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Hanoi, 17 October 2003

## **JOINT CIRCULAR PROVIDING GUIDELINES ON**

### **COPYRIGHT PROTECTION AT CUSTOMS OFFICES WITH RESPECT TO IMPORTED AND EXPORTED GOODS**

*Pursuant to the Civil Code of the Socialist Republic of Vietnam dated 28 October 1995;*

*Pursuant to the Law on Customs 29-2001-QH10 dated 29 June 2001;*

*Pursuant to Decree 76-CP of the Government dated 29 November 1996 providing guidelines for implementation of a number of the provisions of the Civil Code with respect to copyright (hereinafter referred to as Decree 76-CP);*

*Pursuant to Decree 60-CP of the Government dated 6 June 1997 providing guidelines for implementation of provisions of the Civil Code with respect to civil relations involving foreign elements (hereinafter referred to as Decree 60-CP);*

*Pursuant to Decree 101-2001-ND-CP of the Government dated 31 December 2001 making detailed provisions for implementation of a number of articles of the Law on Customs on customs procedures, customs inspection and control (hereinafter referred to as Decree 101-2001-ND-CP);*

*The Ministry of Culture and Information and the Ministry of Finance hereby provide the following guidelines on copyright protection at customs offices with respect to imported and exported goods involving copyright:*

#### **I. INTERPRETATION OF TERMS**

In this Circular, a number of terms shall be construed as follows:

1. Authors are persons provided for in article 745 of the Civil Code.
2. Owners of works are individuals and organizations provided for in article 746 of the Civil Code.
3. Works which are protected in Vietnam consist of types of works which are protected as provided for in article 747 of the Civil Code and article 4 of Decree 76-CP; which do not have any contents provided for in clause 1 of article 749 of the Civil Code, and are one of the following works:
  - 3.1 A work the author of which is a Vietnamese citizen;
  - 3.2 A work belonging to a Vietnamese citizen, legal entity or organization;
  - 3.3 A work of a foreign individual or foreign legal entity which is created and expressed in a definite material form in Vietnam;
  - 3.4 A work of a foreign individual or foreign legal entity which is first published or disseminated in Vietnam;

3.5 A work of a foreign individual or foreign legal entity which is protected in Vietnam in accordance with international treaties to which Vietnam is a signatory or participant.

Works which are protected must be expressed in a definite material form, irrespective of the form and language used and the quality of the work, of whether or not it is published, or of whether or not it has been issued with a copyright certificate.

4. Publication or dissemination of a work is the expression of the work to the public by way of presentation, exhibition, publication, performance, radio or television broadcasting, and other material forms.

5. Work which is first published or disseminated in Vietnam is the work of a foreign individual or foreign legal entity which has not yet been published or disseminated in any country prior to publication or dissemination in Vietnam. A work shall be considered as a work which is first published or disseminated in Vietnam when such work is published or disseminated in Vietnam within thirty (30) days from the date on which the work is first published or disseminated in any country.

6. Temporary suspension of performance of customs procedures means the temporary suspension by a customs office of the performance of customs procedures for a consignment of imported or exported goods which is suspected to be in breach of copyright.

7. Customs clearance means the decision-making by a customs office for goods to be imported or exported.

8. Imported or exported goods in breach of copyright are imported or exported goods which are in breach of the personal rights and property rights of an author or owner of a work, comprising the following goods:

8.1 Imported or exported goods which are copies of a work which are produced and/or circulated without the permission of the owner of such work;

8.2 Imported or exported goods which are copies of a work the contents of which are in breach of copyright.

## **II. SUBJECTS ENTITLED TO REQUEST AND SCOPE OF REQUESTS FOR COPYRIGHT PROTECTION AT CUSTOMS OFFICES**

1. Subjects entitled to request copyright protection at customs offices:

The following subjects shall be entitled to request the customs office to provide copyright protection: 1.1 An author or owner of a work which is protected in Vietnam;

