



## NEWS

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### OPENING CEREMONY OF EXPERTISE CENTER OF COPYRIGHT AND RELATED RIGHTS

 n October 12, 2016, the Copyright Office of Vietnam opened a ceremony of Expertise Center of Copyright and Related Rights (hereinafter referred to as “the Center”) which was established according to Decision No. 1981/ QD - BVHTTDL dated June 3,


2016 of the Minister of Ministry of Culture, Sports and Tourism.

The Center whose head office located at the Copyright Office of Vietnam is a non-business organization having the function of assisting the Director General of the Copyright Office of Vietnam to exercise the assessment of copyright and related rights. Its international transaction name is Expertise Center of Copyright, Related Rights (abbreviated as ECCR).

The Center provide professional and legal advices on assessment of copyrights and related rights; build up a database of information on copyright and related rights in support of the assessment thereof; receive and conduct assessment of copyright and related rights as per requests of individuals or organizations; and fulfill rights and obligations of an organization of intellectual property assessment in accordance with the laws.

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### THE NATIONAL OFFICE OF INTELLECTUAL PROPERTY BEGINS DEVELOPMENT OF AN ONLINE FILING SYSTEM

 ecently, the National Office of Intellectual Property has announced the development of an online filing system for registration of industrial property rights in Vietnam. This online filing system has been developed according to Resolution No. 36a/NQ-CP dated December 14, 2015 of the Government on e-Government.

Currently, the first version of the system is under testing process with a few IP agents to gain feedbacks and continue to improve the system to be ready for official use in the future.

Applicants can find out about the system and register at the following address

<http://dvctt.noip.gov.vn:8888/HomePage.do>

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## NEW LEGISLATION

### **DECREE NO. 28/2017/NĐ-CP DATED MARCH 20, 2017:**

#### **AMENDING AND SUPPLEMENTING SOME ARTICLES OF DECREE NO. 131/2013/NĐ-CP STIPULATING SANCTIONS FOR ADMINISTRATIVE VIOLATIONS OF COPYRIGHT AND RELATED RIGHTS AND DECREE NO. 158/2013/NĐ-CP STIPULATING SANCTIONS FOR ADMINISTRATIVE VIOLATIONS IN THE FIELDS OF CULTURE, SPORT, TOURISM AND ADVERTISING**



On March 30, 2017 the Government promulgated Decree No. 28/2017/NĐ-CP (“Decree 28”) to amend and supplement some articles of Decree No. 131/2013/NĐ-CP dated October 16, 2013 regulating sanctions for administrative violations of copyright and related rights and Decree No. 158/2013/NĐ-CP stipulating sanctions for administrative violations in the fields of culture, sport, tourism and advertising. Decree 28 has some remarkable new provisions as follows:

#### **1. Amending and supplementing some articles of Decree No. 131/2013/NĐ-CP stipulating sanctions for administrative violations of copyright and related rights**

Decree 28 clarifies in more details the administrative violation sanctioning jurisdiction of Inspectorates, Customs, Market Management Forces, Border Guards, Coast Guards as well as gives the sanctioning jurisdiction to several bodies and individuals. The details are as follows:

##### ***Sanctioning jurisdiction of Inspectorates***

The sanctioning jurisdiction of Inspectorates has been given to 16 official titles such as Inspectors, Chief Inspectors of Departments, Inspectors-In-Chief of the Specialized Inspectorates, Chief Inspectors of Ministries, etc. Accordingly, Inspectorates have the competence to impose fines, confiscate infringed materials, deprive of business licenses for a definite time, apply remedial measures. The fines of from US\$25 up to US\$12,500 are decided by the individual having the corresponding titles and jurisdiction. For instance, Inspectors only have competence of imposing fines of up to US\$25 whereas Chief Inspectorates of Ministries have competence to impose fines of up to US\$12,500.

##### ***Sanctioning jurisdiction of Customs***

The sanctioning jurisdiction of Customs has been given to 11 official titles such as Directors of Customs Departments, Directors of Anti-smuggling and Investigation Department, the Director of General Department of Vietnam Customs, etc. Accordingly, Customs have the competence to

impose fines, confiscate infringed materials, deprive of business licenses for a definite time, apply remedial measures. The fines of from US\$1,250 up to US\$12,500 are decided by the individual having the corresponding titles and jurisdiction. For instance, Directors of Customs Departments only have competence of imposing fines of up to US\$1,250 whereas the Director of General Department of Vietnam Customs has competence to impose fines of up to US\$12,500.

