons who collect published works to make selections or anthologies.
7. Pursuant to the provisions in paragraph 2 Article 758 of the CC, individuals or organizations that produce cinematographic, video, radio, television, theatrical works or works of other kinds of performing art are entitled to the rights provided for in paragraph 1 and point c paragraph 2 Article 751 of the CC. To be entitled to such rights, however, such individuals or organizations are required to perform all the obligations they have towards the authors (including the authors of the original works; the authors of the translated, adapted, compiled, modified or transformed works; the authors in capacity of directors, scenario writers, cameramen, stage managers, composers, and painters...) and the owners of work, as stipulated by law, except where the authors simultaneously is the owners of work. Therefore, where individuals or organizations use the works of other persons for producing cinematographic, video, radio, television, theatrical works or works of other kinds of performing art, without performing all the obligations they have towards the authors and owners of work, the authors and owners of work have the right to request the said individuals or organizations to perform such obligations. The courts shall rely on the provisions of the CC and this Circular to settle cases when initiated. In a similar manner, the courts may handle and settle disputes between authors, owners of work and performers.
8. Disputes may arise from contracts for use of work between authors (co-authors), the heirs of authors, the heirs of owners of work and parties using works, if contracts for use of work have been concluded as between them in accordance with the provisions in Article 767 of the CC. The content of contracts for use of work and the contractual rights and obligations of the parties to such contracts are stipulated in Articles 768 through 772 of the CC and Articles 15 through 18 of the Decree 76/CP; therefore, in the settlement of disputes of this kind the courts shall rely on the said provisions and contractual agreements.
9. In the settlement of disputes involving inheritance of copyright, the courts are required to comply with the provisions in Articles 764 and 765 of the CC and, at the same time, take into account that the heirs are entitled only to the author's rights that are effective in regard of the duration of protection. Pursuant to the provisions in Article 766 of the CC, the duration of protection of copyright after the death of the authors is as follows:
 - a. 50 years after the death of the author;
 - b. 50 years after the death of the last surviving co-author, in the case of a work of co-authorship;
 - c. 50 years after the death of the author, where the author died and the heir is entitled to the personal rights provided for in points c and d paragraph 1 Article 751 and the property rights provided for in paragraph 2 Article 751 and paragraph 2 Article 752 of the CCWhere the heir of an author died prior to the end of the above- mentioned duration of protection, the heir of the deceased heir is entitled to the rights of the author, provided for in paragraph 1 Article 764 of the CC, until the end of the duration of protection; therefore, the last-mentioned

person has the right to initiate a suit at court to request the protection of the rights of the author and his or her right to inheritance until the end of the duration of protection. The moment at which the 50-year duration of copyright protection terminates is specified in Article 14 of the Decree 76/CP. Authors who simultaneously are owners of work and authors who simultaneously are not owners of work are entitled to receive the prize awarded to their work. This right is also protected for a period of 50 years following the death of authors; therefore, if after the termination of the 50-year duration of protection, counted from the date the author or the last surviving co-author died, the said author or co-author is awarded a prize, he or she is entitled only to the personal rights while the property right that relates to the material value included in the prize belongs to the State. Where the author or co-author is awarded a prize before the end of the 50-year duration of protection, the heirs of such an author or co-author are entitled, according to the provisions on inheritance of the CC, to the material value included in the prize. The 10-year time limit for initiating suits involving matters of inheritance, as provided for in Article 648 of the CC, is counted from the date the prize is awarded.

10. The rights of organizations producing audio tapes, audio discs, video tapes or video discs, as provided for in Article 777 of the CC, and the rights of radio or television broadcasting organizations, as provided for in Article 779 of the CC, are subject to the performance of all the obligations such organizations have under the provisions in Articles 760, 776, and 778 of the CC. The said organizations have these same rights in its productions while the authors and owners of work have their rights in such productions pursuant to the provisions of law or under contracts (concluded between the organizations and authors, co-authors, owners of work). In the case of violations of the rights of organizations producing audio tapes, audio discs, video tapes or video discs, or the rights of radio or television broadcasting organizations, such as the duplication or distribution of their products, the broadcast of their programmes or the making of copies of their programmes for unlawful commercial purposes, not only such organizations but also the authors and owners of work have the right to initiate suits to request the courts to protect their rights and lawful interests. Similarly, performers also have the right to initiate suits against persons who infringe upon the rights of organizations producing audio tapes, audio discs, video tapes or video discs, such as the unlawful duplication or distribution of the above-mentioned products.
11. In case violations of copyright are prosecuted under the provisions of the Criminal Code, in hearing this kind of criminal cases the courts are required to take into account the protection of the authors' rights that are infringed upon by the crimes, if there are such requests.

IV. CO-OPERATION IN SETTLEMENT OF DISPUTES INVOLVING COPYRIGHT

In the course of the settlement of disputes involving copyright, the close co-operation of the courts and procuracies with the Copyright Office (Ministry of Culture and Information) and the Departments of Culture and Information is required in carrying out the following tasks:

1. Where professional questions in the field of culture and information arise and the courts have requested in written form the needed opinions of the specialized culture and information branch, the Copyright Office or the Departments of Culture and Information shall have the responsibility to give answers to such questions as requested by the courts or to establish examination boards to carry out tasks the courts requested to be done.
2. The procuracies and courts shall notify the Copyright Office and the Departments of Culture and Information of the acts of copyright infringement found in the course of criminal prosecutions and trials, for enabling them to participate in the proceedings or to follow up the outcome of copyright protection in accordance with their functions.

V. GUIDANCE TO THE VALIDITY OF CIRCULAR

1. This Circular shall take effect as from 21st December 2001.
2. This Circular shall also apply to the settlement of disputes involving copyright that belongs to foreign individuals or organizations, or international organizations, in respect of literary, artistic or scientific works published or disseminated for the first time in Vietnam or created and expressed in a certain material form in Vietnam, as stipulated in Article 12 of the Decree No 60/CP of 6th June 1997 of the Government "on guidance to the implementation of the provisions of the Civil Code on civil relations involving foreign elements", except where the works are not protected by the State under the provisions in Article 749 of the CC.
3. The guidance provided in this Circular shall apply to the settlement of disputes involving copyright arising on and after 1st July 1996. All previous guidances whose content is contrary to this Circular shall be repealed.

4. In the case of suits where the court proceedings ended with final settlement (the judgments or decisions made by the courts took legal effect), the guidance provided in this Circular shall not apply for the purpose of making protests under review-appellate orders, except where other bases exist.
5. In the course of the implementation, any encountered entanglements or unguided issues, which need further interpretation and guidance, are to be notified to the Supreme People's Courts, the Supreme People's Procuracy and the Ministry of Culture and Information for timely issuance of interpretation and guidance.

On behalf of the Minister of Culture
and Information
Tran Chien Thang

(Signed)

On behalf of the Chief of the
Supreme People's Procuracy
Khuat Van Nga

(Signed)

On behalf of the Chief of the Supreme
People's Court
Dang Quang Phuong

(Signed)