

**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 [of a work] with an author shall be the owner of the entirety or part of the work created by the author under the contract;
  - e. An heir under a will or an heir at law of an author shall be the owner of the inherited work in circumstances where the author is concurrently the owner of the work; [and]
  - f. An individual to whom, [or] organisation to which the owner of a work stipulated at points a, b, c, d and e of Clause 1 of this Article transfers his/her rights over the work under a contract shall be the owner of the rights transferred.
2. An author who creates a work under a delegated duty [or] a contract as stipulated at points c and d of Clause 1 of this Article shall have the rights stipulated in Article 733 of this Code.

### **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<sup>(1)</sup>, 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**

The rights of an author shall consist of the personal rights and property rights of the author over the work created by him/her.

### **Article 732 Rights of author being concurrently the owner of works**

1. Any authors to be concurrently the owner of works shall have personal rights in respect of their own works, namely:
  - a. Naming the work;
  - b. Appending his/her real name or pseudonym to the work; having his/her real name or pseudonym cited when the work is publicised, disseminated [or] used;
  - c. Publicising [and] disseminating the work, or authorising other persons to publicise [and/or] disseminate the work;
  - d<sup>(2)</sup>.Permitting or not permitting other persons to use the work; [and]
  - e. Protecting the integrity of the work, and permitting or not permitting other persons to alter the content of the work.
2. An author who is concurrently the owner of a work shall have property rights over his/her work, which shall include:
  - a. Receiving royalties;

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1. The original Vietnamese term is "*toãi àùc*", which may be translated as evil or criminal as well.

2. See footnote to Article 747 (1).

- 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<sup>(3)</sup>, 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:
  - a. Naming the work;
  - b. Appending his/her real name or pseudonym to the work; having his/her real name or pseudonym cited when the work is publicised, disseminated [or] used; [and]
  - c. Protecting the integrity of the work, and permitting or not permitting other persons to alter the content of the work.
2. An author who is not concurrently the owner of a work shall have property rights over the work of which he/she is the author, which shall include:
  - a. Receiving royalties;
  - b. Receiving remuneration when the work is used; [and]
  - c. 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 734 Rights of owners of work not to be concurrently the authors**

1. An owner of a work who is not concurrently the author [thereof] shall have personal rights over the work, which shall include:
  - a. Publicising [and] disseminating the work, or permitting other persons to publicise [and/or] disseminate the work under his/her ownership rights, except in circumstances where otherwise agreed by the author and owner; [and]
  - b. Permitting or not permitting other persons to use the work belonging to his/her ownership rights, except in circumstances where otherwise agreed by the author and owner.
2. An owner of a work who is not concurrently the author [thereof] shall be entitled to enjoy the material benefits from the use of the work in the following forms:
  - a. Publication, re-publication, display, exhibition, performance, sound broadcast, television broadcast, audio recording, video recording [and] photographing;
  - b. Translation, adaptation, re-writing and transformation; [and]

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3. From the Vietnamese word "*phaùt thanh*" which may also be translated as radio.

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 over such part(s), if not otherwise agreed by the co-authors.

**Article 737 Right to claim protection**

An author whose copyright, [and] an owner of a work whose rights are infringed upon by other persons shall have the right to request the person who has committed the act of infringement, or the competent State authority to compel such person to, terminate the act of infringement, apologize publicly, issue a public retraction [and/or] compensate for damage.

**Article 738 Restrictions on Copyright**

Individuals [and] organisations may use the already publicized [and] disseminated works of other persons if such works are not prohibited from being copied and such use is not for commercial purposes and does not affect the normal exploitation of the works [and] is not detrimental to the other interests of the authors or owners of the works; the individuals [and] organisations using [such] works do not have to obtain permission from and do not have to pay remuneration to the authors or owners of the works, but [they] must acknowledge or cite the name of the authors and the original source of the works

**Article 739 Registration and submission of an application to request protection of copyright [and] the right to ownership of a work**

1. An author [and] owner of a work shall have the rights to:
  - a. Register the work belonging to his/her ownership with the competent State authority; [and]
  - b. Submit an application to request the competent State authority to protect the rights of the author or owner of the work when such rights are infringed upon by other persons.
2. An author [and] owner of a work who have registered for protection of the work with the competent State authority shall not have the obligation to prove the right to ownership over the registered work when there is a dispute.