##### ***Sanctioning jurisdiction of Market Management Forces***

The sanctioning jurisdiction of Market Management Forces has been given to 6 official titles such as Heads of Market Management Teams, Directors of Market Management Sub-Departments of provincial-level Industry and Trade Departments, the Director of the Market Management Department etc. Accordingly, Market Management Forces have the competence to impose fines, confiscate infringed materials, deprive of business licenses for a definite time, apply remedial measures. The fines of from US\$1,250 up to US\$12,500 are decided by the individual having the corresponding titles and jurisdiction. For instance, Heads of market management teams only have competence of imposing fines of up to US\$1,250 whereas the Director of the Market Management Department has competence to impose fines of up to US\$12,500.

##### ***Sanctioning jurisdiction of Coast Guards***

The sanctioning jurisdiction of Coast Guards has been given to 7 official titles such as Heads of Professional Operation Teams, Heads of Professional Operation Squads, the Commander of Vietnam Coast Guard, etc. Accordingly, Coast Guards have the competence to impose fines, confiscate infringed materials, deprive of business licenses for a definite time, apply remedial measures. The fines of from US\$250 up to US\$12,500 are decided by the individual having the corresponding titles and jurisdiction. For instance, Heads of Professional Operation Teams only have competence of imposing fines of up to US\$250 whereas Director of the Commander of Vietnam Coast Guard has competence to impose fines of up to US\$12,500.

##### ***Sanctioning jurisdiction of Border Guards***

The sanctioning jurisdiction of Border Guards has been given to 6 official titles such as Chiefs of Border-guard Stations, Commanders of Border-guard Stations at Ports, Provincial-level border-guard Commanders etc. Accordingly, Border Guards have the competence to impose fines, confiscate infringed materials, deprive of business licenses for

a definite time, apply remedial measures. The fines of from US\$1,250 up to US\$12,500 are decided by the individual having the corresponding titles and jurisdiction. For instance, Chiefs of Border-guard Stations only have competence of imposing fines of up to US\$1,250 whereas Provincial-level border-guard Commanders have competence to impose fines of up to US\$12,500.

In addition to the above said amendments and supplements, Decree 28 also amends some provisions regarding the remedial measures, namely, some amendments in the application of the two measures: “forcible re-export of infringed materials” and “forcible destruction of infringed materials” in a number of cases. This change is designed to create a more proper legal base for improving the effectiveness of handling of administrative violations of copyright and related rights in practice.

## **2. Amending and supplementing some articles of Decree No. 158/2013/NĐ-CP stipulating sanctions for administrative violations in the fields of culture, sport, tourism and advertising.**

Similar to the amendments and supplements to the Decree 131 as mentioned above, Decree 28 amends Decree 158 in order to clarify in more details the sanctioning jurisdiction of Inspectorates, Customs, Market Management Forces, Border Guards, Coast Guards as well as to give the sanctioning jurisdiction to several bodies and individuals. Depending on the seriousness of violations, different sanctions may be imposed on the violators such as caution, fine, deprivation of business licenses for a definite time, confiscation of infringed materials or means used for commission of administrative violations. The fines of from US\$25 up to US\$12,500 are decided by the individual having the corresponding titles and jurisdiction.

In addition, Decree 28 also amends and supplements many other provisions of Decree 158 regarding acts of violations in the field of culture, sport, tourism and advertising, with the following remarkable points:

As to violations against regulations on film distribution, Decree 28 stipulates:

- A fine of US\$50 up to 100 shall be imposed with regard to the following acts: Selling, renting films classified for internal circulation only; Erasing, amending rating labels on the video tapes or discs.
- A fine of US\$100 up to 250 shall be imposed with regard to the acts of Selling, renting video tapes or discs without rating labels or with rating labels not in compliance with the license of for distribution.

