

# VIETNAMESE LAW ON COPYRIGHT LICENSING

## LEI DO VIETNÃ SOBRE LICENCIAMENTO DE DIREITOS AUTORAIS

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regulamentos sobre contratos de licenciamento de direitos autorais ou direitos conexos e proporá algumas soluções para melhorar a lei de licenciamento de direitos autorais ou direitos conexos.

**Palavras-chave:** Licenciamento de direitos autorais, contrato de direitos autorais, lei vietnamita, proprietário dos direitos autorais, autor

**Abstract:** In Vietnam, in order to use and exploit the economic benefits of copyright and related rights, copyright owners must transfer their rights to users through contracts for the assignment of copyright or related rights or contracts for the licensing of copyright or related rights. In this article, the author will analyze the regulations of Vietnamese law on the legal basis for licensing, the regulations on contracts for the licensing of copyright or related rights, and propose some solutions to improve the law on licensing of copyright or related rights.

**Keywords:** Copyright licensing, copyright contract, Vietnamese law, copyright owner, author

**Resumo:** No Vietnã, para usar e explorar os benefícios econômicos dos direitos autorais e direitos relacionados, os proprietários dos direitos autorais devem transferir seus direitos aos usuários por meio de contratos de cessão de direitos autorais ou direitos relacionados ou contratos de licenciamento de direitos autorais ou direitos relacionados. Neste artigo, o autor analisará os regulamentos da lei vietnamita sobre a base legal para licenciamento, os

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## 1. Introduction

Copyright protection is the state's recognition and protection of the achievements of creative and investment activities of authors and copyright owners of literary, scientific, and artistic works, through the provision of exclusivity and the establishment of mechanisms to ensure the enforcement of rights (Patterson, 1993). Copyright law not only provides provisions to exclude others from using copyrighted works, but more importantly, it allows others to use those works through various methods such as transferring authorship rights and licensing rights. Among these methods, licensing of copyright and related rights is considered the most common, frequent, and important activity in the life cycle of a copyrighted work (WIPO, 2004). This activity primarily brings economic benefits to the author and copyright owner. Compared to other developed countries, copyright protection in Vietnam appeared late. The first legal document to officially regulate copyright issues in Vietnam was Decree No. 142/HDBT dated November 14, 1980, and Vietnam has since participated quite fully in multilateral international conventions on copyright and related rights protection (Khong, 2019). Vietnam has also issued the Intellectual Property Law and related implementing documents regarding copyright and related rights regulations. These regulations ensure the principle of balancing interests between individuals (owners) and the public (society), which has a positive impact on promoting and supporting creative activities contributing to socio-economic development (Đinh, 2022). Currently, licensing of copyright in Vietnam is mainly done through copyright use contracts. The provisions on copyright use contracts have established the necessary legal basis for establishing and implementing contracts. However, these provisions still have some difficulties that need to be revised and supplemented for further improvement.

## 2. Methodology

The legal analysis method is the main approach used in this article. The author focuses on analyzing legal regulations, court cases, and relevant articles and studies on the topic to clarify the concept and legal provisions related to copyright licensing. Additionally, the article also utilizes a comparative method to analyze the differences in copyright licensing laws among countries and the historical method to understand the development of regulations in Vietnam related to copyright licensing over different periods, thereby proposing appropriate changes in line with the current context.

### 3. Results and Discussion

#### *3.1 Legal basics for copyright licensing*

The history of the birth of copyright is marked by the Statute of Anne in 1710, which recognized the rights of authors to the works they created with the purpose of encouraging the dissemination of knowledge and promoting those who have studied and created useful books (Benedict Atkinson & Brian Fitzgerald, 2014). This law marked an important turning point in the history of copyright worldwide, as it was the first time that the law recognized the author's right to control the copying of books. The law granted authors exclusive rights to copy their books for a period of 14 years, with the possibility of extending it for another 14 years. By recognizing the author's property rights in their works, the Statute of Anne laid the foundation for the modern copyright regime.