1.2 An individual or organization issued with a licence to use works which are protected in Vietnam;

1.3 An individual or organization providing copyright services and authorized by the subjects referred to in clauses 1.1 and 1.2 of Section II of this Circular;

1.4 A relevant organization in charge of collective management of copyright.

## 2. Scope of copyright protection by customs offices:

This Circular shall be applicable to all imported or exported goods involving protected copyright, except for the following cases:

2.1 Humanitarian aid;

2.2 Goods temporarily imported for a definite period serving the work and daily living of foreign organizations and individuals during their stay in Vietnam and then re-exported;

2.3 Goods temporarily imported or exported for a definite period for shows, exhibitions and introduction of products or for helping consumers in distinguishing or recognizing goods in breach of copyright, which are re-exported or re-imported;

2.4 Goods in transit;

2.5 Goods being gifts and donations in a quantity entitled to duty exemption; personal baggage as stipulated in the Law on Customs.

### **III. PROCEDURES FOR COPYRIGHT PROTECTION AT CUSTOMS OFFICES**

1. Submission of applications for copyright protection to the customs office (hereinafter referred to as application for protection):

For copyright protection at the customs office, the subjects referred to clause 1 of Section II of this Circular (hereinafter referred to as applicant) may submit an application for protection in accordance with the provisions of clause 1.1 or 1.2 of Section III of this Circular.

1.1 Submission of an application for long-term protection: Where there is no information on a specific consignment of imported or exported goods in breach of copyright, the applicant may submit an application for long-term protection. The application for protection shall be accompanied by the following documents:

1.1.1 Application for copyright protection at the customs office (in the form of Appendix 1 attached to this Circular);

1.1.2 Power of attorney (in the case where the applicant is an individual or organization provided for in clauses 1.3 and 1.4 of this Circular);

1.1.3 Documents evidencing the right to request:

1.1.3.1 Copyright certificate (if any). Where a request for protection is made without a copyright certificate, the applicant must, in the application for protection, prove and guarantee its copyright with respect to the work for which protection is requested;

1.1.3.2 Contract for use of a work (in the case where the applicant is a subject provided for in clause 1.2 of Section II of this Circular);

1.1.3.3 Documents evidencing transfer or inheritance of copyright (in the case of subjects receiving a transfer or inheritance);

1.1.3.4 Other documents evidencing the right to request in accordance with the law of Vietnam or international treaties to which Vietnam is a signatory or participant (in the case of the author or owner of a work provided for in clauses 3.3, 3.4 and 3.5 of Section I of this Circular);

1.1.4 Description of the work and sample or photograph of the work, specifying signs for recognition or distinction between goods in breach and goods not in breach;

1.1.5 A deposit<sup>1</sup> or letter of guarantee of a credit institution in order to guarantee the payment of expenses and damages caused by the temporary suspension by a customs office of the performance of customs procedures for a consignment of imported or exported goods at the request of an applicant in the case where the temporarily suspended goods are found not to be in breach of copyright. In this case, the deposit or letter of guarantee shall be provided for as follows:

1.1.5.1 The deposit shall be a specific amount of at least twenty (20) million Vietnamese dong; or

1.1.5.2 The letter of guarantee shall provide a guarantee for a specific amount of at least fifty (50) million Vietnamese dong; or

1.1.5.3 The letter of guarantee of a credit institution shall guarantee payment of all expenses and damages caused by the temporary suspension by the customs office of the performance of customs procedures for the consignment of imported or exported goods at the request of the applicant in the case where the temporarily suspended goods are found not to be in breach of copyright.

Where an applicant has submitted an application for protection to the customs office in accordance with the provisions of clause 1.1 of Section III of this Circular, and subsequently obtains information on the specific consignment of goods in breach of its copyright, it may submit an application for protection on a case-by-case basis to the customs office for temporary suspension of the performance of customs procedures for the consignment which is suspected to be in breach of copyright as provided for in clause 1.2 of Section III of this Circular. In this case, the applicant shall be exempted with respect to the papers and documents stipulated in clause 1.2.4 of Section III of this Circular.