- A fine of US\$500 up to 750 shall be imposed with regard to the act of replacing the content of films bearing the rating labels.
- A fine of US\$750 up to 1,000 shall be imposed with regard to one of the following acts: Selling, renting or distributing unapproved films; distributing celluloid films; Distributing video tapes or discs beyond the scope approved in the license for distribution.
- A fine of US\$1,000 up to 1,250 shall be imposed with regard to the acts of Selling, renting or distributing celluloid films, video tapes or discs of which the decisions on recall, confiscation, prohibition or destruction have been issued.

As to the violations against regulations on the storage and distribution of audio and video recordings of art performances, Decree 28 clearly stipulates:

A fine of US\$500 up to 750 shall be imposed with regard to the acts of illegally storing, distributing audio and video recordings of art performances that are unapproved or without rating stamps;

- A fine of US\$750 up to 1,000 shall be imposed with regard to the acts of illegally storing, distributing audio and video recordings of art performances that incite debauchery, are not appropriate for the social moral standards and fine traditions of Vietnam;
- A fine of US\$1,000 – 1,250 shall be imposed with regard to the acts of illegally storing, distributing audio and video recordings of art performances of which the decisions on recall, prohibition, confiscation or destruction have been issued;
- As to the violations against regulations on advertising that affect the landscape, traffic safety, or social order and advertising on vehicles, Decree 28 stipulates:

A caution or a fine of US\$10 up to 25 shall be imposed with regard to the act of distributing fliers that affects the landscape, traffic safety, or social order;


- A fine of US\$100 up to 250 shall be imposed with regard to one of the following acts: Placing advertisements on the front, back, or top of the vehicle; placing advertisement that exceeds the permissible area for advertisement on any side of the vehicle;
- A fine of US\$250 up to 500 shall be imposed on any individual whose products, goods or services advertised in leaflets that affects the landscape, traffic safety, or

social order.

This Decree 28 shall take effect on May 5, 2017. For the administrative violations of copyright, related rights and those in the fields of culture, sport, tourism and advertising which have been committed before the effective date of this Decree and are discovered afterwards or those being handled, the provisions that are favorable to the violators shall be applied. The amending and supplementing of the above said regulations in Decree 28 will help complete Decrees Nos. 131 and 158 which are the two legal documents providing important legal frameworks for the handling of the administrative violations in a variety of wide fields including intellectual property. Further, the said amending and supplementing also makes the systems of legal documents on handling administrative violations in all the fields of life become more and more compliant and consistent with the regulations under the effective Law on Handling of Administrative Violations.

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#### **RESOLUTION NO. 03/2017/NQ-HDTP ON THE PUBLICATION OF COURT'S JUDGMENT AND DECISIONS**

 On March 16, 2017, the Judicial Council of the Supreme People's Court issued Resolution No. 03/2017/NQ-HDTP on the publication of Court's judgments and decisions. According to this Resolution, the following Court's judgments and decisions will be published on the Court's web portal:

- (i) First-instance judgments which are not appealed; appellate judgments; cassation and retrial decisions on settlement of criminal, administrative, civil, marriage and family, business, trade and labor cases;
- (ii) Legally effective decisions, cassation or retrial decisions on the settlement of civil matters;
- (iii) Decisions on declaration of liquidation of enterprises or cooperatives; decisions on settlement of the petition or appeal against Decisions on declaration of liquidation of enterprises or cooperatives.

As to the term of the publication, the Court's judgments and decisions must be published on the Court's web portal within 30 days from the date on which such judgments, decisions take effect.

Besides, this Resolution also regulates judgments and decisions which shall not be published on the Court's web Portal as follows:

- (i) Judgments and decisions of cases subject to secret trial;
- (ii) Judgments and decisions of cases subject to a public trial, but fall on the following cases:
  - Having contents that are in the list of State secret or having contents that have not been published by the State and if these


contents are disclosed, it shall cause harm to the State;

- Having information on financial investment, professional know-how or undisclosed technology which can be used and taken advantage of in business of which the parties in litigation procedures required to keep secret during the trial;
  - Having contents which negatively affect on recognized and widely used traditional culture and valuable customs in a region, ethnic group or population community;
  - Having under-18-year-old participants in the procedure.
- (iii) Judgments or decisions which have not yet taken effect.