Thus, even in the early stages of copyright, there was a legal recognition of authors' rights as a form of property, and authors were considered the owners of those exclusive privileges. Over time, the rights of authors and copyright holders have been further defined and expanded. For example, the Berne Convention affirms the author's right to translation or authorization of translation (Article 7), the author's right to reproduction (Article 9), the author's right to broadcasting and communication to the public (Article 10), and the author's right to authorize adaptations, arrangements, or other transformations of their works (Article 12). When authors have exclusive rights over translation, reproduction, broadcasting, or adaptation, no other entity can exercise these rights without the author's permission. However, it's worth noting that these rights are not absolute but are limited under certain conditions. These limitations are considered means to balance the interests of authors, copyright holders, and the public interest in promoting creative activities within society (Walker, 2001). Regulations regarding limitations on copyright typically include provisions on the duration of protection and some exceptions for use.

In Vietnam, the Intellectual Property Law clearly defines that " *Copyright* means rights of an organization or individual to works which such organization or individual created or owns"<sup>1</sup>. Copyright includes property rights and moral rights<sup>2</sup>. The property rights are exercised exclusively by the author or copyright holder, or with their permission, by other organizations or individuals." Except for exceptional cases<sup>3</sup>, organizations and individuals must obtain permission from the copyright owner and pay copyright fees, as well as other material benefits (if any), when

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<sup>1</sup> Clause 4, Article 4

<sup>2</sup> Article 19, 20

<sup>3</sup> Exceptions specified in Clause 3, Article 20, articles 25, 25a, 26, 32, 33 of the Intellectual Property Law 2022

exploiting, using all or part of the property rights and rights to disclose the work. This provision of Vietnamese law affirms that the copyright owner is the sole entity with the right to manage and exploit the property rights and moral rights as prescribed by the law. Any other organizations or individuals such as performers, media companies, publishers who want to exploit the property rights and moral rights such as (i) the right to create derivative works, (ii) the right to publicly perform the work, (iii) the right to copy, (iv) the right to import for distribution to the public, (v) the right to broadcast, transmit to the public, (vi) the right to rent the original or copies of cinematographic works, computer programs, (vii) the right to attribute the work, (ix) the right to disclose or authorize others to disclose the work, must obtain a transfer of the author's rights. If the use of works has expired copyright protection or falls under the exceptions specified in Article 25<sup>4</sup>, no permission or copyright fees are required. However, if it falls under the cases specified in Article 26<sup>5</sup>, no permission is required but copyright fees must be paid.

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<sup>4</sup> Article 25. Copyright exceptions

1. Cases in which a published work may be used without permission or payment of royalties except provision of information about the author and origin of the works:

a) The user makes a copy for the personal purpose of scientific research or study and of a non-commercial nature. This does not apply if the copy is created using a copying device;

b) The user reasonably reproduces part of the work using a copying device for the personal purpose of scientific research or study and of a non-commercial nature.

c) The user reasonably uses the work to as illustration in a lecture, printed matter, performance, audio or video recording, broadcast for teaching purposes. This may include sharing the work in a local network, provided technical measures are taken to make sure that it is only accessible to the teacher and the learners in that session.

d) The user uses the work in public service activities of state agencies;

dd) The user reasonably cites the work without misrepresenting the author's views to comment, introduce or illustrate in the user's own work, to write a news article or periodical, in a broadcast or documentary;

e) The user uses the work for library operation of a non-commercial nature, including reproducing works being stored in the library for preservation, provided these copies are marked as archived copies and have restricted access in accordance with regulations of law on library and archiving; reasonably reproduces part of the work using a copying device serving another person's research or study; reproduces or sends the archived work on the inter-library network, provided the number of concurrent readers do not exceed the number of copies held by these libraries, unless otherwise is permitted by the right owner. This does not apply if the work has been digitally released;

g) The user performs a theatrical work, musical work, dance or work of other art forms during a cultural event of a non-commercial nature;

h) The user photographs, telecasts an fine art, architectural, photographic, or applied art work displayed at a public place for introduction of such work of a non-commercial nature;

i) The user imports copies of another person's work for personal use of a non-commercial nature;

k) The user reproduces the work by publishing on a newspaper or periodical, broadcasts or otherwise publicly present the lecture or speech or talk within an appropriate scope for the purpose of news production, unless the author announces he/she holds the copyright;

l) The user photographs, makes an audio or video recording, or broadcasts an event in which the work is heard or seen for the purpose of news production;

m) A person who has visual impairment or any impairment that render him/her unable to read printed text or read the work in a conventional way (hereinafter referred to as "disabled person) and his/her carer who satisfies the conditions specified by the Government uses the work in accordance with Article 25a of this Law.

