ARTICLES

VIETNAM'S 1994 ORDINANCE ON COPYRIGHT PROTECTION: A SURVEY AND PRELIMINARY ANALYSIS

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In December, 1994, the Standing Committee of the Vietnamese National Assembly promulgated a long-awaited new Ordinance\(^1\) on

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In 1994 I was asked by the Vietnamese National Office of Industrial Property (NOIP) to offer comprehensive courses in intellectual property in Hanoi and Ho Chi Minh City. The purpose of the courses was to provide training in U.S. and world intellectual property systems to Vietnamese judges, lawyers, government officials and other interested persons. In preparing this article I have drawn on my work with many of these individuals, and I am grateful for all of their contributions.

Particular thanks, however, are due to Nguyen Quoc Hai, of the Chamber of Commerce and Industry of Vietnam, who provided a very valuable early translation of the Ordinance upon which I have relied principally in preparing this article. Mr. Hai also furnished a translation of a proposed Ministerial Decree which affords additional insight into the meaning of the provisions of the Ordinance. These translations are published, respectively, as Appendices A and C to this article.

Special thanks also are due to Do Khac Chien, Director of International Relations of the NOIP, who has offered both assistance and advice in understanding the new Copyright Ordinance, as well as a second translation of the Ordinance, and who very kindly read and offered comments upon a draft of this article. Mr. Chien's translation is published as Appendix B.

\(^1\) Ordinances issued by the Standing Committee occupy a unique intermediate position in the hierarchy of Vietnamese law-making. The highest form of legislation under the Constitution of the Socialist Republic of Vietnam is the “Law,” the issuance of which is
Copyright Protection. The Ordinance comprises forty-seven Articles (or sections), organized into six Chapters, which are intended to deal comprehensively with copyright and allied rights.

In this article I summarize the Ordinance and analyze each chapter briefly in its own terms. In my analysis I rely chiefly on the text of the Ordinance as well as conversations and correspondence with Vietnamese officials involved in the process of drafting and administering it. I also draw upon a Decree which has been proposed by the Ministry of Culture for the purpose of providing guidance in interpreting and implementing the Ordinance. If adopted, as now appears likely, the Decree eventually will be signed and promulgated by the Prime Minister.

CHAPTER I: GENERAL PROVISIONS

A. NATURE OF COPYRIGHT

The provisions of the Ordinance reflect both natural and positive law influences. On the one hand, copyright protection is articulated in terms of the "moral and economic rights of the author," and

reserved to the National Assembly. The Assembly's Standing Committee has the authority to issue Ordinances, however, when legislation appears desirable or necessary and the full National Assembly is not yet prepared to act. Ministerial Decrees sometimes issue to provide interpretive guidance in understanding Laws or Ordinances. Meanwhile, as in the United States, Vietnamese government agencies (or ministries)—acting pursuant to Laws, Ordinances or Decrees—may promulgate Administrative Regulations which are binding on those who are subject to the agency's jurisdiction.

1 Except when otherwise specifically noted, all citations herein are to the Hai translations of the Ordinance and the Decree.

Understandably, translations from Vietnamese to English are problematic. Having access to two translations of the Ordinance has made it possible to decide upon meaning more exactly than a single translation could have done. Thus I am greatly indebted to both Mr. Hai and Mr. Chien.

Minor spelling errors in the original translations have been corrected without being noted when there was no risk of altering the meaning of the language. In addition, brackets indicate language in the original translations which was clarified by the author. The original translations are on file both with the author and the Journal of Intellectual Property Law.

The version of the Decree relied on in preparing this article was current, circa March, 1995. As of mid-August, 1995, the Decree reportedly had been revised in certain minor details, and was soon to be formalized. At the time the article went to press in late October, however, no translation of the final version of the Decree was available.

2 Art. 2; Decree, Art. 6.
thus is recognized as an end in and of itself. At the same time, however, protection for copyright is expected to promote the creation of new works, to contribute to the development of the Vietnamese culture, and to lead to a cooperative international exchange of "culture, science and technology."\footnote{Preamble to the Ordinance.}

B. SUBJECT MATTER

Copyright is recognized in "literary, artistic, scientific [and technical] works" irrespective of their forms of expression.\footnote{Art. 4. The bracketed words "and technical" appear in the Hai translation only. Chien does not include these words, and affirms that the final draft does not contain them.} These fundamental categories of subject matter are further divided into enumerated subcategories which generally echo the format of both the 1909 and 1976 United States Copyright Acts as well as those of other countries.\footnote{The enumerated sub-categories include: written works; lectures, speeches and orally expressed works; theatrical works; cinematographic works, radio broadcasts, television broadcasts and videograms; photographic works; musical compositions; graphic [Chien: "plastic"] works and works of applied arts; architectural works; computer software; scientific works, text books, instructional materials; topographic pictures, drawings, plans, maps relating to geographical situations, architecture [sic], scientific researches [Chien: "maps relating to geographical topography, architecture, scientific works"]; translations, adaptations, compilations, modifications and transformations; anthologies and collective works; and other works eligible for protection by law. Art. 4(1)-(14).} Works must be original to be eligible for protection.\footnote{Art. 4.}

The Ordinance also reflects the fundamental distinction observed elsewhere in the world between expression and invention. Thus, presumably, the recognition of copyright in "scientific works" is limited to the expression in those works and does not extend to the invention. Such a distinction would correspond to international practice and is confirmed by my own conversations with interested officials.

Fixation is another question, however. "Orally expressed works" are included in the itemized list,\footnote{Art. 4(2).} suggesting that fixation may not be required; elsewhere, the Ordinance provides that copyright begins only when a work has been "created in a certain form of
expression." The question is whether "a certain form of expression" refers to fixation or, rather, to any specific delineation of the work, regardless of fixation.

The Ordinance itself does not resolve the issue raised by these two provisions. The proposed Decree, however, makes it quite clear that "lectures, speeches and orally expressed works are works created in the form of spoken language [which] . . . have not been securely stored in any means of materials before presentation, i.e., speech deliver[ed] with a sudden inspiration, lecture giving, talking, poem criticizing, debating at court cases, [and] other spoken forms recorded during speaking or debating." It remains to be seen whether a definition as generously open-ended as this can prove practicable without at least some clearer provision for marking off the protected speech.11

Computer software is specifically recognized as copyrightable and is conventionally defined in the Ordinance.12 (The Vietnamese Patent Law does not extend to programs.) A fixed embodiment in the form of a writing seems to be contemplated both by the Ordinance and the Decree before a program can claim protection.13

C. EXCLUSIONS AND SPECIAL PROVISIONS

While the Ordinance extends copyright to broad categories of expression, some works are excluded from protection: official State

9 Art. 17(1). Cf. Chien, Art. 17(1) ("Copyright in a work subsists from its creation in a certain form").

10 Decree, Art. 4(2).

11 Cf. Estate of Hemingway v. Random House, 244 N.E.2d 250, 255 (N.Y. 1968) (suggesting, in considered dictum, that before conversation could be protected by common law copyright it must be marked off in some fashion from "the ordinary stream of speech").

12 "Computer software means one or more than one program expressed in a series of commands in [the] form of a certain programming language and files of data concerned [Chien: "related data files"], indicating a computer or informatic system to carry out the determined tasks. Computer software can be installed either inside or stored outside the computer in such various forms as text, magnetized discs [or] CD ROM." Art. 9 (2). NB: According to Chien, "data files" are not actually part of the copyrightable program.

13 Decree, Art. 12 (providing "[c]omputer software which is developed and securely stored in a certain storing device by an individual or organization shall be protected as a written work").
documents, translations of those documents, and current news;\textsuperscript{14} inventions, utility solutions and industrial designs;\textsuperscript{15} and an extensive array of works which might be considered offensive or prejudicial to political, cultural or individual moral order, as well as works which threaten the security of the State.\textsuperscript{16}

Interestingly, copyright in "folklore works" may be recognized—but only under separate terms to be "provided by the Government."\textsuperscript{17} This is a matter of considerable consequence in Vietnam, where folklore is still very much at the center of contemporary popular culture.

D. AVAILABILITY

The copyright authorized by the Ordinance is available for "works of Vietnamese citizens . . . whether published or unpublished."\textsuperscript{18} Foreign works ("works of foreign [authors]")\textsuperscript{19} may gain protection in either of two ways: (1) through publication in Vietnam within thirty days of prior publication elsewhere in the world, without regard to nationality or domicile;\textsuperscript{20} or (2) when published elsewhere and disseminated in Vietnam, in accordance with treaty obligations recognized as binding by the Vietnamese government.\textsuperscript{21} As Vietnam is not yet a party to any major copyright convention, this protection may prove less than adequate for the time being.\textsuperscript{22}

\textsuperscript{14} Art. 6(1).
\textsuperscript{15} Art. 6.
\textsuperscript{16} Art. 7(1)-(4).
\textsuperscript{17} Chien, Art. 8. See also Decree, Art. 27 (providing for "[t]he protection of folklore literature or arts as stipulated in Article 8 of the Ordinance shall be prescribe[d] separately"). Though neither the Ordinance nor the Decree says so explicitly, it seems probable that the limitation would not extend to folklore or similar expression contained in the works of foreign authors. Also, it should be noted that while copyright cannot be claimed in works of Vietnamese folklore, the works themselves may be freely used by authors unless they are deliberately distorted.
\textsuperscript{18} Chien, Art. 3(1).
\textsuperscript{19} Art. 3. Cf. Chien, Art. 3 (using "works of foreign authors").
\textsuperscript{20} Art. 3(2).
\textsuperscript{21} Id.
\textsuperscript{22} In this connection, Article 3 provides: "The State [shall protect] copyright [in] . . . works of foreign [authors when] published [abroad] and disseminated in Vietnam, [which] shall be protected [pursuant] to International Treaties to which Vietnam is a signatory, member [or party]." Though party to several bilateral or multilateral treaties, Vietnam
The Decree suggests, moreover, that additional formalities may be imposed as a condition of the automatic availability of protection for foreign works. According to the Decree, "works of foreigners, either first published in Vietnam or published in Vietnam within 30 days counting from their first publication in a foreign country, shall not be protected, unless otherwise published by a Vietnamese organization [or] juridical personality."\textsuperscript{23} This limitation would not apply to "[w]orks of an overseas Vietnamese which are legally published in Vietnam,"\textsuperscript{24} or to "[w]orks of a Vietnamese individual or organization which are legally published overseas."\textsuperscript{25}

E. FORMALITIES

Certain other formalities are nominally prerequisite to protection—though in fact they may not always be required. Authors are permitted to register their works with the Vietnamese Copyright Office under "their real names or pseudonyms."\textsuperscript{26} This registration is apparently necessary to insure protection.\textsuperscript{27} But the Ordinance provides that "such protection is also granted . . . to the authors who do not make registrations, but request the enjoyment of protection."\textsuperscript{28} No provision in the Ordinance or the Decree makes clear whether such "request" automatically begets protection or whether some element of discretion is involved.\textsuperscript{29}

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  \item current is "a signatory or a member" of neither the UCC nor Berne. It is expected to become a member of ASEAN in the near future.
  \item Decree, Art. 2(2).
  \item Decree Art. 2(3).
  \item Decree Art. 2(4).
  \item Art. 5.
  \item Registration may be a prerequisite to maintaining a suit for infringement or other dispute resolution, as it is in the United States. Article 41 provides: "The author or owner of copyright, having registered or filed applications for protection of copyright, shall be entitled to lodge an appeal for protection of his rights at the State authorities competent for the work concerned." Accord Decree, Art. 2(1) (providing "[t]he State shall . . . protect copyright of an author or copyright owner who makes registration . . . at the National Office of Copyright").
  \item Art. 5.
  \item At least the Hai translation does not seem to address this issue. Cf. Chien, Art. 5 (claiming "[t]he State also protects, pursuant to the provisions of this Ordinance, copyright of the authors who do not make such registrations but request the enjoyment of protection") (emphasis added). Articles 38 and 39, read together, authorize the Ministry of Culture and Information to issue "policies and regulations," which may be sufficient to imply discretion
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conventional practice in Vietnam, however, a priori procedures are not always provided or required by law; instead, individual cases may be decided on an ad hoc basis by appropriate officials—in this case, presumably, by the Copyright Office of the Ministry of Culture and perhaps by judges having jurisdiction in matters affecting copyrights.30