1.2 Submission of an application for protection on a case-by-case basis: Where there is suspicion that a specific consignment of imported or exported goods is in breach of copyright, an applicant may submit an application for protection on a case-by-case basis to the customs office for temporary suspension of the performance of customs procedures for the consignment of imported or exported goods specified in the application for protection. The application for protection shall be accompanied by the following documents:

1 Phillips Fox Note: The literal translation is "advance".

1.2.1 Application for copyright protection at the customs office (in the form of Appendix 1 attached to this Circular), providing sufficient information on the specific consignment of goods which is requested to be temporarily suspended in order for the customs office to identify such consignment of goods, such as: name and address of importer, exporter; importing, exporting country; country of origin of consignment of goods; method of transportation, details of means of transportation, carrier, number of bill of lading; proposed

port of import, export; proposed customs office to perform procedures; detailed description of suspected goods or sample or photograph of suspected goods; name of manufacturer or distributor of goods suspected to be in breach;

1.2.2 Initial evidence of the suspicion that the imported or exported goods are in breach of copyright, such as:

1.2.2.1 The origin of the consignment of goods being not from countries, regions, individuals or organizations authorized to produce legal copies of the work;

1.2.2.2 A sample or photograph of the copies in breach (if any);

1.2.3 A deposit or letter of guarantee of a credit institution in order to guarantee the payment of expenses and damages caused by the temporary suspension by a customs office of the performance of customs procedures for a consignment of imported or exported goods at the request of an applicant in the case where the temporarily suspended goods are found not to be in breach of copyright. In this case, the deposit or letter of guarantee shall be provided for as follows:

1.2.3.1 The deposit or letter of guarantee shall be equal to twenty (20) per cent of the value of the consignment of goods at the price stipulated in the contract and shall be paid into an escrow account of the customs office opened at the State Treasury; or

1.2.3.2 The deposit or letter of guarantee shall be for a specific amount of at least twenty (20) million Vietnamese dong (where the value of the consignment of goods suspected to be in breach is unknown); or

1.2.3.3 The letter of guarantee of a credit institution shall guarantee payment of all expenses and damages caused by the temporary suspension by the customs office of the performance of customs procedures for the consignment of imported or exported goods at the request of the applicant in the case where the temporarily suspended goods are found not to be in breach of copyright;

1.2.4 Papers and documents stipulated in clauses 1.1.2, 1.1.3 and 1.1.4 of Section III of this Circular.

1.3 The applicant must pay a fee in accordance with the regulations of the Ministry of Finance.

2. Receipt and processing of applications for protection:

2.1 Bodies receiving and processing applications for protection:

2.1.1 The General Department of Customs shall receive applications which are submitted in accordance with the provisions of clause 1.1 of Section III of this Circular if the scope of the request for protection by customs offices falls within the localities under the control of two or more provincial or municipal Customs Departments.

2.1.2 A provincial or municipal Customs Department shall receive applications which are submitted in accordance with the provisions of clause 1.1 or 1.2 of Section III of this Circular

if the scope of the request for protection by customs offices falls within the locality under the control of such provincial or municipal Customs Department.

2.1.3 A customs office shall receive applications which are submitted in accordance with the provisions of clause 1.1 or 1.2 of Section III of this Circular if the scope of the request for protection by customs offices falls only within the locality under the control of such customs office.

## 2.2 Receipt and processing of applications for protection:

After receiving an application for protection, a customs office must examine the application and enclosed files and documents in order to decide whether such application for protection will be accepted.