#### **Article 740 Transfer of Copyright**

1. The personal rights of an author shall not be transferred to other persons, with the exception of the personal rights of an author who is concurrently the owner as stipulated in Points c and d of Clause 1 of Article 732 of this Code.
2. An author [and] owner of a work shall have the right to transfer the entirety or part of the property rights over the work as stipulated in Clause 2 of Article 732, Clause 2 of Article 733 or Clause 2 of Article 734 of this Code to other persons under a contract or in accordance with the provisions of the laws on inheritance

#### **Article 741 Inheritance of Copyright**

1. In the event that an author dies, his/her heir is entitled to enjoy the following rights:
  - a. The personal rights stipulated in Points c and d of Clause 1 of Article 732 of this Code, except in circumstances where the author is not concurrently the owner of the work; [and]
  - b. The property rights of the author over the work as stipulated in Clause 2 of Article 732 or Clause 2 of Article 733 of this Code.

In circumstances where there is no heir, or the heir disclaims inheritance or is not entitled to the right to inherit the estate, those rights shall belong to the State.

2. In the event that the author's heir dies before the expiry of the protection period, the heir [succeeding] such person shall be entitled to enjoy the author's rights stipulated in Clause 1 of this Article until the expiry of the protection period.
3. An author's heir who is entitled to enjoy the property rights stipulated in Clause 2 of Article 732 or Clause 2 of Article 733 of this Code, shall be the owner of the rights transferred and shall have the right to transfer the entirety or part of such rights to other persons.

#### **Article 742 Inheritance of the rights of co-authors**

With respect to a work of co-authors who are owners in a consolidated common ownership in respect of the work, if a co-author dies without an heir, [or] [his/her] heir disclaim the inheritance or is not entitled to the right to inherit the estate, the property rights of such co-author shall belong to the State.

#### **Article 743 Term of protection of copyright**

Copyright shall be protected during the term provided for by law.

#### **Article 744 Contracts for the Use of Works**

1. Any assignment of a work between its author or its owner and an individual or organization using that work must be made in the form of a contract.
2. A contract for the use of a work must be made in writing, except in circumstances where otherwise agreed upon or otherwise stipulated by law.

### **Section 2**

#### **Rights, obligations of performers, producers of audio tapes and records, and video tapes and disks, and radio and television broadcasting organizations**

#### **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 recordings of his performance or to prohibit another from duplicating such recording for circulation;
5. To receive royalties from other people using their performances for business purposes pursuant to the stipulation's in Clause 3 and 4 of this Article; and to be entitled to remunerations if their program-carrying tapes and disks are used by others for broadcasting; and
6. To request another individual, organization which infringes upon the rights of performers to stop their acts of infringement, to make public apology/correction, and pay compensation for any damages.

#### **Article 748. Obligations of organisations which produce audio tapes and disks, video tapes and disks**

An organisation which produces audio tapes and disks [and/or] video tapes and disks shall have the following obligations:

1. Enter into a contract in writing with the author or owner of the work if using a work which has not been publicised to produce a programme of its own;
2. Acknowledge by name the author [or] performer and ensure the integrity of the contents of the work and to pay remuneration to the author or owner of the work if using a work which has been publicised to produce a programme of its own; [and]

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:
  - a. Permit or not permit the duplication and/or distribution of the product; [and]
  - b. Enjoy benefits when the product is used.
2. The rights of an organisation producing audio tapes and disks [and/or] video tapes and disks shall be protected for a period of fifty years from the date the audio tapes and disks [and/or] video tapes and disks are disseminated for the first time.
3. During the protection period, the organisation to which the rights of an organisation producing audio tapes and disks [and/or] video tapes and disks has been transferred shall continue to enjoy the rights stipulated in Clause 1 of this Article until the expiry of the protection period.

**Article 750. Obligations of radio and television broadcasting organisations**

Radio and television broadcasting organisations shall have the following obligations:

1. Obtain permission from and pay royalties to the author or owner of the work if using a work which has not been publicised to create a radio [or] television broadcasting programme of their own;
2. Acknowledge by name the author [or] performer and ensure the integrity of the contents of the work, and pay remuneration to the author or owner of the work if using a work which has been publicised to create a radio [or] television broadcasting programme of their own; [and]
3. Pay royalties to the author or owner of the work with respect to the rewritten [or] transformed work, and pay remuneration to the author or owner of the work with respect to the original work if using a rewritten [or] transformed work to create a radio [or] television broadcasting programme of their own.

**Article 751. Rights of Radio and Television Broadcasting Organisations**

1. Radio and television broadcasting organisations shall have the following rights with respect to their programmes:
  - a. Permit or not permit the re-broadcasting of their programmes; and
  - b. Permit or not permit the duplication of their programmes for commercial purposes.
2. The rights of radio and television broadcasting organisations shall be protected for a period of fifty (50) years from the date their radio [or] television programme is broadcast for the first time.

