

Legal news

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Industrial property

Copyright Laws For Protecting Software A Tangle Of Thorns

By Nguyen Nhu Hoa

As in most countries, computer software is considered a form of work in Vietnam, and therefore, it is a subject matter protected by copyright law.

In detail, computer software is included in the list of literary, artistic and scientific works with copyright protected by the State (Article 747 of the Civil Code). In spite of the fact that the term "computer software" itself is not defined in such legislation, Governmental Decree No. 76-CP provides a number of provisions on copyrights in the Civil Code, defining software as computer programme, programme descriptions, supportive documents and database.

According to the provisions of the Civil Code, the owner of the copyright, including those over computer software, is defined as either an author (or co-authors) who personally creating the computer software work, or an agency or individuals who assign the task to create an agreement with the author, or the author's heir, or those who receives such right from the above owners, or The State where the author of the computer software work is un-known.

Regarding the protection period, computer software is protected since the moment it is created in a given material form, regardless of whether it is published or registered or not till 50 years after the author's death.

Vietnamese intellectual property law provides that software writer outside Vietnam can receive protection for original computer software in Vietnam if his software computer was first made public, disseminate in Vietnam or was created and expressed under a given material form in Vietnam. In addition, at present, Vietnam is a member of the Berne Convention, meaning that the offshore writer or owner can also enjoy protection for his computer software in Vietnam if the author of the computer software is national or resident of one of the member countries of Berne Convention or his work first published in one of those countries, or simultaneously in a country that is not a member country of Berne Convention and in a country which is a member country of Berne Convention.

Transfer of copyright

The copyrights with respect to computer software are the exclusive rights of the author with regard to the work created by him. They include the rights "to publish, disseminate of his work in the form of publishing, republishing, copying, performing, displaying or exhibiting, importing, distributing of work or copies thereof via sale, lease or in other ways"; "to permit another person to use his work in the form of: copying, translating, adapting, transforming"; and "to protect the integrity of his work and to permit another person to alter the content of his work"

Correlatively, a copyright for computer software is infringed by any person who, without the consent or license of the owner, does any of the foregoing acts with respect to the software computer to which the owner has exclusive rights.

When the infringement occur, an author or owner of a software program shall be entitled to request the violator or the relevant state agency to coerce such person to stop his acts, to apologize and pay compensation for damage.

The settlement of copyright infringement on software shall be carried out in accordance with the procedure of administration by the specialized Inspector of Information – Culture or the Customs Office; or civil action by Civil Court; or criminal action by Criminal Court.

In Vietnam, the following steps are carried out to settle the infringement: (i) locate infringement; (ii) assess infringement to establish evidence that is an infringement of copyright; (iii) identify the infringing parties; (iv) establish proof of ownership of copyright; (v) write a warning letter; (vi) if no warning letter proceed with administrative, civil or criminal proceedings.

Upon lodging an opposition, the plaintiff shall bear the obligation of proving his ownership over the protected software computer. Therefore, the registration of work at the National Office of Copyright is advisable.

However, the Civil Code also sets forth some exclusions for the use of copyrighted computer software. For example, use for the purpose of commentary or illustration, use for teaching or examinations in schools, for the purpose of writing newspaper articles, broadcasting or television programme, and so on, provided the usage does not conflict with normal exploitation of the work by the owner and does not unreasonably prejudice the legitimate rights of the owner.

However, the duplication computer software for personal use is not considered as form of fair use allowed by law.

In the future, the enforcement of copyright over computer software in Vietnam has been a big challenge since the rapid growth of information technology has made copying computer software easier than ever. The rampancy of such violations has hindered the development of the hi-tech industry in Vietnam.

Other Sectors

Trading

- On February 01, 2005, the Minister of Trade issued Decision 0161/2005/QD-BTM, promulgating the Regulation on protection of State secret in the field of Trade.
- On February 03, 2005, the Government issued Decree 13/2005/ND-CP, on amendment of and supplementation to the List of goods and import tariff of Vietnam for the purpose of the implementation of the Agreement on Common effective preferential tariff (CEPT).