2. The use of a work in the manners specified in Clause 1 of this Article must not contradict the normal use of the work and must not cause unreasonable damage to the lawful interests of the author or copyright owner.

3. Regulations on reproduction specified in Clause 1 of this Article do not apply to architectural works, fine art works, computer programs, collection and compilation of works.

These regulations have established important legal foundations for the formation of agreements on copyright licensing between the copyright owner and the user.

### ***3.2 Vietnamese law on contracts for the licensing of copyright or related rights***

#### ***3.2.1 Concept of contracts for the licensing of copyright or related rights***

The Intellectual Property Law of Vietnam does not provide a definition of copyright licensing or specify the forms of licensing that copyright owners can use to express their consent. The law provides a definition of the transfer of the right to use copyright and related rights, as well as regulations on the content of contracts for the use of copyright and related rights.

These provisions of Vietnamese law indicate that contracts are the primary means for copyright owners to grant permission to users. Article 385 of the Civil Code 2015 defines a contract as "an agreement between parties regarding the establishment, modification, or termination of civil rights and obligations." The definition of a contract reflects its fundamental nature as an agreement or consent. The purpose of consent or the objective of an agreement implies that the parties must agree with each other on a specific matter, and the will of each party must be directed toward a common goal, also known as a meeting of minds. The definition also

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4. The Government of Vietnam shall elaborate this Article.

<sup>5</sup> Article 26. Limitations of copyrights

1. When a published work is used without permission but royalties have to be paid, the following information about the author and origin of the work must be provided:

a) Broadcasting organizations that commercially use published works, works that have been fixed in audio or video recordings by their copyright owners as broadcasts with sponsorships, advertisements or charges in whatever form are not required to obtain permission but have to pay royalties to the copyright owners as soon as the works are used. Levels of royalties and methods of payment shall be agreed upon by involved parties. If no agreement is reached, involved parties shall comply with regulations of the Government.

Broadcasting organizations that commercially use published works, works that have been fixed in audio or video recordings by their copyright owners as broadcasts without sponsorships, advertisements or charges in whatever form are not required to obtain permission but have to pay royalties to the copyright owners as soon as the works are used.

b) In case a work that has been fixed in audio or video recordings by its copyright owner is published for commercial purposes, other organizations and individuals may use such recording in business operation without having to obtain permission but royalties have to be paid to the copyright owner under agreement as soon as the work is used. If no agreement is reached, regulations of the Government shall be complied with. The Government of Vietnam shall elaborate this Point.

2. The use of a work in the manners specified in Clause 1 of this Article must not contradict the normal use of the work and must not cause unreasonable damage to the lawful interests of the author or copyright owner.

3. The use of works in the cases stipulated in clause 1 of this article shall not apply to cinematographic works.

4. Regulations of the Government shall apply to Vietnamese organizations and individuals that enjoy incentives for developing countries regarding the right to translate works in foreign languages into Vietnamese and the right to reproduce them for teaching or research of a non-commercial nature according to international treaties to which the Socialist Republic of Vietnam is a signatory.

5. Organizations and individuals that wish to use published works of Vietnamese organizations but fail to find or identify their copyright owners, regulations of the Government shall apply."

specifies the conditions for the agreement of the parties to become a contract, which is when it leads to legal consequences such as the establishment, modification, or termination of civil rights and obligations.

In relation to the above elements of a contract, a contract for the use of copyright must also include the following core elements:

First, the parties to the contract for the use of copyright and related rights (including the copyright owner and the transferee) must have a meeting of minds regarding the transfer of the right to use copyright. The intention of the parties must be expressed outwardly and understood clearly by the parties involved and entered into voluntarily.

Second, the parties must both agree upon and define the main purpose of their participation in the agreement. The purpose of the transferee is to be granted the right to use and exploit the related rights to the work in a lawful manner, while the purpose of the copyright owner is to transfer the right to use to another party in order to obtain certain economic benefits.