CHAPTER II: COPYRIGHT AUTHORSHIP AND ALLOCATION OF AUTHOR'S RIGHTS: DERIVATIVE WORKS; FAIR AND EXEMPT USES; TERM OF PROTECTION; TRANSFERS

A. AUTHORSHIP DEFINED

The Ordinance defines an author as “a person who directly creates [an] entire literary, artistic, scientific [or] technical work, or [a] part thereof . . . .”31 An author may also be “a person who [t]ranslates a work from one language to another; [or] [a]dapt[s] a pre-existing work, arranges or modifies or transforms a work from one form of art into another, [or] [c]ompiles, annotates or selects works of others, [and, by so doing, makes a creative work].”32 The Decree describes the author as “a person who, with his own knowledge, directly creates the entire literary, artistic and scientific work or part thereof.”33 This definition apparently refers to expression in the work, rather than to ideas, which the Decree excludes from “authorship.”34 Again, as has been noted, copyright does not extend to inventions or utility solutions, which are provided for under separate laws.35

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30 See infra notes 139-140 and accompanying text (describing forms of disputes involving copyright which may be heard by courts).
31 Art. 1.
32 Id.
33 Decree, Art. 1.
34 Id.
35 Supra note 15 and accompanying text.
B. AUTHOR'S RIGHTS

Article 10 of the Ordinance prescribes six fundamental rights:

1. to claim authorship of the work (authorship: a quasi-moral right; but, in concept, also an initial right to convey, publish and otherwise exploit);
2. to have his or her name or pseudonym indicated on his work; and to have his name mentioned in connection with any public use of the work (recognition);\(^\text{36}\)
3. to claim protection for the integrity of the work in connection with any modifications or derogatory action by others (integrity);\(^\text{37}\)
4. to authorize the publication or dissemination of the work (publication);
5. to receive royalties or remuneration from any use of the work. According to Chien, this is a broad and undefined right which will require subsequent construction;
6. to authorize or forbid use of the work by others, and to receive economic interests from any authorized use (exploitation).

In certain respects, of course, the economic rights enumerated here correspond approximately to the exclusive rights delineated in § 106 of the United States Copyright Act of 1976.\(^\text{38}\) No display right is provided for anywhere in the Ordinance. The Decree, on the other hand, includes displays and exhibitions among the author's enumerated economic rights,\(^\text{39}\) and also treats certain unauthorized displays as a serious form of infringement.\(^\text{40}\) Performance rights are implied in passing in a separate Article of

\(^{36}\) The Chien translation of Article 10 does not limit this right to "public use."

\(^{37}\) The Chien translation of Article 10 does not mention "derogatory action."


\(^{39}\) Decree, Art. 7(4).

\(^{40}\) Decree, Art. 25(4) (imposing criminal liability for making "a faked plastic work for display or sales").
the Ordinance dealing with fair use;\(^4^1\) performance rights also are distinctly provided for and greatly elaborated under a separate Chapter in both the Ordinance\(^4^2\) and the Decree.\(^4^3\)

Moral rights are woven into the basic fabric of the new law. The Decree implies that the first three rights provided for in the Ordinance are in the nature of moral rights,\(^4^4\) while the fourth through sixth rights are economic in nature.\(^4^5\) In practice, the authorship right is also akin to an "ownership" or "property" right, in that the authorship right (like the more explicit economic rights) may be transferred by the author.\(^4^6\) But it is doubtful whether the more personal moral rights recognized by Article 10 (2) and (3) can be alienated. Article 22, authorizing the transfer of rights, pointedly makes no such provision as to the personal moral rights. Moreover, elaborating on the subject of transfers, the Decree provides that the author's moral rights "will remain perpetually protected,"\(^4^7\) and elsewhere the Decree provides that the creator of a derivative work may never, "in any case, be permitted to distort the contents of the original work."\(^4^8\)

The Decree elaborates on the nature of moral rights, which include: the right to entitle the work; to be recognized by name on copies of the work and in connection with any publication or dissemination of the work; to authorize modifications; and to protect the work's integrity.\(^4^9\) Indeed, integrity is a serious matter. If necessary, the author may even enlist the assistance of the State to prevent "deformations or distortions."\(^5^0\)

\(^{4^1}\) Art 16(7).

\(^{4^2}\) Chapter IV.

\(^{4^3}\) Decree, Chapter III. The Decree also treats certain unauthorized performances of copyrighted works as infringements. See Decree, Art. 25(1) (listing unauthorized performance of theatrical works), (2),(5) (listing unauthorized broadcasts of films and certain audiovisual works).

\(^{4^4}\) Decree, Art. 6. The nature of the rights discussed here corresponds essentially to the first three sections of Article 10 of the Ordinance.

\(^{4^5}\) Decree, Art. 7. Again, one must infer the correlation between the nature of the rights elaborated at this point in the Decree and the rights provided by subsections (3) through (6) in Article 10 of the Ordinance.

\(^{4^6}\) Art. 22.

\(^{4^7}\) Decree, Art. 8.

\(^{4^8}\) Decree, Art. 10.

\(^{4^9}\) Decree, Art. 6.

\(^{5^0}\) Decree, Art. 6(2).
The Decree also elaborates (perhaps even more helpfully) on the scope of the economic rights by providing that an author shall "enjoy royalties or remuneration" when the work is: (1) published or disseminated; (2) re-published; (3) translated, adopted, modified, or transformed; (4) displayed or exhibited; (5) performed; (6) broadcast on radio or television; (7) recorded or televised; or (8) rented.\textsuperscript{61} These enumerated acts not only define the scope of the economic rights more fully; they also obviously serve as an equally useful catalog of infringing acts.\textsuperscript{52}

C. ALLOCATION OF RIGHTS

Meanwhile, these rights are not equally or always available to all "authors" in all copyright settings. Indeed, authorship under the Ordinance is dealt with in more detail, and arguably with even greater conceptual sophistication, than in the case of corresponding provisions of the U.S. law.

In effect, the terms "author" and "authorship" acquire formal meaning according to the nature of the work and the degree to which an individual has contributed to the creation of that work, whether working alone or collaboratively. Thus, in addition to the sole or individual authorship recognized in Article 10,\textsuperscript{53} the Ordinance recognizes four other distinct categories of original authorial effort: (1) joint authorship;\textsuperscript{54} (2) "chief editorship" of a collective work;\textsuperscript{55} (3) individual authorship in principal contribu-

\textsuperscript{61} Decree, Art. 7(1)-(8).
\textsuperscript{52} See infra notes 144-152 and accompanying text (listing various infringing acts under Ordinance and Decree).
\textsuperscript{53} Article 10 refers to "an author."
\textsuperscript{54} Art. 11. A "joint work" is defined as "a work jointly created by two or more persons." Chien, Art. 9(1).
\textsuperscript{55} Art. 12. A "collective work" is defined as "a work created from [the] selection of a number of different works written by more than one author." Art. 9(9).

The editors of "anthologies" are not entitled to the treatment extended to chief editors of collective works. The reason for this exclusion is not clear. Anthologies are defined as works "created from [the] collection of a number of separate works written by a single author," Art. 9(8), and are specifically identified as a category of authorship, Art. 4(13). Presumably, therefore, the editor of an anthology can be an "author" for the purposes of Article 10. Conceivably, it may have been thought that collections of the work of a single author need not be augmented by specific additional authorial rights. The editor of such a work would be an author nonetheless (of the compilation), while the author of the antecedent works
tions to an audio-visual work; and (4) authorship in contributions to a work for hire. The Decree also specifically adds a fifth category that provides authorship rights for "[a]n individual or organization who is responsible for financing or the like for the development of computer software, being the owner thereof..."

Each of these five categories earns its "author" a discrete, prescribed share of the six fundamental rights.

1. Joint Authorship. As in the case of individual authors, joint authors receive all six of the basic rights, and probably share them indivisibly in the entire work. But this is so only with respect to works in which the joint authors' contributions are in fact indivisible. Where the joint work can be divided into "individual parts [susceptible to] independent use," each joint author is entitled to rights only in his or her own share, unless they agree otherwise. The Decree provides that "if one of the joint authors is dead without any legal successors, the rights to enjoy royalties or remuneration will belong to the State."

2. Collective Works. The chief editor of a collective work created under the "responsibility of one person or entity" is treated in effect as the sole author of that work; all six rights belong to that editor. Other authors (i.e., those authors whose independent works make up the collective work) are entitled to claim authorship of their own contributions to the collective work, and to be recog-

would of course retain rights in those works.

56 Art. 13. The term "audio-visual work" is used in the Hai translation, but is not explicitly defined either in the Ordinance or in the Decree. Chien translates Article 13 of the Ordinance somewhat differently (and more expansively), referring instead to "motion pictures, radio broadcasts, television broadcasts, video works, [and] theatrical works . . . ." Chien, Art. 13(2). Some, though not all, of these terms are addressed in the Decree. "Cinematographic works" are there defined (together with "television programs and videograms") as "works created on a certain kind of material in a series of continuous images, either with or without accompanying sound, which are shown or transmitted in waves by means of conformable equipment." Decree, Art. 4(4).

57 Art. 14. "[A] work created by a person in the course of an employment either assigned to him by or as per a contract with an organization . . . ." Cf. Chien, Art. 14 (stating "a work created within the term of the author's responsibility when performing his or her duties commissioned by or contracted with an organization . . . .").

58 Decree, Art. 13.
59 Art. 11.
60 Id.
61 Decree, Art. 9.
62 Art. 12.
nized accordingly. Additionally, they are entitled to compensation for the subsequent use of their work, and perhaps to other unspecified rights as well. The chief editor and other authors also appear to have the capacity to be "joint authors," as among themselves. In practice, however, their additional status as joint authors appears likely to be significant only in the relatively rare case in which their individual contributions have become indissolubly merged in the collective work. In that instance, each may acquire indivisible rights in the others' works.

3. Audiovisual Works. Authors of contributions to audiovisual works are the subject of yet another divided allocation of basic rights. This provision may appear ambiguous upon a first reading. Principal individual contributors to audiovisual productions are entitled to claim recognition and freedom from mutilation (integrity), as well as payment for subsequent uses of their contributions. In contrast, the producer or owner of the production is entitled to all of the basic rights—except, apparently, the right to be paid for subsequent uses of the work—i.e., the earnings right! Of course this does not mean that the producer does not have the right to exact licensing, exhibition or other fees; presumably these can be negotiated for as part of the owner's rights and obligations, pursuant to Chapter III of the Ordinance. What Article 13 appears to contemplate, rather, is that the producing entity does not share in the individual artists' claims to continuing payments for subsequent uses of their several contributions to the audiovisual work.