### 2.2.1 Conditions for acceptance of an application for protection:

2.2.1.1 The applicant is a person entitled to submit an application for protection as provided for in clause 1 of Section II of this Circular;

2.2.1.2 The contents of the application for protection fall within the scope of rights of the applicant;

2.2.1.3 The duration and point of time of application for protection falls within the duration of copyright protection as provided for in article 766 of the Civil Code, article 14 of Decree 76-CP or bilateral agreements and international treaties to which Vietnam is a signatory or participant;

2.2.1.4 The work for which protection is requested must be a work protected in Vietnam;

2.2.1.5 The application for protection and enclosed documents contain sufficient information for the customs office to use as the basis for taking copyright protection measures in accordance with this Circular;

2.2.1.6 The applicant pays a deposit or provides a letter of guarantee of a credit institution as provided for in clause 1.1.5 or 1.2.3 of Section III of this Circular.

### 2.2.2 Time-limit for acceptance of an application for protection:

2.2.2.1 With respect to applications for protection submitted in accordance with clause 1.1 of Section III of this Circular, the applicant must be notified in writing within ten (10) days whether its application is accepted or not. Where an application is not accepted, the reason therefor must be specified.

2.2.2.2 With respect to applications for protection submitted in accordance with clause 1.2 of Section III of this Circular, where an application is not accepted, a notice must be given promptly to the applicant within the day and specify the reason therefor. In this case, the notice shall be given by facsimile or telephone and must also be mailed in written form to the applicant.

3. Inspection and identification of imported or exported goods which are suspected to be in breach of copyright:

After accepting an application for protection, a customs office shall:

3.1 Forward information relating to the application for protection to all units under the customs office for implementation.

3.2 Inspect the imported or exported goods which are suspected to be in breach of copyright:

The customs office receiving information shall, on the basis of the information provided in the application and file for copyright protection, be responsible for monitoring, inspecting and identifying imported or exported goods which are suspected to be in breach of copyright.

3.3 Make a decision on temporary suspension of performance of the customs procedures:

3.3.1 The head of the customs office which identifies imported or exported goods which are suspected to be in breach of copyright shall make a decision on temporary suspension of the performance of customs procedures (in the form of Appendix 2 to this Circular):

3.3.1.1 In the case of an application for long-term protection, upon identifying a breach, the customs office shall make a decision on temporary suspension without requiring additional application from the applicant;

3.3.1.2 In the case of an application for protection on a case-by-case basis, upon obtaining information on a specific consignment, the customs office shall make a decision on temporary suspension based on such application for protection on a case-by-case basis.

3.3.2 A decision on temporary suspension shall be made upon the arrival of the owner of imported or exported goods to perform customs procedures.

3.3.3 The decision on temporary suspension of performance of customs procedures must be sent to the applicant and the owner of imported or exported goods.

3.3.4 The duration of temporary suspension and the extension of the duration of temporary suspension of performance of customs procedures shall be determined in accordance with the provisions of article 14 of Decree 101-2001-ND-CP of the Government (the decision on extension of the duration of temporary suspension shall be in the form of Appendix 3 to this Circular).

4. Inspection to determine the legal status of the copyright and to deal with goods which are subject to temporary suspension: Verification of the legal status of copyright with respect to temporarily suspended goods is the physical inspection of goods, enclosed documents and evidence in order to determine whether such consignment of imported or exported goods is in breach of copyright.

4.1 Rights and responsibilities of organizations and individuals concerned in the inspection and determination of the legal status of copyright with respect to temporarily suspended goods:

4.1.1 Rights and obligations of applicants for temporary suspension:

4.1.1.1 To request the customs office to take samples from the temporarily suspended consignment of imported or exported goods in order to determine whether such consignment of imported or exported goods is in breach of copyright;

4.1.1.2 To present and provide sufficient truthful information and evidence to the customs office to prove that the consignment of imported or exported goods has been in breach of their copyright;

4.1.1.3 To produce evidence or conclusions of a competent body (if any) to prove to the customs office that the consignment of imported or exported goods is in breach of copyright.