Third, the parties must clearly identify the legal consequences of the agreement. The agreement to license the use of copyright does not deprive the copyright owner of their ownership rights over the transferred object but rather establishes a legitimate legal status for the user.

### *3.2.3 Form of Copyright Agreement*

The form of the contract is one of the important aspects of the legal regulation of contracts. The form of the contract serves various purposes such as (i) providing evidence to third parties regarding the existence and content of legal relationships (evidentiary function); (ii) preventing individuals from inadvertently or negligently entering into legal relationships (warning function); and (iii) providing individuals with standardized means through which they can effectively exercise their legal rights (channeling function) (Lon L, 2013).

In some cases, the form of the contract is also a requirement for the validity of the contract. According to the regulations of Vietnamese law, the form of the contract can be implemented "orally, in writing, or by specific conduct. For civil transactions conducted through electronic means in the form of data messages, as regulated by the law on electronic transactions, they are considered as written transactions." For types of contracts that are required to comply with specific forms according to the law, they must adhere to those regulations, such as in writing, notarization, or authentication.

Based on Article 48 of the Intellectual Property Law, the form of the copyright agreement must be in writing. This requirement imposes a mandatory obligation on the parties to enter into a written agreement when participating in the contract. However, the law does not clearly specify whether the contract becomes invalid if the parties do not comply with the form requirement.

### *3.2.3 Essential Contents of the Copyright Agreement*

In Paragraph 1, Article 48 of the Intellectual Property Law, the copyright agreement includes the following contents:

First, the full name and address of the assignor and the assignee. This provides basic information about the parties involved in the contract.

Second, the basis for the assignment. The basis for the assignment is an important content in the copyright agreement to confirm the legal status of the assigning party. In the copyright agreement, the assigning party must be the owner of the copyright subject matter being transferred. However, determining the exact owner of copyright, related rights of a work, or related objects can be complex, as these objects are automatically protected without the need for registration procedures (unlike verifying the subject of some industrial property rights, which can be done simply by comparing with the protection certificate). Therefore, establishing the "basis for the assignment" provision in the copyright transfer agreement is extremely necessary.

Third, the scope of the rights transfer. The scope defines the framework and limitations for an activity. When establishing limitations on the transfer of copyright and related rights, it is necessary to have a close agreement. Vietnamese law requires that the parties in the contract negotiate the content of the "scope of the rights transfer," but it does not impose any specific requirements or guidelines for establishing this provision. In contrast, other countries around the world pay significant attention to the issue of the scope of transfer. Some countries establish "specific" principles regarding the form of exploitation, geographical scope, and term of transfer. In certain cases, if these aspects are not included in the copyright agreement, the parties can request invalidation. Other countries set out principles for interpreting the contract in cases where there is a lack of clarity regarding the scope of transfer or agreements related to the future exploitation of the work. The absence of provisions on the "scope of the rights transfer" in Vietnamese law may lead to difficulties for the parties in implementation and may give rise to misunderstandings and disputes in contracting and contract enforcement.



Fourth, price and payment methods: Regarding the level of copyright fees in the main contract, it is determined by the agreement of the parties. The amended Intellectual Property Law of 2022 also establishes a basis for determining copyright fees as "determined based on the framework and rates depending on the type, form, quality, quantity, or frequency of exploitation and use; harmonizing the interests of creators, organizations, individuals exploiting and using, and the public's enjoyment, in accordance with the economic and social conditions over time and the location where the exploitation and use activities take place."

Determining copyright fees is a highly complex issue that is difficult to achieve consensus and meet the needs and interests of all parties. The current laws of Vietnam have provided a basis on which the parties can rely, which is the framework and rates of copyright fees. This framework and rates depend on factors such as (i) the type of work being transferred (literary works, musical works, theatrical works, applied fine arts works, etc.); (ii) the form of transfer, whether it is an assignment or a license, whether it is a partial or complete transfer of rights, and the specific rights being transferred, such as performance rights, reproduction rights, or distribution rights; (iii) the quality, quantity, or frequency of exploitation and use (the quality of the work can be evaluated by experts or by its popularity and public reception; the quantity or frequency of exploitation can be calculated by the number of copies or seats in a performance, the number of accesses or downloads on online platforms, etc.). The issuance of the framework and rates must comply with the general principle of "harmonizing the interests of creators, organizations, individuals exploiting and using, and the public's enjoyment, in accordance with the economic and social conditions over time and the location where the exploitation and use activities take place."