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 registration, the relevant right shall arise from the time a protection certificate is issued and lasts until the expiry date of the effective period of that protection certificate.
2. With regard to the types of industrial property rights which are automatically established, the relevant right shall arise from the time all mandatory protection conditions are met and shall last as long as those conditions are still met.

**Article 758. Rights of owners of industrial property subject matters**

1. Owners of industrial property rights shall have the following rights, except where otherwise provided for by laws:
  - a) to have the exclusive rights to use the subject matter of the industrial property;
  - b) to transfer to another person the right to use the subject of the industrial property, except for the right to use geographical indications; and
  - c) to pass by inheritance or transfer to another person, or to waive the whole industrial property rights.
2. A person using a subject matter of industrial property of another person during its term of protection without consent of the industrial property owner shall be regarded as infringing upon the industrial property rights, except for those cases referred to in Article 761 of this Code.
3. The owner of industrial property has the right to request the court to deal with acts of infringement upon his/her rights by way of taking the remedies set out in Article 9 of this Code and other relevant legislation.

### **Article 759 Transfers of industrial property rights**

1. Any transfer of industrial property rights must comply with the general provisions on civil transactions and civil contracts.
2. Any agreement upon a transfer of industrial property rights must be made in form of a contract.
3. With regard to the industrial property rights established on the basis of a registration:
  - (a) A contract for transfer of the right to use relevant subject of industrial property shall only be valid against a third party if it is registered with the competent State body.
  - (b) Any transfer of the whole of the industrial property rights shall only be valid if it is registered with the competent State body.

### **Article 760. Rights of authors of certain industrial property subject matters**

1. The author or co-author of an invention, utility solution, industrial design, layout design of integrated circuit, plant varieties or another subject of industrial property of nature of technological creativity shall be the person who creates or contributes to the creation of such subject by way of their creative work.
2. The author or a co-author referred to in clause 1 of this Article shall have the following rights:
  - a) To have his/her name stated as the author or a co-author in the protection certificate and publication documents of the relevant subject of industrial property.
  - b) To be entitled to remuneration paid by the industrial property owner out of revenue from using or transferring relevant subject of industrial property, unless otherwise agreed between the industrial property right holder and the author.
3. The author has the right to request the court to deal with the acts of infringement upon his/her rights by way of taking remedies set out in Article 9 of this Code and other relevant legislation.

### **Article 761 Restrictions on the rights of industrial property right owners**

Rights of an industrial property right holder are restricted by certain exceptions set out by laws in order to ensure the balance between benefits of the industrial property right holder and benefits of related parties and national and social interest.

## **Chapter XXXVI**

### **TECHNOLOGY TRANSFER**

#### **Article 762. Subject matters of Technology Transfer**

1. The subject matter of technology transfer shall include:
  - a) Know-how, technical expertise in the forms of engineering alternatives, technological solutions, technological processes, computer software,

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 ownership right and the rights to use such subject matter must be conducted in accordance with provisions of the laws prior to conducting the technology transfer.

#### **Article 763. Technology Transfer Rights**

1. The State guarantees the legal interests of all individuals, juridical persons and other subjects engaging in the activity of technology transfer.
2. Individuals, legal entities and other subjects who are owners of the technology to be transferred or who are authorized by the owner of the technology to be transferred, shall have the right to transfer the ownership right or the right to use such technology.

#### **Article 764. Circumstances where a transfer of technology is not permitted**

A transfer of technology is not permitted in the following circumstances:

1. [Where] the technology does not meet the regulations promulgated by the competent State authority;
2. Other circumstances stipulated by law.

#### **Article 765. The Form of a Technology Transfer Contract**

1. Any technology transfer must be in the form of a contract.
2. Technology transfer contracts must be in writing and must be registered with the State competent body if so provided by the laws.
3. Technology transfer at the decision of the State competent body must also be conducted through written contracts.

#### **Article 766. The effect time of technology transfer contracts**

The parties may agree upon the effect time of the contracts. In the event that technology transfer contracts must be registered with the State competent body, the effect time of the contracts shall be calculated from the date of registration.

#### **Article 767 . The contents of a technology transfer contract**

Depending on the subjects of a technology transfer contract, the parties may agree on the following principal contents:

1. The subjects of the contract, the name and particulars of the technology, the contents of the technology and the results from the application of the technology;

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.