This Resolution is promulgated by the Judicial Council of the Supreme People's Court on February 17, 2017 and shall take effect from July 1, 2017.

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#### **CIRCULAR 169/2016/TT-BCT: AMENDING, NEW REGULATIONS ON FEES FOR ASSESSMENT OF TECHNOLOGY TRANSFER AGREEMENT**

 On October 26, 2016, the Ministry of Finance (MOF) issued Circular No. 169/2016/TT-BCT ("Circular No. 169") replacing Circular No. 200/2009/TT-BCT dated October 15, 2009 providing collection rates, regime of collection, payment, management and use of fees for assessment of technology transfer agreement. The details of fees are as follows:

For technology transfer agreement which is not in the List of restricted technologies, official fees for assessment for registration for the 1st time will be charged at the rate of 0,1% per the total value of technology transfer agreement but not exceeding 10 million VND (equally US\$500.00) and not be inferior of 5 million VND (equally US\$250.00). For registration of amendment of technology transfer agreement, official fees for assessment will be charged at the rate of 0,1% per total value of amended technology transfer agreement, but not exceeding 5 million VND (equally US\$250.00) and not be inferior of 3 million VND (equally US\$150.00).

For technology transfer agreement which is in the List of restricted technologies, assessment fees for granting a preliminary license are 10 million VND (equally US\$500.00) and for granting a License of technology transfer will be charged at the rate of 0.1% per the total value of technology transfer agreement but not exceeding 10 million VND (equally US\$500.00) and not be inferior of 5 million VND (equally US\$250.00).

Circular No. 169 is effective as of January 1, 2017.


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**CASES**

**THE “AOP” COLLECTIVE MARK CASE:  
THE MATTER OF REGISTRATION OF A  
COLLECTIVE MARK**

**R**ecently, D&N International, on behalf of Association suisse des AOP-IGP, Sweden (“Applicant”) has successfully overcome the NOIP’s provisional

refusal to register the  collective mark for goods in classes 29, 30, 31, 32 & 33 (“the Applied Mark”).

**Facts**

The Applicant filed an international application for registration of the Applied Mark in Vietnam. However, the NOIP provisionally refused to protect the Applied Mark on the ground that the application dossier lacked the document specifically required for registering a collective mark as provided in Article 105 of IP Law of Vietnam.

Having reviewed the case, D&N International advised and assisted the Applicant in preparing required the specific documents, i.e. Regulations governing the use of the collective mark and the list of people authorized to use the mark. D&N International, concurrently, on behalf of the Applicant, responded to the NOIP’s provisional refusal.

After reviewing the document supplemented by the Applicant, on October 17, 2016, the NOIP issued the Decision No. 4142/QĐ-SHTT accepting to protect the Applied Mark.

**Comments**

To avoid the risks of being refused by the NOIP, any organization who intends to register collective mark should not only prepare the information and document required for a dossier of applying for a normal mark, such as sample of mark, specification of goods/services bearing the mark, and a power of attorney (if the application is filed through an IP representative) but also pay attention in preparing a Regulations governing the use of the collective mark specifically required for a dossier of applying for a collective mark. According to Article No. 105.4 of IP Law of Vietnam, the Regulations governing the use of a collective mark must include the following minimum obligatory contents:

- Name, address, grounds of establishment and operations of the collective organization that is the owner of the mark;
- Requirements to become a member of the collective organization;
- List of organizations and individuals permitted to use the mark;
- Conditions for using the mark;
- Remedies applicable to acts against violating the rules on using the collective mark.

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## **D&N INTERNATIONAL CO., LTD (D&N International)**

**D&N International** is a Vietnam's leading firm providing professional legal services in the field of Intellectual property, investment consultancy and business law.

As a representative for a large number of reputable clients from over 50 countries, each year, D&N International settles thousands of cases relating to establishment and enforcement of IP rights, as well as provides consultancy services for various investment projects, both domestic and foreign.

With our professional and experienced lawyers, IP attorneys and associates, D&N International commit ourselves to providing our clients with high-quality services at reasonable price, helping clients enhance their business effectiveness and create competitive advantage in both their domestic and international markets.

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