Fifth, rights and obligations of the parties: Previously, under Vietnam's Civil Code of 1995, there were detailed provisions on the rights and obligations of the parties in contracts for the use of works, from Article 769 to Article 772. For example, the user of the work had the obligation to "use the work in the agreed form, scope, and duration; not transfer the work to other individuals or organizations for use without the permission of the author or copyright owner; pay the agreed remuneration or fee to the author or copyright owner within the agreed timeframe and method; compensate for damages to the author or copyright owner in case of breach of obligations..."

Currently, the provisions of the Intellectual Property Law regarding contracts for the use of copyright do not specify the rights and obligations of the parties, but leave them to be mutually agreed upon by the parties.



Six, liability for contract breaches: A contract breach refers to the act of one party violating the agreed-upon obligations in the contract that both parties have signed.

The Intellectual Property Law does not specifically stipulate the enforcement measures to be applied in contracts for the use of copyright. This matter is left to the agreement of the parties. The parties may agree on certain enforcement measures commonly used, such as contract termination, penalties for violations, or compensation for damages.

### **3.3 Recommendations for improving Vietnamese laws on copyright licensing**

Firstly, according to the provisions of Vietnamese Intellectual Property Law, organizations and individuals who wish to exploit and use intellectual property rights and personal rights (authorized by the author) must obtain permission from the copyright owner. However, the law does not specify the form of permission. The question arises whether entering into a contract for the use of copyright, but with a different name, different provisions, and different forms, would be effective. According to the author, Vietnamese law should not stipulate the form of copyright and related rights agreements; instead, they should be documented and issued in a way agreed upon by the parties, with only basic requirements such as the copyright owner's confirmation of the rights being transferred, the scope of the rights, and the payment of copyright fees. This approach would ensure convenience, efficiency, and effectiveness. Additionally, Vietnamese law should supplement provisions regarding the form of authorizing the use of copyright and related rights as a unilateral legal act that reflects the owner's intention to grant permission to organizations and individuals within the permitted scope.

Secondly, compared to the regulations in other countries regarding the "scope of transfer" in copyright agreements, Vietnamese law is not yet specific and clear. Vietnamese law needs to provide more detailed requirements regarding the scope of transfer, such as the parties in the contract agreeing on the type of rights to be used, the forms of use, the space and time of use. It should also include provisions for licensing works created in the future or for forms of copyright use that do not exist at the time of contract formation.

Thirdly, the provisions on copyright fees in copyright agreements do not have specific regulations to protect the interests of authors and copyright owners. Vietnam may consider supplementing provisions related to copyright fees, such as regulations on resale fees, provisions on Best Seller terms, or fair remuneration.

Fourthly, supplementing provisions on the interpretation of copyright transfer contracts and related rights. Vietnamese Intellectual Property Law should supplement principles for interpreting copyright transfer contracts and related rights based on the legal purpose and legal nature of the contract. In practice, parties may use vague terms that lead to disputes and difficulties in determining the scope of transfer, whether it is an exclusive use contract or a transfer contract. Determining the rights, obligations, and consequences of the transfer desired by the parties is a suitable basis for interpreting unclear provisions of this type of contract.

Finally, supplementing termination provisions for copyright transfer contracts and related rights. Vietnamese law should add a provision that if the recipient of the copyright transfer fails to exploit the transferred rights within a reasonable period, the transfer shall be terminated.

#### **4. Conclusion**

Licensing copyright is an important mechanism for authors and copyright owners to receive deserved rewards for their creative efforts or investments in creating works. Vietnamese law has established legal provisions to ensure authors and copyright owners can enforce their rights. However, the regulations related to the form and content of copyright licensing, especially copyright usage contracts, need to be amended and supplemented to be in line with the practical situation in Vietnam and the trends in other countries worldwide.

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