Accounting – Auditing

- The Minister of Finance issued Decision 03/2005/QD-BTC, on January 18, 2005, promulgating six standards of Vietnam auditing (6th batch).
- The State Bank of Vietnam issued Decision 121/2005/QD-NHNN, on February 02, 2005, promulgating the Regulation on independent auditing to credit institutions.
- Interministerial Circular 13/2005/TTLT-BTC-BLDTBXH, dated February 07, 2005, of the Ministry of Finance, the Ministry of Labor, War Invalids and Social Affairs, guiding some regulations on chief accountant and accountants of business entities.

Finance

- Decision 06/2005/QD-BTC, dated January 18, 2005, of the Ministry of Finance, on issuing the Regulation on assessment of property, goods and services.
- Decision 09/2005/QD-BTC, dated January 21, 2005 of the Ministry of Finance, on the third issuance of government bonds in 2005 for the purpose of investment in some significant transport and irrigational construction works of the country.
- On January 27, 2005, the Ministry of Finance issued Decision 335/2005/QD-BTC, on promulgation of State budget estimates in 2005.
- On February 02, 2005, the Ministry of Finance issued Circular 10/2005/TT-BTC, guiding the implementation of Regulation on financial disclosure toward distribution, using, and management of infrastructure investment capital belong to State budget.
- The Ministry of Finance issued Circular 12/2005/TT-BTC, on February 04, 2005, on amendment of and supplementation to Circular 81/2004/TT-BTC, dated August 13, 2004, guiding the implementation of Government's Decree 147/2004/ND-CP, dated July 13, 2004, with detailed regulation on the implementation of the Ordinance on income tax toward persons having high income.

Banking

- Decision 127/2005/QD-NHNN, dated February 03, 2005, of State Bank of Vietnam, on amendment of and supplementation to a number of articles of the Regulation on lending of credit organizations, issued with Decision 1627/2001/QD-NHNN.

Labor

- On January 28, 2005, the Ministry of Labor, War invalids and Social affairs issued Circular 12/2005/TT-BLDTBXH, dealing with administrative violation in breaking the labor laws.

Transportation

- The Government issued Decree 09/2005/ND-CP, on January 27, 2005, dealing with administrative violation in the field of interior waterway traffic.

Construction

- The Ministry of Construction issued Circular 01/2005/TT-BXD, on January 21, 2005, guiding the implementation of a number of articles of Government's Decree 126/2004/ND-CP, dated May 26, 2004, dealing with administrative violation in activities of construction, management of urban infrastructure works and houses management and using.
- Government's Decree 08/2005/ND-CP, dated January 24, 2005, on construction planning.
- Decision 27/2005/QD-TTg, dated January 31, 2005, of the Prime Minister, on the List of supreme secret of State in the field of Construction.
- On February 07, 2005, the Government issued Decree 16/2005/ND-CP, on the management of construction investment project.

Industry- Technology transfer

- On February 07, 2005, the Prime Minister issued Decision 31/2005/QD-TTg, on the List of top confidential items of the State in the field of Industry.
- On February 02, 2005, the Government issued Decree 11/2005/ND-CP, guiding the implementation of Regulations of Chapter III, part 6 of Civil Code in 1995 and to replace Decree 45/1998/ND-CP, with detailed regulation on technology transfer.

Education

- The Prime Minister issued Decision 32/2005/QD-TTg, on February 07, 2005, on the List of top confidential items of the State education sector.

Insurance

- Decision 109/2005/QD-BCA(11), dated February 01, 2005, of the Ministry of Security, on the List of State confidential items in the field of Social Insurance.

Miscellaneous

- Government's Decree 05/2005/ND-CP, dated January 18, 2005, on the auction of property.

- On January 19, 2005, the Government issued Decree 06/2005/ND-CP, on the establishment and operation of representative office of foreign cooperation and research organizations in Vietnam.
- On February 04, 2005, the Government issued Decree 14/2005/ND-CP, dealing with administrative violations in the field of statistics.

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