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63 Id. Subsection (2) of Article 12 provides: "The authors other than the chief editor shall be entitled to the rights as prescribed in Items 1 [authorship], 2 [recognition], (and) 5 [earnings] of Article 10 . . . and to other interests resulting from the use of the work" (emphasis added).
64 Article 12 parcels out the rights of the sole author under Article 10; in addition, Article 12 also makes specific reference to Article 11, in which the rights of joint authors are specified.
65 Art. 13. The Article refers to "such persons as director, scenario-writer, cameraman, music composer (and) painter . . . ." Art. 13(1). Others may qualify as well.
66 Article 13 refers to the "individuals, organizations who make the audio-visual works."
67 Id.
68 See generally Articles 25 - 28 (dealing with contracts on use of work).
69 This might further suggest that the "earnings right" is specifically intended for individual creative artists. It should be noted, however, that the State succeeds to this right among others. See infra note 98 and accompanying text (describing transfer of authorship right to State upon expiration of original author's term). Also, organizations which provide
Meanwhile, the individual contributors to the audiovisual work are entitled to joint authorship status where that status has additional significance: i.e., in the case of indivisible contributions. Such contributions are commonplace in works of this kind, and so the joint authorship status may in fact have real importance. In contrast, the individual producer or producing entity cannot acquire joint authorship status in any circumstance.

4. Works for Hire. Contributors to works for hire\(^72\) (whether pursuant to employment or under contract) are presumptively entitled to claim recognition and integrity, as well as the earnings right, "unless otherwise agreed upon."\(^73\) The employer or contracting entity may claim authorship and is entitled to control dissemination and exploitation.\(^74\) It is unclear what effect an agreement between the parties may have upon the disposition of the personal moral rights (recognition and integrity) or the earnings right. It seems unlikely that the drafters could have intended the employing entity to acquire personal moral rights and, as noted earlier, there is at least some reason to suppose that even the earnings right is designed mainly for individual creators.\(^75\) But it may be, instead, that the agreement can serve to prevent the creator from acquiring such rights in the first place.

5. Computer Software Financing. As noted above, the Decree has added a provision not found in the Ordinance which will apply to any "individual or organization" responsible for owning and financing computer software. To those who qualify, Article 13 of the Decree extends the authorship right, as well as all three of the economic rights. This additional provision reflects the wider

\(^70\) Art. 13(1).

\(^71\) See Art. 13(2) (stating rights which individual and organizational producers may have but not including joint authorship).

\(^72\) The term "work for hire" is not used in the Ordinance or the Decree, but it generally fits the concept of the works described in Article 14.

\(^73\) Art. 14.

\(^74\) Id.

\(^75\) See supra note 69 and accompanying text (suggesting that there are exceptions but general rule is ownership by individual creators).
determination of the government to provide a secure place for software development in Vietnam.

D. DERIVATIVE WORKS

Though the term "derivative work" does not appear in the Ordinance, Article 15 does contemplate authorship of a "translation, adaptation, compilation, modification or transformation," and provides that the author of such a work shall be entitled to rights allocated according to the basic scheme and variations outlined above.\footnote{Art. 15.} Four prerequisites must be met, however: (1) permission must be obtained from the proprietor of the prior work;\footnote{Art. 15(1).} (2) agreement must be reached with the prior author concerning any modification in the prior work;\footnote{Art. 15(2).} (3) identification of the prior author must be made, and the title of the prior work stated, in the derivative work;\footnote{Art. 15(3).} and (4) "remuneration" must be paid to the prior author or owner.\footnote{Art. 15(4).}

The Decree requires that authorizations for derivative works be executed in writing,\footnote{Decree, Art. 10.} and that the writing specify whether or not the "contents" of the work are to be changed.\footnote{Id.} As previously noted, the author's moral right to prevent distortions apparently cannot be conveyed away.\footnote{See supra notes 47-48 and accompanying text (protecting author's moral rights "perpetually" and refusing to allow distortion of original's contents).}

E. FAIR AND EXEMPT USES

The term "fair use" is not employed as such in the Ordinance, but Article 16 provides that certain uses, "not for commercial purposes . . . shall be permissible . . . [without permission or payment],
provided that the name of the author and the source of the work are indicated and that such uses do not harm the normal exploitation of the work and legitimate interests of the author.” The following ten examples are stated:84 (1) reproductions for private use of lawfully published works; (2) quotations for the purposes of comment and illustration; (3) excerpts for use in article, periodicals, audiovisual works or documentaries; (4) excerpts for use in teaching or examinations; (5) reproductions for libraries or archival purposes; (6) translations from Vietnamese into the languages of ethnic minorities; (7) performances of theatrical works or musical compositions for motivational purposes;85 (8) live recordings or telecasts specifically in connection with current news or teaching; (9) photographs or videos of certain works of fine and applied arts when they are displayed for the purpose of public education or enlightenment;86 and (10) translations of works for the blind. These seem to be perfectly normal examples of fair or exempt use and might well be recognized as such in U.S. law. Meanwhile, Article 16 specifically excludes reproductions “of architectural works in the form of architectural constructions, of graphic works and of computer software.”87

The Ordinance does not indicate whether the examples are merely illustrative, or whether instead they preclude other similar, but unstated, uses. The former seems likely, however, because Vietnamese legal theory and practice allow substantial flexibility in interpretation and administration.

The Decree elaborates on these provisions in two significant respects. First, private reproductions for personal use may be made “for one time only”—that is to say, only one such reproduction may be made at a given time with respect to a particular work.88 Second, quotations are limited to “introduction, comments or enlightenment of questions presented in [a] work; the quotations are not allowed to be of the main composition of the new work.”89

84 Art. 16(1)-(10).
85 Art. 16(7). “[D]uring cultural activities organized in public places for motivational purposes.”
86 Or so it would seem. The exact language is: “[when such works are] displayed in public places for the sake of introduction thereof.” Art. 16(9).
87 Art. 16(11).
88 Decree, Art. 14(1).
89 Decree, Art. 14(2).
F. TERM OF PROTECTION

Under Article 17(1) of the Ordinance, copyright begins when a work is "created" in "a certain form." As we have seen, this does not always require fixation. In the case of "orally expressed works," a sufficient delineation presumably confers the necessary "certainty" as to form.90 The personal moral rights under Article 10 (recognition and integrity) endure perpetually.91 The authorship right, as well as the more explicit economic rights (publication, earnings and exploitation), are protected for the lifetime of a known author plus fifty years92 (or, in the case of joint authors, for the life of the last surviving author plus fifty years93).

Authorship and economic rights in anonymous or pseudonymous works belong to the State from creation unless, within fifty years from first publication, the author's identity is disclosed; in that case, the author is entitled to rights in the balance of that fifty-year term.94

Authorship and economic rights in posthumous works, as well as audiovisual works, are protected for fifty years from the date of first publication.95 However, only the authorship and economic rights are protected; the personal moral rights are unavailable to

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90 See supra notes 9-11 and accompanying text (suggesting that fixation is probably not required for copyright protection).
91 Art. 17(2).
92 Art. 17(3).
93 Art. 18.
94 Art. 20(2). I have suggested what I believe to be the better construction of an ambiguous provision. The subsection actually provides: "If within fifty years, counting from its first publication, the author [of a pseudonymous or anonymous work] is identified; the rights shall be protected as provided in this Ordinance" (emphasis added). The question is, whether the underscored language refers to the general provision for an author's life plus fifty years, or rather to the fifty year term provided elsewhere in the case of works in which an author's life is inapplicable. Of course, in the case of pseudonymous or anonymous works, once the fact of authorship is disclosed the author's life is available to serve as a measure, but Article 20(2) appears to permit a term to commence at any time "within fifty years ... [of] first publication." What if the author dies ten years prior to first publication, but the fact of authorship is not disclosed for another forty-five years? In such a case, what would the remaining term be? Given this textual problem in the Ordinance, the better construction, I submit, is to treat pseudonymous and anonymous works the same as posthumous works—i.e., subject to a term of fifty years from the date of first publication. See Art. 20(1) (stating protection term for posthumous works).
95 Arts. 20(1); 21.
either class of work.96

Neither the Ordinance nor the Decree makes any separate provision for the term of protection in collaborative works or works for hire. Additional clarity might have been achieved had the drafters addressed these works explicitly. The omission seems deliberate, however, and is unlikely to cause serious confusion. Individual authorship status is allocated in each case, and terms of protection therefore can be inferred or construed.97

The authorship right is transferred to the State upon expiration of the original author’s term.98 There is no formal provision in the Ordinance for a “public domain” from which subsequent authors may draw at will, and indeed such a concept would appear to be somewhat at odds with the more fundamental organization of property and legal rights in the Socialist Republic of Vietnam. In practice, however, Vietnamese artists quite routinely create work without any explicit a priori authorization by the State authorities; and Vietnamese sources say that, again in practice, a “public domain” of sorts is actually what is intended to result from the State’s succession to the authorship right.

Interestingly, the State also succeeds to the author’s economic rights.99 Whether the State would attempt to exercise these rights in perpetuity is unclear from the actual language of the Ordinance. Again, Vietnamese sources say that is not intended to be the case. The Decree is silent on this point.

G. TRANSFERS, OWNERSHIP AND SUCCESSION

Authorship and the economic rights may be transferred or assigned to new owners, in whole or in part.100 Such transfers are to be made by the author initially during his or her lifetime, and thereafter by any successive owner or owners.101 In each

96 Id.
97 See supra notes 62-73 and accompanying text (describing allocation in different types of works).
98 Art. 17(4).
99 Id.
100 Art. 22.
101 Arts. 23, 24.
case the transfer must be by written instrument. 102 Transferees succeed to ownership rights during the balance of the original term. 103

In the event of an author's death prior to transfer, the author's legal successors (or failing a successor, the State) may exercise the authorship and economic rights of an owner for the balance of the term—i.e., for an aggregate period of fifty years. 104

**CHAPTER III: AGREEMENTS WITH RESPECT TO THE USE OF THE WORK**

Subject to two exceptions, the terms of any license to "use" 105 a work must be set forth in "a written contract to that effect" between the author or owner and the licensee. 106 The agreement must include, inter alia, the scope of the license with regard to form, the term, the provisions for royalties or other form of payment, and the rights available to each party in the event of breach. 107 The two exceptions to the requirement of a written agreement arise when a work is used in a periodical or audiovisual program or when a work is subjected to fair use under Article 16. 108

In addition to the specific terms of the licensing agreement, each party to the agreement is subject to three additional terms and conditions prescribed by the Ordinance.

First, in general, the owner must transfer the work as required in a timely fashion, 109 and must observe exclusivity unless the agreement provides otherwise. 110 Correspondingly, the licensee may not reconvey rights to third parties without a specific provision

102 Art. 24.
103 Id.
104 Art. 23.
105 Art. 25. "Use" is not a defined term, either in the Ordinance or the Decree, but its meaning seems clear enough from context: it is intended to encompass the exercise of any of the authorial rights.
106 Id.
107 Art. 26(1)-(4).
108 Art. 25(1)-(2).
109 Art. 27(4).
110 Art. 27(5).
to that effect in the agreement.  
Second, the owner has a right to demand that the contemplated exploitation in fact be made. Correspondingly, the licensee must exploit the work as contemplated by the agreement or pay damages.

Third, either party may terminate the agreement unilaterally in the event of a material breach. Thereafter, the injured party also may demand compensation for harms suffered.

**CHAPTER IV: NEIGHBORING RIGHTS: PERFORMERS; PHONOGRAM PRODUCERS; BROADCASTERS**

This Chapter of the Ordinance, which is plainly influenced by the Rome Convention, provides special rights adjacent to copyright in the case of three classes of beneficiaries. These rights also extend to foreigners in certain circumstances.

**A. PERFORMERS**

Under Article 30 of the Ordinance, “artistic performers” are entitled to five special rights: (1) the right to recognition by name “when their performances take place”; (2) the right to protection against having their performances distorted; (3) the right to authorize broadcasts of their performances (subject to a “fair use” exception in the case of current news accounts or teaching); (4) the right to control recordings or reproductions “for dissemination [i.e., publication]”; and (5) the right to be paid for commercial broadcasts or other forms of dissemination when they are authorized.