4.1.2 Rights and obligations of owners of goods:

4.1.2.1 To request the customs office to take samples from the temporarily suspended consignment of imported or exported goods in order to prove that the consignment of imported or exported goods is not in breach of copyright;

4.1.2.2 To present and provide truthful information and evidence to the customs office to prove that the consignment of imported or exported goods is not in breach of copyright;

4.1.1.3 To produce evidence or conclusions of a competent body to prove to the customs office that the consignment of imported or exported goods is not in breach of copyright.

4.1.3 Rights and responsibilities of customs offices:

4.1.3.1 To determine, based on the actual available goods, evidence and information, whether the consignment of goods is in breach of copyright;

4.1.3.2 To request the applicant for temporary suspension to prove where it is impossible to determine whether a consignment is in breach of copyright;

4.1.3.3 Where there is a conclusion of an authorized State body on the legal status of the copyright of a consignment, the customs office shall deal on the basis of such conclusion.

4.1.4 Rights and obligations of State bodies in charge of culture and information:

When consulted by customs offices, the Department of Literary and Art Copyright, Departments of Culture and Information of provinces and cities, and specialized culture and information inspection bodies shall be responsible:

4.1.4.1 To participate in consideration and study of files and samples of goods;

4.1.4.2 Where necessary, to establish an inspection team. Members of the inspection team may consult the applicant and the owner of imported or exported goods;

4.1.4.3 To reach a conclusion and to propose measures to deal with the consignment of imported or exported goods.

4.2 Bases for determination of legal status of copyright of temporarily suspended imported or exported goods:



4.2.1 Bases for determination that temporarily suspended imported or exported goods are in breach of copyright:

4.2.1.1 Conclusion of an authorized State body (if any) indicating that the temporarily suspended imported or exported goods are in breach of copyright; or

4.2.1.2 Evidence provided by the parties which enables the customs office to determine that the temporarily suspended imported or exported goods are in breach of copyright; or

4.2.2 Bases for determination that temporarily suspended imported or exported goods are not in breach of copyright:

Temporarily suspended imported or exported goods shall be deemed not to be in breach of copyright in the following cases:

4.2.2.1 The applicant unilaterally withdraws its application for protection or requests termination of the decision on temporary suspension (if any); or

4.2.2.2 The conclusion of an authorized State body (if any) indicates that the temporarily suspended imported or exported goods are not in breach of copyright; or

4.2.2.3 The applicant fails to provide the customs office with clear evidence or the conclusion or decision of an authorized State body that the consignment of temporarily suspended imported or exported goods is in breach of copyright within the time-limit stipulated in the decision on temporary suspension.

5. Resolution after determination of the legal status of the copyright of temporarily suspended imported or exported goods:

5.1 Where it is determined that the temporarily suspended imported or exported goods are in breach of copyright:

5.1.1 Bases for resolution:

5.1.1.1 The customs office shall issue a decision on penalty for an administrative breach with respect to the conduct of import or export of goods in breach of copyright in accordance with the laws on penalties for administrative offences in the culture and information sector.

5.1.1.2 Where an authorized State body has made a decision on penalty for the conduct of import or export of goods in breach of copyright, the customs office shall execute the decision on penalty of the authorized State body.

5.1.2 Resolution:

Upon resolution, the customs office shall:

5.1.2.1 Issue a decision on penalty for an administrative breach with respect to the consignment of imported or exported goods in breach of copyright or execute the decision on penalty of the authorized State body (if any);

5.1.2.2 Compel the offender to pay expenses incurred from the temporary suspension of the performance of customs procedures and to compensate for any damages to the applicant in accordance with law;

5.1.2.3 Return the paid deposit to the applicant in the case where the applicant requesting copyright protection submitted an application in accordance with clause 1.2 of Section III of this Circular.

