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### 3. Viet Nam's Legal Framework for Copyright and Neighboring Rights

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#### 1. Developments in the Legal Framework for Copyrights

Right in the first Constitution in 1946, the State of Viet Nam recognized copyright-related fundamental rights of citizens, reflecting the progressive and humanity principles on human rights. Those are freedoms of expression and publication of the citizens. The Vietnamese state also undertook to guarantee rights and interests of intellectuals and private ownership. This progressive and humanity spirit continues to be embedded in the 1959, 1980 and 1992 Constitutions.

In 1986 with the assistance of VAB (a Copyrights Firm of the former Soviet Union), Decree 142/HDBT, the first-ever separate legal document on copyrights in Viet Nam, was issued. To meet the new requirements, the Standing Committee of the National Assembly (NA) adopted the Ordinance on Copyrights in October 1994. During its 8<sup>th</sup> session of 9<sup>th</sup> legislature, the NA passed the Civil Code, which contains provisions on the copyrights. With 36 articles in chapter 1, parts 6 and 7, the Civil Code covers almost copyright-related civil transactions as the economy is in the transition toward the socialist-oriented market economy. The Civil Code with copyrights provisions is a great stride forward in Viet Nam's legal system on this matter. In this process, Viet Nam was greatly assisted by WIPO. The Civil Code has taken into consideration the implementation of Decree 142 and the ordinance to meet international standards. The Code also reflects the trend of copyrights developments in Viet Nam and international integration. During less than 10 years, the State had extended the protection period from 30 years in Decree 142 up to 50 years after the author dies the same level provided for in the Berne Convention (157 member countries). This shows great efforts and strong determination of our Party and State given economic difficulties facing Viet Nam.

The Press Law, Publication Law, Cultural Heritage Law, Advertisement Ordinance also contain copyright-related provisions to enhance the enforcement in these fields. The Customs Law has provisions on Intellectual Property Right (IPR) protection for exports and imports relating to copyrights at border gates. Decrees on the implementation of copyright-related laws have been issued by the Government. Decree 61/CP/2002 on 11 June 2002 on royalties and remuneration to protect the interests of authors and copyright holders. Implementation circulars have been issued by the Ministry of Culture and Information and other relevant agencies.

Administrative, civil and criminal sanctions have been established with effective enforcement mechanisms. According to the revised Criminal Code the maximum penalties have been increased from 5 million dong and 1-year imprisonment up to 200 million dong and 3-year imprisonment for copyright infringements. The 2002 Ordinance on administrative penalties, while reducing maximum level for infringements in the cultural and information, has increased the maximum sanction for IPR infringements up to 100 million dong. These increased sanctions conform with the Vietnamese economic and social conditions and have educational and deterrent effects, showing our strong resolve in the copyright protection.

In addition, bilateral agreements, especially Viet Nam-US Bilateral Trade Agreement (BTA) and Viet Nam-Switzerland IPR Protection Agreement, are also part of Viet Nam's legal system for copyrights.

Since the enactment of the Civil Code, four Decrees, one Prime Minister's Directive and seven Circulars by the Ministry of Culture and Information, Ministry of Finance, Supreme People's Court and Supreme People's Procuracy have been released for implementation. Besides, the Press Law, Publication

Law, Cultural Heritage Law, Customs Law, Advertisement Ordinance, Criminal Code, Administrative Penalties Ordinance and implementation guidelines have copyright-related provisions. It is noteworthy that substantial progress has been made in the law making activities to create a safe legal corridor for promoting creative and innovative activities and protecting literature, art and scientific works. Almost civil transactions on copyrights and related fields have been governed by the legal documents. These meet international standards and facilitate international integration. However, some provisions are not clear and do not follow international practices. The implementation guidelines are not consistent, causing difficulties for the management and enforcement activities. These issues need to be addressed.

The progress made in the law making activities show a strong determination of the Government and relevant agencies as well as of decision making and legislative bodies. The above-mentioned outstanding issues should be addressed by relevant agencies.

## **2. Solutions for improving legal framework on copyright and neighboring rights in Viet Nam**

- (1) In the long run, Viet Nam needs to study and enact a law special for copyrights and related rights as the case of almost states in the world.
- (2) In the immediate, as indicated in the NA's law making agenda, it is necessary to revise the Civil Code, especially the IPR and copyrights provisions in Part 6, Chapter 1, finalize the draft IPR Law for the NA's adoption

-The revised Civil Code should only contain fundamental principles for intellectual property and detailed provisions on civil transactions should be stated in the IPR Law.

-The IPR Law is a civil law that covers all civil transactions in the IP sector. However, as this is a special law it is necessary to have administrative

and criminal penalties governing to ensure effective enforcement.

-The IPR Law should institutionalize the policy of the Communist Party of Viet Nam on promoting the creative potential and cultural, art and scientific values of the citizens for the country's economic, social and cultural development, increase exchanges between cultures, ensure effective protection of creative values of citizens, codify existing regulations that has been tested, meet international standards and national conditions and protect national interest in international integration.

-The revised Civil Code, especially Part 6, should come into effect at the same time with the IPR Law. Therefore, a NA resolution is needed to reserve existing provisions in Part 6, Civil Code until the IPR law comes into effect.