In turn, performers are required to obtain approval before performing an unpublished work owned by another; published

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111 Art. 28(3).
112 Art. 27(2)-(3).
113 Art. 28(4).
114 Arts. 27(1)-(2), (6); 28(2), (4).
115 Protection is provided “according to International Treaties to which Vietnam is a signatory or member.” Art. 37.
116 Artistic performers are defined by Article 29 as “performing individuals, organizations, producers of performing and broadcasting programs, actors and actresses, singers, musical conductors and musical players.”
works do not require such permission. In either case, however, performers must pay “remuneration” (in an unspecified amount) to the author and owner of the work.\textsuperscript{118}

The Rome Convention suggests a 20-year term of protection for rights of this character.\textsuperscript{119} The Ordinance, however, prescribes no fixed terms for these rights at all, and the Decree is simply silent on the point. This may very well reflect nothing more than a drafting oversight, though Chien has suggested privately that the drafters felt the term would be fixed by the contract with the phonogram producer or broadcasting organization. In any event, experience may well suggest a need for an amendment to address this issue at some point in the future.

B. PHONOGRAM PRODUCERS

A “producer of phonograms”\textsuperscript{120} is given three rights: (1) the right to control duplications of the phonogram; (2) the right to control distribution; and (3) the right to receive compensation when such uses are made.\textsuperscript{121} These rights are protected for a term of fifty years from the first publication of the phonogram.\textsuperscript{122}

Producers must obtain written permission to use unpublished materials owned by others and must pay “royalties” in connection with their use.\textsuperscript{123} Published works may be used without approval, but the author of the prior work must be identified, the integrity of that work must be maintained, and “remuneration” must be paid.\textsuperscript{124} Performers (who appear on recordings) also must give consent in writing and must be paid.\textsuperscript{125}

\textsuperscript{117} Art. 31.
\textsuperscript{118} Id.
\textsuperscript{119} International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), Art. 14.
\textsuperscript{120} The term is used in Article 32 and elsewhere in the Ordinance as well as in the Decree, but is not defined.
\textsuperscript{121} Art. 32.
\textsuperscript{122} Id.
\textsuperscript{123} Art. 33(1).
\textsuperscript{124} Art. 33(2).
\textsuperscript{125} Art. 33(3).
C. BROADCASTERS

"Broadcasting organizations"\textsuperscript{126} are given two rights: (1) the right to authorize rebroadcasts of programs; and (2) the right to authorize duplications of programs for commercial purposes and to receive payment accordingly.\textsuperscript{127} These rights also have a term of fifty years from the date of the first broadcast of each program.\textsuperscript{128}

Like phonogram producers, broadcasters are required to obtain approval for the use of any unpublished material owned by others, and must pay "royalties" for any such use.\textsuperscript{129} Published work may be used without approval, but recognition must be given to the author by name and "remuneration" must be paid.\textsuperscript{130} An additional provision requires payment in cases involving the use of derivative works: "royalties" or "remuneration" must be paid to authors or owners of both the derivative work and the underlying work.\textsuperscript{131}

D. FOREIGN PERFORMERS AND PRODUCERS

Foreign performers, as well as the producers of phonograms and broadcast programming of foreign origin which have been published and disseminated in Vietnam, may also claim their respective rights under this chapter, pursuant to applicable treaty obligations.\textsuperscript{132} The Decree does not address these rights and so, presumably, it is intended that the Decree leave them unmodified. Protection will be limited, however, until Vietnam adheres to one or more of the major international copyright conventions.

\textsuperscript{126} Again, an undefined term. See Arts. 35-36 (using, but not defining, "broadcasting organizations").
\textsuperscript{127} Art. 35.
\textsuperscript{128} \textit{Id}.
\textsuperscript{129} Art. 36(1).
\textsuperscript{130} Art. 36(2).
\textsuperscript{131} Art. 36(3).
\textsuperscript{132} Art. 37.
CHAPTER V: COPYRIGHT PROTECTION AND MANAGEMENT
BY THE STATE

Under the Ordinance, copyright protection and management are consigned to the care of the State throughout the Socialist Republic of Vietnam.\textsuperscript{133} The Ministry of Culture, working with other ministries and branches of government (including the People's Committees of the several provinces and cities), is given the primary responsibility for administering the copyright system.\textsuperscript{134} The Ministry is to oversee the registration of copyrights and also has the authority to issue regulations, policies and commentary; to draft and propose additional bills, ordinances and laws; and to “implement international co-operation.”\textsuperscript{135} These provisions are generally reiterated in the Decree.\textsuperscript{136}

Acting pursuant to these provisions of the Ordinance, the Director General of the National Copyright Office of Vietnam has issued a directive, dated January 12, 1995, which designates the Hanoi office of the Chamber of Commerce and Industry of Vietnam “to take charge of registrations and other related services for foreign individuals and organizations who wish to have their copyrights protected in Vietnam.”\textsuperscript{137} Under the directive, the Chamber will act as a non-governmental agent and intermediary for would-be registrants. This appointment is not exclusive, and is typical of other similar agency arrangements for handling foreign intellectual property interests in Vietnam.

CHAPTER VI: APPEALS, DISPUTES AND INFRINGEMENTS

A. APPEALS AND DISPUTES

Authors or owners of copyrights who have registered their work (or filed application for registration) may invoke the protection of

\textsuperscript{133} Art. 38.
\textsuperscript{134} Art. 39.
\textsuperscript{135} Id.
\textsuperscript{136} Decree, Arts. 17-18.
the State in the event of any dispute involving copyrights. This right clearly is available in cases of infringement; presumably it extends to other forms of disputes as well, including disagreements arising from licensing, assignments, claims of ownership and moral rights, issues arising from succession after death, and the like. Domestic disputes may be settled by the Copyright Office, the Ministry of Culture or by provincial and city courts. In a few cases, appeals may be lodged as high as the Prime Minister. Disputes involving foreigners may be resolved by the Ministry of Culture, or by the Local Courts in Hanoi or Ho Chi Minh City, pursuant to Vietnamese law, as well as the provisions of any applicable treaty.

B. INFRINGEMENTS

The Ordinance does not define "infringement," but does provide that an author or owner "whose rights have been infringed by the others" shall be entitled to stop the infringement and demand a public apology and compensation from the infringer. The Decree, meanwhile, deals with the subject of infringement in greater detail. Some cases of infringement will be disposed of as administrative (civil) matters and will require the payment of relatively modest fines. Other more serious cases will lead to formal criminal prosecutions with considerably stiffer sanctions.

The Decree lists several specific infringing acts that are to incur the lesser administrative penalties: unauthorized public dissemination of a work; unauthorized translations, modifications or transfor-

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138 Art. 41.
139 Arts. 41 - 45. See also Decree, Arts. 20 - 26 (discussing term of copyright protection, transfer of copyrights and contracts on use of works).
140 Art. 44; Decree, Arts. 20 - 21.
141 Decree, Art. 21(3).
142 Art. 45; Decree, Art. 22.
143 See supra note 52 and accompanying text (describing list as being helpful in identifying infringing acts).
144 Art. 42(1). The victim of the infringement may request State assistance or may bring a lawsuit at a People's Court. Art. 42(2)-(3).
145 Decree, Arts. 23-24.
146 Decree, Arts. 25-26.
mations of an earlier original work; and unauthorized recordings or transmissions of live performances (subject to a fair use right for news reporting or teaching).\textsuperscript{147}

The Decree offers a considerably longer list of infringing acts that are slated for "criminal liabilities," with prescribed fines ranging between ten and twenty million Vietnamese Dong (i.e., U.S. $1,000 - 2,000):\textsuperscript{148} unauthorized reproduction or performance of theatrical works; illicit broadcasts of films; unauthorized reproduction of previously performed theatrical works; display or sale of "faked plastic works"; or unauthorized broadcast or duplication of radio or television programs.\textsuperscript{149} Fines five times greater even than these, as well as confiscations and forfeitures,\textsuperscript{150} are prescribed for the following offenses: unauthorized reproduction of films or video-grams for the purpose of exhibition, sale or rental; unauthorized reproduction of audio and video tapes or discs for the purpose of sale; unauthorized reproduction of computer software for the purpose of use or sale; and "other infringements which violate the copyright."\textsuperscript{151} In addition, "a person whose infringements cause serious consequences" will be subjected to a fine three times the amount of any ill-gotten gains recovered by the State.\textsuperscript{152}

CONCLUSION

The Socialist Republic of Vietnam seeks recognition as a nation committed to the protection of intellectual property. The Copyright Ordinance of 1994 reflects that commitment. As is true of all new legislation, some ambiguities arise; some doubts and reservations as to enforceability are inevitable as well. Certainly the document will require authoritative interpretation, and perhaps even some amendment. Meanwhile, however, the Ordinance is an important step in the direction of comprehensive protection for works both foreign and domestic.

\textsuperscript{147} Decree, Art. 23.
\textsuperscript{148} Decree, Art. 26(1).
\textsuperscript{149} Decree, Art. 25(1)-(5).
\textsuperscript{150} Decree, Art. 26(2).
\textsuperscript{151} Decree, Art. 25(6)-(8).
\textsuperscript{152} Decree, Art. 26(3).
APPENDIX A*

THE STANDING COMMITTEE
NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM
Independence-Freedom-Happiness

ORDINANCE ON COPYRIGHT PROTECTION

With a view to protecting copyright; [to promoting] the creation of literary, artistic, scientific and technical works, [to] developing the national, modern and human culture, [to expanding] co-operation and [the] exchange of culture, science and technology with other nations;

Pursuant to Articles 60 and 91 of the 1992 Constitution of the Socialist Republic of Vietnam;

This Ordinance provides for Copyright protection.

CHAPTER I
GENERAL PROVISIONS

Article 1.
1. An author is a person who directly creates [an] entire literary, artistic, scientific [or] technical work, or [a] part thereof.
2. An author is also a person who:
   - [t]ranslates a work from one language into another, [or]
   - [a]dapt[s a pre-existing work, or modifies or transforms a work from one form of art into another; [or]
   - [c]ompiles, annotates or selects works of others, [and, by doing so, makes a creative work].

Article 2.
Copyright consist[s of the] moral and economic rights of the author.

* Translation by Nguyen Quoc Hai, of the Chamber of Commerce and Industry of Vietnam, Hanoi.
Article 3.
The State protects copyright [in] the works of:
1. Vietnamese citizens, [or] organizations, whether or not published;
2. [Foreign authors, when such works are] either first published in Vietnam, or published in Vietnam within 30 days [of] their first publication in a foreign country, [in either case] irrespective of [the authors'] nationalities [or domiciles].
Works of foreign [authors, when] published [abroad] and disseminated in Vietnam, shall be protected pursuant to International Treaties to which Vietnam is a signatory, member [or party]

Article 4.
The State protects copyright of literary, artistic, scientific and technical works, whatever may be the mode or form form their expressions, including:
1. Written works;
2. Lectures, speeches and orally expressed works;
3. Theatrical works;
4. Cinematographic works, radio broadcasts, television broadcasts and videograms;
5. Photographic works;
6. Musical compositions;
7. Graphic works and works of applied arts;
8. Architectural works;
9. Computer software;
10. Scientific works, text books, instructional materials;
11. Topographic pictures, drawings, plans, maps relating to geographical situations, architecture, scientific researches;
12. Translations, adaptations, compilations, modifications and transformations;
13. Anthologies and collective works;
14. Other works eligible for protection by laws.
All works claimed for protection of copyright should be original.