5.2 Where it is determined that the temporarily suspended imported or exported goods are not in breach of copyright:

The head of the customs office shall decide:

5.2.1 To continue the performance of customs procedures for the consignment of goods;

5.2.2 To use the deposit for payment of expenses and damages caused by the temporary suspension of the consignment of imported or exported goods. To request the applicant to make additional payment where the deposit is not sufficient for payment of such items;

5.2.3 With respect to an applicant submitting an application for protection in accordance with the provisions of clause 1.2 of Section III of this Circular: to return the remaining deposit to the applicant upon payment of all expenses and compensation for damages to the owner of imported or exported goods;

5.2.4 With respect to an applicant submitting an application in accordance with the provisions of clause 1.1 of Section III of this Circular: to request the applicant to pay an additional deposit in order to satisfy the provisions on payment of deposits or guarantees of clause 1.1.5 of Section III of this Circular.

6. Resolution of certain cases:

6.1 Where the court requests in writing that the customs office hand over the temporarily suspended imported or exported goods, the customs office shall hand over the imported or exported goods to the court for resolution in accordance with civil or criminal legal proceedings as provided for in applicable laws.

6.2 Where an applicant requesting temporary suspension withdraws its application because the applicant and the owner of imported or exported goods have reached an agreement for settlement of the consignment of imported or exported goods, the customs office shall request the parties concerned to produce the agreement and undertake to perform in accordance with the agreement. Upon payment of expenses and damages relating to the temporary suspension, the customs office shall return the deposit or the letter of guarantee of the credit institution to the applicant requesting temporary suspension and shall continue to perform the customs procedures for the consignment of imported or exported goods as stipulated.

#### **IV. COMPLAINTS AND RESOLUTION OF COMPLAINTS**

Where an owner of imported or exported goods or a copyright owner concerned disagrees with the conclusion on resolution of the breach, it shall be entitled to lodge a complaint with the body authorized to resolve complaints.

The procedures and limitation period for complaints; the time-limit, procedures and powers to resolve complaints shall be in accordance with the laws on complaints and other relevant laws.

## **V. MEASURES TO SUPPORT AND IMPROVE CAPACITY TO PERFORM COPYRIGHT PROTECTION OF CUSTOMS OFFICES**

1. Strengthening the co-operation between copyright owners and customs offices:

1.1 Copyright owners shall provide on their own initiative information relating to their copyright for which protection at the customs office is requested;

1.2 Copyright owners shall co-ordinate with customs offices to carry out training courses for customs officers to recognize legal imported or exported goods and imported or exported goods in breach of copyright;

1.3 Copyright owners may provide financial support to customs offices for disposal by way of destruction of consignments of imported or exported goods in breach of copyright.

2. Improvement of knowledge of copyright of customs officers:

The Ministry of Culture and Information and organizations in charge of collective management of copyright, authors and owners of protected works shall be responsible for improving and updating knowledge of copyright of customs officers.

3. Establishment of an electronic database on copyright protection:

The Department of Literary and Art Copyright (Ministry of Culture and Information) and the General Department of Customs (Ministry of Finance) shall co-ordinate to establish a database serving the work of copyright protection at customs offices.

## **VI. ORGANIZATION OF IMPLEMENTATION**

1. The General Department of Customs (Ministry of Finance), the Department of Literary and Art Copyright and specialized culture and information inspection bodies (Ministry of Culture and Information) shall be responsible for providing guidelines to organizations and individuals for implementation of this Circular.

2. Organizations and individuals concerned shall be responsible for implementation of the provisions and guidelines provided in this Circular.

3. This Circular shall be of full force and effect after fifteen (15) day from the date of its publication in the Official Gazette.

4. During the implementation of this Circular, individuals and organizations concerned shall report timely any problems or unclear issues to the Ministry of Culture and Information and the Ministry of Finance for guidance.

**FOR THE MINISTER OF  
FINANCE**

**Truong Chi Trung**

**FOR THE MINISTER OF CULTURE AN  
INFORMATION  
DEPUTY MINISTER DEPUTY MINISTER**

**Tran Chien Thang**