Article 5.
The State protects copyright of authors who register their works by either their real names or pseudonyms with the authority of copyright protection. Such protection is also granted as prescribed
in this Ordinance to the authors who do not make registrations; but request the enjoyment of protection. Violation in any forms of copyright is strictly prohibited.

Article 6.
Protection as such shall not be applied to:
1. Official texts of the State bodies, political, economic and social institutions as well as official translations thereof;
2. Current news.
Rights for inventions, utility solutions, industrial designs shall be protected by laws on industrial property.

Article 7.
Author-owners of copyright as prescribed in Article 24 of this Ordinance should comply with all provisions set forth by laws when using copyright.
The state does not protect copyright for the works the contents of which fall under any of the following:
1. To be hostile to the State of Socialist Republic of Vietnam, destroy the entire people solidarity;
2. To propagandize violence, aggressive wars, cause hatred among nations, diffuse reactionary ideology and culture, depraved and debauched life, criminal behaviors, social evils, superstitions, damaging good morals and good customs.
3. To disclose secrets of the Party, State, military and security secrets related to economy, foreign policies, personal life of citizens and other secrets which are under legal protection.
4. To distort history, reject revolutionary achievements, offend great men and national heroes, slander and prejudice to the reputation of organizations and honor and dignity of citizens.

Article 8.
Protection of folklore works shall be set forth by the Government.

Article 9.
In the Ordinance, the terms as thereunder stated shall be understood as follows:
1. A co-authorship work means a work jointly created by more than one authors;
2. Computer software means one or more than one program expressed in a series of commands in form of a certain programming language and files of data concerned, indicating a computer or an informatic system to carry out the determined tasks. Computer software can be installed either inside or stored outside the computer in such various forms as text, magnetized discs, CD ROM.

3. A posthumous work means a work of a dead author that was not published during his life-time.

4. A publicised work means a work that is disclosed in form of lecture, display, publication, performance, broadcast on radio and television.

5. An adapted work means a work created on the contents of another work.

6. A modified work means a work re-written from a pre-existing work.

7. A transformed work means a work transformed from one form of art into another.

8. An anthologized work means a work created from collection of a number of separate works written by a single author.

9. A collective work means a work created from selection of a number of different works written by more than one authors.

10. A compiled work means a work created from selection of a number of different works of the same subject with comments.

11. An original work means a work first fully completed by the author.

CHAPTER II
COPYRIGHT

SECTION I
AUTHOR’S RIGHTS

Article 10.
An author has the following rights:
1. To claim authorship of the work he has created;
2. To have his name or pseudonym indicated on his work; have his name mentioned in connection with any public use of his work;
3. To claim for protection of the integrity of his work and from any mutilation or deformation or other modifications or other derogatory action in relation thereto by another;
4. To publicise, disseminate or authorize the dissemination of his work;
5. To be paid royalties or remuneration from any following uses of his work;
6. To authorize or prevent the use of his work by the other and enjoy economic interests therefrom.

Article 11.
In the case of joint-authorship, copyright shall be owned by the joint-authors.
In the case of a work comprising individual parts separable for independent use, each of the joint-authors shall be entitled to the independent use and to own the copyright in such an independent part as the case may be, unless otherwise agreed by the joint-authors.

Article 12.
In the case of a collective work, created under the chief editorship and responsibility of one person or entity,
1. This chief editor shall be entitled to the rights as prescribed in Article 10 and Article 11 of this Ordinance.
2. The authors other than the chief editor shall be entitled to the rights as prescribed in Items 1, 2, 5 of Article 10 and Article 11 of this Ordinance and to other interests resulting from the use of the work.

Article 13.
1. In the case of an audio-visual work, such persons as director, scenario-writer, cameraman, music composer, painter shall be entitled to the rights as prescribed in Items 2, 3 and 5 of Article 10 and Article 11 of this Ordinance.
2. Individuals, organizations who make the audio-visual works shall be entitled to the rights as prescribed in Items 1, 2, 3, 4 and 6 of Article 10 of this Ordinance.
Article 14.
In the case of a work created by a person in the course of an employment either assigned to him by or as per a contract with an organization, the author shall be entitled to the rights as prescribed in Items 2, 3 and 5 of Article 10 of this Ordinance, unless otherwise agreed upon therebetween; the latter shall be entitled to the rights as prescribed in items 1, 4 and 6 of Article 10 of this Ordinance.

Article 15.
The author of a translation, adaptation, compilation, modification or transformation shall be entitled to the rights as prescribed in the Articles 10, 11, 12, 13 and 14 of this Ordinance; provided that he complies with the following provisions:
1. To be given authorization by the author or the owner of copyright of the original work;
2. To make no change to the subject of the original work, unless otherwise authorised by the author thereof;
3. To indicate the name of the author and the title of the original work on his work;
4. To pay remuneration to the author or the owner of copyright of the original work.

Article 16.
Acts not for commercial purposes as follows shall be permissible without the author’s authorization and without payment of remuneration made therefor, provided that the name of the author and the source of the work are indicated and that such uses do not harm the normal exploitation of the work and legitimate interests of the author:
1. Make a reproduction for private use of a lawfully published work;
2. Make quotation from a work for comments and illustrations for another work;
3. Take extracts from a work for articles, periodicals, audio-visual programs, documentaries;
4. Take extracts from a work for teaching and examination purposes in educational institutions;
5. Make a reproduction of a work for archival purposes or for use in libraries;
6. Make translation and dissemination of a work from Vietnamese into the languages of ethnical minorities;
7. Perform theatrical works, songs, musical compositions during cultural activities organized in public places for motivational purposes;
8. Make a live recording or telecast of performances stipulated as such for current news or teaching work;
9. Take photographs or videos of graphic, architectural, photographic works and works of applied arts displayed in public places for the sake of introduction thereof;
10. Transform a work into tactile scripts readable for the blind.
11. The provisions as aforesaid shall not be applied to reproduction of architectural works in the form of architectural constructions, of graphic works and of computer software.

SECTION 2
TERM OF PROTECTION OF COPYRIGHT

Article 17.
1. A copyright start as the work is created in a certain form of expression.
2. Copyright as stipulated in Items 2 and 3 of Article 10 of this Ordinance shall be protected perpetually.
3. Copyright as stipulated in Items 1, 4, 5 and 6 of Article 10 of this Ordinance shall be protected during the life of the author and for additional fifty years after his death.
4. Copyright as stipulated in Items 1, 4, 5 and 6 of Article 10 of this Ordinance shall belong to the State, when their term of protection expires.

Article 18.
In the case of a work of joint-authorship, the term as stipulated in Items 1, 4, 5 and 6 of Article 10 of this Ordinance shall be the lives of the authors and additional fifty years after the death of the last surviving author.

Article 19.
The year following of the death of the author as prescribed in
Article 17 and Article 18 of this Ordinance shall begin from the first of January.

Article 20.
1. In the case of a posthumous work, the rights as stipulated in Items 1, 4, 5 and 6 of Article 10 of this Ordinance shall be protected for fifty years counting from its first publication.
2. In the case of an anonymous of a work the author of which does not disclose his name, copyright stipulated as aforesaid shall belong to the State. If within fifty years, counting from its first publication, the author is identified; the rights shall be protected as provided in this Ordinance.

Article 21.
In the case of audio-visual works, the rights as stipulated in Items 1, 4, 5 and 6 of Article 10 of this Ordinance shall be protected for fifty years, counting from their first publication.

SECTION 3
TRANSFER OF COPYRIGHT

Article 22.
The author is entitled to transfer part or the entire rights as stipulated in Item 1, 4, 5 and 6 of Article 10 of this Ordinance to individuals, organizations or the state in form of written texts.

Article 23.
1. After the author is dead, his lawful successor to copyright shall be entitled to all the rights as stipulated in Item 1, 4, 5 and 6 of Article 10 of this Ordinance. In the case of either non-lawful successor or the lawful successor, (if any), refusing to take or being deprived of the right as such, all the rights as stipulated in Items 1, 4, 5 and 6 of Article 10 of this Ordinance shall belong to the State.
2. In the case where the lawful successor is dead within 50 years, the next lawful successor shall be entitled to all the rights as stipulated in Items 1, 4, 5 and 6 of Article 10 of this Ordinance, until the defined term of fifty years expires.
Article 24.
Individuals, organizations, or the State to whom the right to succeed to copyright is transferred or who succeeds to rights as such are the owner of copyright.
The owners of copyright are entitled to transfer part of the entire rights as stipulated in Items 1, 4, 5 and 6 of Article 10 of this Ordinance. The transfer should be done in written texts.

CHAPTER III
CONTRACTS ON THE USE OF THE WORK

Article 25.
Any individual or organization who seeks to use a work must sign a written contract to that effect with the author or the owner of copyright with the exception of the following cases:
1. Where a work is used in a periodical or on an audio-visual program;
2. Where a work is used as stipulated in Article 16 of this Ordinance.

Article 26.
A contract on the use of a work should be in form of a written text with particulars thereof as hereunder stated:
1. The form in which the work is to be used;
2. The extent and the term during which the work is to be used;
3. The royalty and the mode in which it is paid;
4. Liabilities held by each contractual party in case where the contract is violated.
Contents other than the aforesaid shall be mutually agreed, as required.

Article 27.
During the execution of the contract, the author or the owner of copyright shall be entitled to the following rights and obligations:
1. To request or accept amendments made to the contents of the contract, terminate the contract signed with an individual or organization using the work;
2. To invalidate the contract and to claim for damages by the
contracting individual, organization, if within the term of use, the contracted work has not been used.
3. In the case of publications, to terminate the contract and assign the work for use to another individual or organization, if the contracting individual or organization refuses to response to the need of re-publication.
4. Transfer the work to the contracting individual or organization for use within the validating time as stipulated in the contract, including cases in which the contents of the work have to be modified as mutually agreed;
5. During the validity of the contract, avoid the transfer of the contracted work to another individual or organization with the exception as prescribed in Item 3 of this Article or unless otherwise mutually agreed.
6. Compensate for the harms incurred to the contracting individual or organization from any changes or violations caused to the signed contract.

Article 28.
An individual or organization who uses the contracted work is entitled to the following rights and obligations:
1. To publish and disseminate the contracted work during the mutually agreed term;
2. Unilaterally terminate the signed contract, if the author or the owner of copyright does not transfer the contracted work in due time as stipulated in the signed contract;
3. Avoid the transfer of the contracted work to another individual or organization without the approval from the author or the owner of copyright thereof;
4. Compensate for the harms incurred to the author or the owner of copyright in case of violations to the contract.
CHAPTER IV
THE RIGHTS OF THE ARTISTIC PERFORMERS,
PRODUCERS OF PHONOGRAMS AND
BROADCASTING ORGANIZATIONS

Article 29.
Artistic performers comprise performing individuals, organizations, producers of performing and broadcasting programs, actors and actresses, singers, musical conductors and musical players.

Article 30.
Artistic performers shall be entitled to
1. Have their names indicated when their performances take place;
2. Have their performances protected from being distorted;
3. Authorize or prevent the making of their live performing programs with the exception when this work is used for the sake of covering the current news or for the teaching purposes;
4. Authorize or prevent the making of recording or television transmission of their performances and make reproduction thereof for dissemination;
5. Get paid for the use of their performances for commercial purposes as stipulated in Items 3 and 4 of this Article.

Article 31.
The performer is subjected to the following obligations:
1. In the case of performance of another's non-published work, approval should be obtained from the author or owner of copyright thereof and remuneration paid therefor;
2. In the case of a published work, approval is not required, but remuneration should be paid for the author and the owner thereof.

Article 32.
The producer of phonograms can authorize or prevent the duplication and distribution of his products, and enjoy economic interests from the use thereof.
The term of protection for the producer of phonograms shall be fifty years counting from the first publication thereof to the public.
Article 33.
The producer of phonograms, using another's works for his programs, should comply with the following provisions:
1. In the case of a non-published work, a contract should be signed with the author or the owner of copyright thereof and royalties paid therefor;
2. In the case of a published work, approval is not required from the author or the owner of copyright thereof, but his name should be indicated, the integrity of his work insured and remuneration paid;
3. A contract should be signed with and remuneration paid for the performer.

Article 34.
The phonograms as prescribed in this Ordinance comprise tapes, cassettes, discs for artistic purposes, excluding computer software.

Article 35.
Radio and Television Broadcast Organizations are entitled to the following rights to the audio-visual programs they make:
1. authorize or prevent the re-broadcast of their programs;
2. authorize or prevent the duplication of their programs for commercial purposes and enjoy economic interests when the programs are performed.
The term of protection for the rights of radio and television broadcasting organizations shall be fifty years, counting from the first publication of the programs.

Article 36.
The Radio and Television Broadcasting Organizations, using the another's works to make their programs, should comply with the following provisions:
1. In the case of a non-published work, approval should be obtained from the author or owner of copyright thereof and royalties paid therefor;
2. In the case of a published work, approval is not required from the author or owner of copyright thereof, but his name should be indicated and remuneration paid therefor;
3. In the case of a modified or transformed work, royalties should
be paid for the author thereof and also, remuneration paid for the author or owner of copyright of the original work.

Article 37.
The rights, held by the performer and producer of foreign phonograms, videograms, radio programs, television programs disclosed and disseminated in Vietnam, shall be protected by the State of Socialist Republic of Vietnam according to International Treaties to which Vietnam is a signatory or member.

CHAPTER V
STATE ADMINISTRATION OF PROTECTION OF COPYRIGHT

Article 38.
The Government shall be responsible for the central administration of copyright protection throughout the country.
The State administration of protection of copyright shall include:
1. Submission of bills on law, proposed ordinance on protection of copyright;
2. Issuance of legal writings, policies and regulations on copyright;
3. Inspection, control and settlement of copyright infringements;
4. Implementation of international co-operation on copyright.

Article 39.
The Ministry of Culture and Information in collaboration with other ministries and branches concerned with the function of the State administration relating to protection of copyright throughout the country shall be entitled to the following rights and obligations:
1. To draft and submit to the Government legal bills, ordinance, legal writings on copyright;
2. To issue, within its competence, other regulations on protection of copyright;
3. To register and administer protection of copyright;
4. To inspect, control and settle copyright infringements;
5. To implement international co-operation on copyright.

Article 40.
The People's Committees of provinces and cities under Central
administration shall be responsible for local administration of protection of copyright as prescribed by the Government.

CHAPTER VI
SETTLEMENT OF APPEALS, DISPUTES AND INFRINGEMENTS

Article 41.
The author or owner of copyright, having registered or filed applications for protection of copyright, shall be entitled to lodge an appeal for protection of his rights at the State authorities competent for the work concerned.

Article 42.
The author or owner of copyright, whose rights have been infringed by the others, shall be entitled to:
1. Request the infringer to stop the infringement and give public apology, rectification and compensate for any harms that might have resulted therefrom;
2. Request the State authorities concerned to settle the problems as stipulated by law;
3. Take a law-suit against the case at the People’s Court.

Article 43.
The person who has committed infringements as prescribed in this Ordinance shall be, dependent upon the seriousness of his infringing actions, either subjected to administrative settlement or prosecuted for criminal liabilities.

Article 44.
Disputes over copyright can be settled either at the State authorities concerned or at the People’s courts of provinces and cities under Central administration.

Article 45.
Disputes where one of the parties being foreigner, over contracts on use of works shall be settled either at the State authorities concerned or at the Local Courts in Hanoi or Ho Chi Minh City
according to the Law of Vietnam and International Treaties to which Vietnam is a signatory or member.

CHAPTER VII
PROVISIONS OF IMPLEMENTATION

Article 46.
This Ordinance shall come to effect from the date of issuance. Any former regulations contrary to this Ordinance are by now null and void.

Article 47.
The Government shall provide in detail guidance on implementation of this Ordinance.

Hanoi, December 2, 1994
FOR THE STANDING COMMITTEE
THE NATIONAL ASSEMBLY

NONG DUC MANH
Chairman
(Signed)
APPENDIX B*

THE STANDING COMMITTEE
NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM
Independence-Freedom-Happiness

ORDINANCE ON COPYRIGHT PROTECTION

With a view to protecting copyright; to contributing to foster the
creation of literary, artistic, scientific works; to developing the
national, modern, human culture; to expanding the cultural,
scientific cooperation and exchange with foreign countries;

Pursuant to Articles 60 and 91 of the Constitution of 1992 of the
Socialist Republic of Vietnam;

This Ordinance provides for copyright protection.

CHAPTER I
GENERAL PROVISIONS

Article 1
1. An author is a person who actually creates an entire literary,
artistic, scientific work or a part thereof.
2. Is also recognized as an author a person who:
   - translates a work from one language into another lan-
guage; or
   - adapts a pre-existing work, arranges a work, transforms a
work from one form into another form of art; or
   - compiles, annotates, selects works of others and, by doing
so, creates a work of creativity.

Article 2
A copyright consists of the author’s moral and economic rights.

* Translation by Do Khac Chien, Director of International Relations of the National
Office of Industrial Property of Vietnam, Hanoi.
1995] VIETNAM’S COPYRIGHT PROTECTION 41

Article 3
The State protects copyright in works of:
1. Vietnamese citizens, organizations, whether published or unpublished;
2. foreign authors, first published in Vietnam or published in Vietnam within 30 days of their first publication in a foreign country, without regard to the authors’ nationalities and domiciles.

Works of foreign authors, published abroad and disseminated in Vietnam, shall be protected pursuant to international treaties to which Vietnam is a party.

Article 4
The State protects copyright in literary, artistic, scientific works without regard to forms of expression, including:
1. written works
2. lectures, addresses, orally expressed works;
3. theatrical works;
4. cinematographic works, radio broadcasts, television broadcasts, videotapes;
5. photographic works;
6. musical compositions;
7. plastic works, works of applied art;
8. architectural works;
9. computer software;
10. scientific works, textbooks, educational materials;
11. pictures, drawings, plans, maps relating to geographical topography, architecture, scientific works;
12. translations, adaptations, compilations, arrangements, transformations;
13. anthologies, collective works;
14. other works eligible for protection by laws.

To be eligible for protection, any works shall be original.

Article 5
The State protects copyright of the authors who register their works by their real names or pseudonyms with the authority responsible for copyright protection. The State also protects,
pursuant to the provisions of this Ordinance, copyright of the authors who do not make such registrations but request the enjoyment of protection.

Any acts of violation of copyright shall be strictly prohibited.

Article 6
This Ordinance does not apply to:
1. texts of State bodies, political organizations, economic organizations, social organizations; and translations thereof, and
2. current news.

The rights of the authors of inventions, utility solutions, industrial designs are protected pursuant to the provisions of laws on industrial property.

Article 7
The authors and the copyright owners as provided in Article 24 of this Ordinance, when using copyright, shall comply with the provisions stipulated by laws.

The State does not protect copyright in works the content of which falls under any of the following:
1. being hostile to the State of the Socialist Republic of Vietnam, breaking the unity of the national solidarity; or
2. propagating violence, aggressive wars; causing hatred among nations, countries; diffusing reactionary ideology, culture; diffusing obscene, depraved way of life or crimes, social evils, superstitions; damaging fine customs; or
3. disclosing the secret of the Party, State; military, security, external economic secrets, personal secrets, other secrets as provided by laws; or
4. distorting history, rejecting revolutionary achievements, hurting great personalities, national heroes, slandering or hurting the reputation of organizations, honour or dignity of citizens.

Article 8
The protection of folklore shall be provided by the Government.
Article 9
As used in this Ordinance, the following terms mean the following:
1. A joint work means a work jointly created by two or more persons.
2. Computer software means one or more groups of programs expressed in form of commands written in a programming language and related data files, which instruct a computer or an informatic system to carry out a predetermined task. Computer software can be installed inside a computer or stored outside a computer in different forms such as text, magnetic disc, optical disc.
3. A posthumous work means a work left unpublished by its dead author.
4. A published work means a work disclosed to the public in form of presentation, display, publication, performance, radio broadcast, television broadcast.
5. An adaptation means a work the creation of which is based upon the content of another work.
6. An arrangement means a rewrite of pre-existing work.
7. A transformation means a work resulted from another work by way of change from one form into another form of art.
8. An anthology means a work formed by the collection of separate works by one author.
9. A collective work means a work formed by the collection of works by several authors.
10. A compilation means a work formed by the collection of works on the same subject suitable for the purpose of comments and evaluation.
11. An original work means a work first fully worked-out by its author.

CHAPTER II
COPYRIGHT

SUBCHAPTER I
RIGHTS OF AUTHOR

Article 10
The author of a work has the following rights:
1. to claim authorship of the work he or she created;
2. to be identified as author on his or her work by his or her name or pseudonym, to be mentioned by his or her name or pseudonym when the work is used;
3. to protect the integrity of his or her work, to authorize or prevent the modification of the work by others;
4. to publish, disseminate his or her work or to authorize others to do so;
5. to enjoy royalty or remuneration when his or her work is used;
6. to authorize or prevent the use of his or her work by others and to enjoy economic interest resulted from authorized use of the work.

Article 11
In the case of a joint work, the copyright is owned jointly by the authors.

In the case of a work consisting of individual parts being separable for independent use, the authors are entitled to the independent use of and to enjoy copyright in their separate part unless otherwise agreed by the co-authors.

Article 12
In the case of a work created by a group of people directed by the chief editor:
1. the chief editor is entitled to the rights provided in Articles 10 and 11 of this Ordinance;
2. the authors other than the chief editor are entitled to the rights provided in Article 10(1), (2), and (5) [and] Article 11 of this Ordinance and to enjoy economic interest when the work is used.

Article 13
1. In the case of motion pictures, radio broadcasts, television broadcasts, video works, theatrical works; the directors, scenario writers, cameramen, music composers, painters are entitled to the rights provided in Article 10(2), (3), and (5) and Article 11 of this Ordinance.
2. Individuals who or organizations which produce motion pictures, radio broadcasts, television broadcasts, video works, theatrical works are entitled to the rights provided in Article 10(1), (2), (3),
(4), and (6) of this Ordinance.

Article 14
In the case of a work created within the term of the author's responsibility when performing his or her duties commissioned by or contracted with an organization, the author is entitled to the rights provided in Article 10(2), (3), and (5) of this Ordinance unless otherwise agreed by the author and the commissioning or contracting organization; the commissioning or contacting organization is entitled to the rights provided in Article 10(1), (4), and (6) of this Ordinance.

Article 15
The authors of translations, adaptations, compilations, arrangements, transformations are entitled to the rights provided in Articles 10, 11, 12, 13, and 14 of this Ordinance provided that the following provisions are complied with:
1. the authorization of the author or the copyright owner of the original work is required to be obtained;
2. no change of the original work's content is permitted unless authorized by the author;
3. the mentioning of the name of the author and the title of the original work is required to be made;
4. the payment of remuneration to the author or copyright owner of the original work is required to be made.

Article 16
In the following cases, individuals who or organizations which use a published, disseminated work of another, for non-commercial purposes without prejudice to the normal exploitation of the work and without damage to other interests of the author, are required neither to seek the authorization of the author or copyright owner nor to pay remuneration thereto provided that the name of the author and the origin of the work is mentioned or indicated:
1. the copy of a work is used for private purposes;
2. the extraction from a work is used for the purpose of comments or illustration in another work;
3. the extraction from a work is used in articles, periodicals, radio programs, television programs, documentary films;
4. the extraction of a work is used for the purpose of teaching, testing at educational institutions;
5. the copy of a work is used for archives, libraries;
6. the translation of a work is made from Vietnamese into languages of ethnic minorities;
7. theatrical works, songs, musical compositions are performed in public cultural entertainments, propaganda - motivation activities;
8. the live audio - visual recording of a performance is made for the purpose of news reporting or teaching;
9. photographs, television broadcasts are made for the purpose of introducing plastic, architectural, photographic, applied art works displayed at public places;
10. the translation of a work is made into tactile characters for blind people;

The provisions provided in this Article do not apply to the act of copying architectural works in architectural construction form, plastic works, and computer software.

**SUBCHAPTER II**

**TERM OF COPYRIGHT PROTECTION**

**Article 17**
1. Copyright in a work subsists from its creation in a certain form.
2. The rights provided in Article 10(2) and (3) of this Ordinance endure perpetually.
3. The rights provided in Article 10(1), (4), (5), and (6) of this Ordinance endure for a term consisting of the life of the author and fifty years after the author’s death.
4. The rights provided in Article 10(1), (4), (5), and (6) of this Ordinance shall belong to the State from the expiration of term of protection.

**Article 18**
In the case of a joint work, the rights provided in Article 10(2), (4), (5), and (6) of this Ordinance endure for a term consisting of the lives of the authors and fifty years after the last surviving author’s death.
Article 19
The year following the death of the author provided in Articles 17 and 18 of this Ordinance shall begin on January 1st.

Article 20
In the case of a posthumous work, the rights provided in Article 10(1), (4), (5), and (6) of this Ordinance endure for a term consisting of fifty years after the first publication of the work.

In the case of an anonymous work or a work the author of which does not disclose his or her name, the copyright shall belong to the State. If, within fifty years from the date of the work’s first publication, the author is identified the copyright shall be protected pursuant to the provisions of this Ordinance.

Article 21
In the case of motion pictures, radio broadcasts, television broadcasts, video works, the rights provided in Article 10(1), (4), (5), and (6) and Article 11 of this Ordinance endure for a term of fifty years following the date of the work’s first publication.

SUBCHAPTER III
TRANSFER OF COPYRIGHTS

Article 22
The author has the right to transfer in whole or in part the rights provided in Article 10(1), (4), (5), and (6) of this Ordinance to a person, an organization, or the State by means of a written document.

Article 23
1. After an author’s death, his or her copyright successor is entitled to the rights provided in Article 10(1), (4), (5) and (6) of this Ordinance.

Where there is any successor or the successor waives the right to be as such or the successor is deprived of the right to be as such, the rights provided in Article 10(1), (4), (5), and (6) of this Ordinance shall belong to the State.
2. Where the author's successor dies within the term of fifty years, the consecutive successor shall be entitled to the rights provided Article 10(1), (4), (5), and (6) of this Ordinance until the expiration of the fifty year term.

Article 24
An individual, an organization, or the State being the transferee or successor of a copyright is a copyright owner.

The copyright owners have the right to transfer in whole or in part the rights provided in Article 10(1), (4), (5), and (6) of this Ordinance. The transfer shall be in written form.

CHAPTER III
CONTRACTS ON USE OF WORKS

Article 25
Individuals, organizations using others' works shall sign written contracts with the authors or copyright owners except the following cases:
1. where a work is used in periodicals or in radio broadcasts, television broadcasts;
2. where a work is used pursuant to the provisions of Article 16 of this Ordinance.

Article 26
Contracts on use of works shall be drawn in written form and include the following substantial provisions:
1. the form of the use of the works;
2. the extent and the term of the use of the works;
3. the royalty and its payment mode;
4. the liabilities of each party in case of violation of contract.

Other provisions as agreed upon by the parties, if required.

Article 27
During the execution of contracts, the authors or copyright owners have the following rights and obligations:
1. to request or to accept amendments to the contracts, to terminate the contracts signed with the individuals, organizations using the works;
2. to invalidate the contracts and to claim damages by the contracting individuals, organizations if within the term of use the contracting individuals, organizations have not used the works;
3. in the case of publications, to terminate the contracts and to assign the works for use to other individuals, organizations if the contracting individuals, organizations refuse to response to the need of republications;
4. to deliver the works for use to the contracting individuals, organizations at time as agreed upon in the contracts, including the case where the parties have agreed to make amendments thereto;
5. to avoid assigning the works for use to other individuals, organizations within the term of validity of the contracts except as provided in Article 3 of this Ordinance or otherwise agreed by the parties;
6. to pay the contracting individuals, organizations using the works for damages caused by amendments made to or violation of the contracts.

Article 28
Individuals, organizations using works have the following rights and obligations:
1. to publish, disseminate the works within the term agreed by the parties;
2. to unilaterally terminate the contracts if the authors or copyright owners have not delivered the works in due time as stipulated therein;
3. to avoid assigning the works for use to other individuals, organizations without the authorization of the authors or copyright owners;
4. to pay the authors or copyright owners for damages in case of violation of contract.
CHAPTER IV
RIGHTS OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND VIDEORECORDERST, RADIO AND TELEVISION BROADCASTING ORGANIZATIONS

Article 29
Performers are performing individuals, organizations, directors of musical programs or radio programs or television programs, actors, singers, band-masters, musicians.

Article 30
The performers have the following rights:
1. to be introduced by name when they perform;
2. to be protected against the distortion of their performing images;
3. to authorize or prevent the making of live radio or television transmissions by others from their performance programs' stage except where such transmissions are made for news reporting or teaching purposes;
4. to authorize or prevent the making of audio, visual recordings of their performances and the making of copies thereof by others for dissemination;
5. to enjoy remuneration due to the authorization for commercial use provided in Paragraphs (3) and (4) of this Article.

Article 31
The performers have the following obligations:
1. in the case of the use of others' unpublished works in performances, to acquire the authorization of the authors or copyright owners and pay remuneration thereto;
2. in the case of the use of others' published works in performances, to pay remuneration to the authors or copyright owners, without being required to seek the authorization thereof.

Article 32
Organizations producing phonograms, videorecorders have the right to authorize or prevent the making of copies or the distribution of their products by others and the right to enjoy economic interest when the products are used.
The rights provided in this Article endure for a term of fifty years after the first dissemination of the phonograms, videograms.

Article 33
Organizations producing phonograms, videograms when using others' products for making programs shall comply with the following provisions:
1. in the case of an unpublished work, to conclude contract with the author or copyright owner and to pay royalty thereto;
2. in the case of a published work, to indicate the author's name, performer's name, to guarantee the work's integrity and to pay remuneration, without being required to seek the authorization of the author or copyright owner;
3. in the case of performances, to conclude contract with the performers and to pay remuneration thereto.

Article 34
The phonograms, videograms referred to in this Ordinance shall include tapes, discs for purposes of an artistic nature and shall not include computer software.

Article 35
Radio, television broadcasting organizations have the following rights in relation to their programs:
1. to authorize or prevent the rebroadcast of their programs;
2. to authorize or prevent the making of copies of their programs for commercial purposes and to enjoy economic interest when such programs are performed. The rights provided in this Article endure for a term consisting of fifty years following the first broadcast of the radio, television programs.

Article 36
Radio, television broadcasting organizations when using others' works for making programs shall comply with the following provisions:
1. in the case of an unpublished work, to acquire the authorization of the author or copyright owner and to pay royalty;
2. in the case of a published work, to indicate the author's name, the performer's name, to guarantee the work's integrity and to pay
remuneration, without being required to seek the authorization of
the author or copyright owner.
3. in the case of an arrangement or transformation, to pay royalty
to its author and to pay remuneration to the author or copyright
owner of the original work.

Article 37
The rights of foreign performers and producers of phonograms,
videograms, radio programs, television programs which are
published, disseminated in Vietnam shall be protected by the State
of the Socialist Republic of Vietnam pursuant to international
treaties to which Vietnam is a party.

CHAPTER V
STATE ADMINISTRATION OF COPYRIGHT PROTECTION

Article 38
The Government shall be responsible for the uniform State
administration of copyright protection throughout the country.

The state administration of copyright protection includes:
1. the submission of bill, proposed ordinance on copyright pro-
tection;
2. the issue of legal writings, policies, and regulations on copyright;
3. the supervision, inspection, and settlement of copyright
infringements;
4. the international cooperation in the field of copyright.

Article 39
The Ministry of Culture and Information, in collaboration with
Ministries and branches concerned, shall be responsible for
realizing the State administrative functions in relation to copyright
protection throughout the country and shall have the following
tasks and competence:
1. to draft and submit to the Government bill, proposed ordinance,
legal writings on copyright;
2. to issue, within its competence, writings on copyright protection;
3. to conduct the registration and to administer the copyright
protection;
4. to carry out the supervision, inspection and settlement of copyright infringements;
5. to carry out the international cooperation works concerning copyright protection.

Article 40
The People’s Committees of provinces and cities subordinated to the Central Government shall be responsible for carrying out the State administration of copyright protection within their territory pursuant to the Government’s regulations.

CHAPTER VI
SETTLEMENT OF APPEALS, DISPUTES
AND INFRINGEMENTS

Article 41
The authors and copyright owners who have made registration or filed application for copyright protection may appeal to the competent authorities for protection of their interest.

Article 42
The authors and copyright owners whose copyright is infringed by others shall have the right:
1. to request the infringer to stop the infringement, give public apology and rectification and pay for damages;
2. to request the competent authorities to provide settlement pursuant to the provisions of Laws;
3. to take a law-suit at the People’s Courts.

Article 43
Any person who violates copyright provided in this Ordinance is liable, subject to the gravity of the infringement, to be involved in an administrative process or prosecuted in a criminal action.

Article 44
Copyright disputes may be settled at the competent authorities or at the People’s Courts of provinces of cities subordinated to the
Central Government.

Article 45
Copyright disputes involving at least one foreign party may be settled at the competent authorities or at the People's Court of Hanoi City or People's Court of Ho Chi Minh City, pursuant to the Laws of Vietnam and international treaties to which Vietnam is a party.

CHAPTER VII
IMPLEMENTATION PROVISIONS

Article 46
This Ordinance takes effect from the date of its issue.

Any provisions, applicable to date, which are contrary to this Ordinance shall be repealed.

Article 47
The Government shall provide regulations to implement this Ordinance.

Hanoi, December 2nd, 1994
ON BEHALF OF THE STANDING COMMITTEE
OF THE NATIONAL ASSEMBLY

Chairman
NONG DUC MANH
(signed)
APPENDIX C*

THE GOVERNMENT OF VIETNAM

GOVERNMENT DECREE ON
DETAILED GUIDANCE TO THE IMPLEMENTATION OF
THE ORDINANCE ON COPYRIGHT PROTECTION
(draft)

GOVERNMENT

- Pursuant to the Law on organization of the Government of September 30, 1992;
- Pursuant to the Ordinance on Copyright Protection of December 10, 1994;
- According to the proposal submitted by the Minister of Culture-Information.

DECREE

CHAPTER I
GENERAL PROVISIONS

Article 1
An author as provided in the Ordinance on Copyright Protection, herein after referred to as the Ordinance, is a person who, with his own knowledge, directly creates the entire literary, artistic and scientific work or part thereof.

An individual or organization who arranges or makes idea contributions or provides materials to the creator shall not be recognized as an author.

* Translation by Nguyen Quoc Hai, of the Chamber of Commerce and Industry of Vietnam, Hanoi.
Article 2
The copyright protection as stipulated in Article 3 of the Ordinance shall be executed as follows:
1/ The State shall first and foremost protect copyright of an author or copyright owner who makes registration in his/her real name or pseudonym at the National office of Copyright.
2/ Works of foreigners, either first published in Vietnam or published in Vietnam within 30 days counting from their first publication in a foreign country, shall not be protected, unless otherwise published by a Vietnamese organization of juridical personality.
3/ Works of an overseas Vietnamese which are legally published in Vietnam shall enjoy protection as provided by the Ordinance.
4/ Works of a Vietnamese individual or organization which are legally published overseas shall enjoy protection as provided by the Ordinance.

Article 3
A publicized or non-publicized work as stipulated in Article 3 of the Ordinance shall be understood as follows:
1/ A published work is a work that is disclosed to the public in the form of a lecture, publication, performance, radio and television broadcast, movie show, display, exhibition.
2/ A work that is presented within a family only is not considered publicized.

Article 4
A number of concepts as stipulated in Article 4 of the Ordinance shall be understood as follows:
1/ A written work is a work that is expressed in the form of characters such as novels, medium stories, short stories, reports, comments, essays, notes, memoirs, scenarios, poems, music composition, teaching materials, textbooks, scientific studies, and other writings.
2/ Lectures, speeches and orally expressed works are works created in the form of spoken language and have not been securely stored in any means of materials before presentation, i.e., speech delivering with a sudden inspiration, lecture giving, talking, poem criticizing, debating at court cases, other spoken forms recorded
during speaking or debating.

3/ A theatrical work is a work that is performed on the stage such as programs, performing items, music, dances, circus, puppet shows and the like.

4/ Cinematographic works, television programs and videograms are works created on a certain kind of material in a series of continuous images, either with or without accompanying sound, which are shown or transmitted in waves by means of conformable equipment.

5/ A photographic work is an artistic work which shows the image of an object on a photosensitive material.

6/ Musical work is a phonographic work expressed by vocal voice or musical instrument including vocal music and instrumental music.

7/ Graphic works and work of applied arts are works created with lines, colors, two or three-dimensional shapes such as pictures, sculptures, interior designs, artistic designs and the like.

8/ An architectural work is a kind of artistic creation in the field of construction, expressed in the form of outline plans, projects, finished buildings, landscape designs.

9/ A translated work is a work translated from one language into another, or from an ethncial language into Vietnamese and vice versa, or from Sino-Nom hieroglyphic scripts into alphabeticalized national scripts.

Article 5
Official texts which do not fall under protection as stipulated in Article 6 of the Ordinance include:
1. Legal writings, administrative documents, judiciary documents of the State organs, political, economical or social institutions.
2. Current news, political, economical, social or scientific information published on newspapers, magazines, radio and television broadcast.
CHAPTER II
AUTHOR'S RIGHTS

Article 6
Author's rights are moral and economic rights which an author is entitled to enjoy, including:
Moral rights:
1/ Set a title to his/her work, have his/her name or pseudonym indicated on his/her work; have his/her name or pseudonym mentioned in connection with any publication or dissemination of his/her work.
2/ Authorize or prevent others' modifications to his/her work, have its integrity of contents protected. Request the State authorities concerned to stop the publication or dissemination of his/her work, when any deformations or distortions in related thereto are discovered.

Article 7
An author's economic rights are rights to enjoy royalties or remuneration, as his/her work is used in any of the following ways:
1/ Published or disseminated;
2/ Re-published;
3/ Translated, adopted, modified, transformed;
4/ Displayed, exhibited;
5/ Performed;
6/ Broadcast on radio or television;
7/ Recorded or televised;
8/ Rented.

Article 8
When an author or copyright owner transfers his/her economic rights, the moral rights will remain perpetually protected.

Article 9
In the case of a work of joint-authorship, if one of the joint-authors is dead without any legal successors, the rights to enjoy royalties or remuneration will belong to the State. The living author is responsible for indicating the dead author's name or pseudonym and maintaining the content integrity of his/her work.
Article 10
In the case where an author or copyright owner authorizes another person to modify or transform his/her work, the authorization should be done in writing, indicating whether or not the work contents can be changed. The authorized person shall not, in any case, be permitted to distort the contents of the original work.

Article 11
A person who makes annotations or studies variants of a work shall enjoy the copyright of the part he/she has done; yet, he is not permitted to prevent others from doing the same.

Article 12
Computer software which is developed and securely stored in a certain storing device by an individual or organization shall be protected as a written work.

Article 13
An individual or organization who is responsible for financing or the like for the development of computer software, being the owner thereof, shall enjoy the rights as stipulated in Article 10(1) (4) (5) and (6) of the Ordinance.

Article 14
Items 1,2,3 and 4 of Article 16 of the Ordinance shall be prescribed as follows: 
1/ A work is allowed to be reproduced for private use for one time only.
2/ Quotations made from another person’s published or disseminated work should be limited only to introduction, comments or enlightenment of questions presented in one’s work; the quotations are not allowed to be of the main composition of the new work.
CHAPTER III
RIGHTS OF ARTISTIC PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS

Article 15
Royalties and remuneration as stipulated in Articles 31, 33 and 36 of the Ordinance shall be paid in the following ways:
1/ A performing individual or organization shall pay royalties or remuneration for an author or copyright owner through either the National Office of Copyright or an agent who represents his/her copyright;
2/ A producer of phonograms or radio and television broadcasting organization should pay royalties or remuneration directly to the author or copyright owner. In the case where the author’s or copyright owner’s address is unknown, within 30 days counting from the publication of phonograms, the payment should be made through the National Office of Copyright, who shall, in its turn, transfer the payment to the author or copyright owner within 15 days.
3/ Article 25(1) and article 36(2) of the Ordinance shall not be applied to the case where a television broadcasting organization uses a cinematographic work or videogram for transmission.

Article 16
Tapes or discs for artistic use as stipulated in Article 34 of the Ordinance are those used for sound or image recording of music programs with or without accompanying words, comical plays, performances, karaoke and the like.

CHAPTER IV
THE STATE ADMINISTRATION OF PROTECTION OF COPYRIGHT

Article 17
The Ministry of Culture-Information functions the State administration of protection of copyright throughout the country, the tasks entrusted thereto as stipulated in Article 39(2), (3) of the Ordinance shall be specified as follows:
1/ To administer the copyright for a work the protection term of which has expired; 
2/ To issue regulations on procedures of registration for copyright protection, grant or withdraw Certificates of Copyright Protection throughout the country; 
3/ To execute, on its own or in collaboration with other ministries and branches concerned, the inspection, the control and inspection of appeals, denunciations and disputes over copyright protection and settle infringements related thereto within its competence; 
4/ To submit to the Government the signing or joining of International treaties/conventions on Copyright and arrange the implementation thereof.

Article 18
The National Office of Copyright of Vietnam affiliated to the Ministry of Culture-Information is entrusted to function the State administration of copyright protection throughout the country.

The Minister of Culture-Information shall decide on the organization and activities of the National Office of Copyright Protection of Vietnam.

Article 19
The people's Committee of provinces and cities directly under the Central administration shall be responsible for controlling and supervising the implementation of the Ordinance of Copyright Protection, settling disputes or infringements over copyright arising within their own territories.

Local Offices of Culture-Information shall be responsible for assisting the People's Committees of provinces and cities directly under the central administration in the execution of this given task.
CHAPTER V
SETTLEMENT OF APPEALS, DISPUTES
AND INFRINGEMENTS

Article 20
The order of settlement of appeals, denunciation of copyright infringements as per administrative formalities shall be prescribed as follows:
1/ To appeal or denounce against copyright infringements at the Local Office of Culture-Information;
2/ In the case where there arises a disagreement on the decision made by the Local Office of Culture-Information, the appeal or denunciation shall be lodged at the National Office of Copyright Protection;
3/ In the case where the decision made by the National Office of Culture-Information is disagreed, the appeal or denunciation shall be lodged to the Minister of Culture-Information, who shall make the final decision.

Article 21
The order of settlement of appeals or denunciations against the State administering organs who have competence of copyright shall be prescribed as follows:
1/ Appeals or denunciations against the Local Office of Culture-Information shall be settled by the National Office of Copyright Protection.
2/ Appeals or denunciations against the National Office of Copyright Protection shall be settled by the Minister of Culture-Information.
3/ In the case where the decision made by the Minister of Culture-Information is disagreed, the appeals or denunciations shall be lodged to the Prime Minister.

Article 22
The State organ responsible for the settlement of disputes over the copyright where one of the parties being a foreigner as stipulated in Article 45 of the Ordinance shall be the Ministry of Culture-Information.
Article 23
An individual or organization who infringes the copyright shall have to stop his/her infringements, give a public apology and rectification, compensate for any harms, and shall be subjected to administrative liabilities, if the infringement falls under any of the following cases:
1/ To publicize or disseminate a work without any approval from the author or copyright owner thereof;
2/ To translate, modify or transform an original work without any approval from the author or copyright owner thereof;
3/ To publicize or disseminate a joint-authorship work without any approval from the joint-authors or copyright owner thereof;
4/ To make a live recording or telecast or transmission of performances from where they are taking place without any approval from the performer, with an exception as stipulated in Article 16(8).

Article 24
A person who commits infringements as above-stated in Article 23(1) (2) (3) (4) and Article 22 of this Decree shall be liable for a fine between 2,000,000 VND (two millions) and 10,000,000 VND (ten millions).

Article 25
An individual or organization who infringes the copyright shall have to stop his/her infringements, compensate for any harms, and shall be subjected to criminal liabilities, if the infringement falls under any of the following cases:
1/ To perform a theatrical work without paying royalties or remuneration to the author or copyright owner of the theatrical scenario;
2/ To broadcast cinematographic or video films owned by others without their approval. Copyright falls under the ownership of an individual or organization who publicizes a work or the author thereof.
3/ To reproduce an already-performed theatrical work without the author's approval;
4/ To make a faked plastic work for display or sales;
5/ To broadcast or duplicate programs made by a radio and television broadcasting organization for dissemination without their
approval;
6/ To illegally reproduce cinematographic or television films or
videograms for show, sale or rental;
7/ To illegally reproduce cassette tapes, discs, video tapes, video
discs for sales;
8/ To illegally reproduce computer software for use or sales;
9/ Other infringements which violate the copyright.

Article 26
1/ A person who commits infringements as above-stated in Article
25(1), (2), (3), (4) and (5) of the decree shall be liable for a fine of
between 10,000,000 VND (ten million) and 20,000,000 VND (twenty
million).
2/ A person who commits infringements as above-stated in Article
25 (6), (7) and (8) of the Decree shall be liable for a fine of between
20,000,000 VND (twenty million) and 50,000,000 VND (fifty
million), and all material evidence and device used for committing
infringements as such shall be confiscated.
3/ A person whose infringements cause serious consequences shall
be liable for a fine three times bigger than the amount of illegal
earned money which is confiscated.

CHAPTER VI
PROVISIONS OF IMPLEMENTATION

Article 27
The protection of folklore literature or arts as stipulated in Article
8 of the Ordinance shall be prescribed separately.

Article 28
The term for copyright protection as stipulated in Articles 17, 18,
19, 20 and 21 of the Ordinance shall be applied to the works the 50
year term of which has not yet expired till December 10, 1994.

Article 29
This Decree shall come into effect from the date of the undersign.
Article 30
The Ministry of Culture-Information in collaboration with other ministries and branches concerned shall guide the implementation of this Decree.

Article 31
Ministers, heads of offices of ministerial level, heads of offices directly under the Government control, chairmen of people's committees of provinces and cities directly under the central administration shall be responsible for the implementation of this Decree.

FOR THE GOVERNMENT

Prime Minister
VO VAN KIET
(signed)