

JOINT CIRCULAR No 04/2003/TTLT/BVHTT-BXD OF 24th JANUARY 2003 OF THE MINISTRY OF CULTURE - INFORMATION AND MINISTRY OF CONSTRUCTION

On Guidance to the Implementation of Copyright protection in respect of architectural works

- Pursuant to the Decree No 76/CP of 29th November 1996 of the Government on Guidance to the Implementation of a Number of Provisions on Copyright in the Civil Code (hereinafter referred to as the Decree No 76/CP);
- Pursuant to the Decree No 60/CP of 6th June 1997 of the Government on Guidance to the Implementation of the Provisions on Civil Relations Involving Foreign Elements (hereafter referred to as Decree No 60/CP);

The Ministry of Culture and Information and the Ministry of Construction provide the following guidance to copyright protection in respect of architectural works:

I. INTERPRETATION OF TERMINOLOGIES:

A number of terminologies shall be understood as follows:

1. An "architectural work" means, according to the provisions in paragraph 8 Article 4 Decree No 76/CP, the design drawings that express a creative idea of a house, construction, or space planning (construction planning) whether or not constructed;
An architectural work includes plane section, vertical section, cross section, and perspective design drawings, which represent a creative idea of a house, construction, combined architectural construction, space planning, perspective architecture of an area or urban, urban system, functional urban area, or rural habitation area.
The model, maquette, and descriptive representation (if any) of a specific house, construction or space planning are regarded as an inseparable part of an architectural work, however they are not regarded as a substitute for the design drawings in order to be an independent work.
2. "To create an architectural work" is understood to mean an act of thinking of an author who personally makes a part or the whole of a work expressed in the form of design drawings.
3. "To copy an architectural work" means an act of re-drawing a part or the whole of an architectural work.
4. "To photocopy an architectural work" means an act of making a completely identical copy of a part or the whole of an architectural work by applying a process of photography, photocopy, or the like.
5. A "copy of architectural work" is a product obtained by copying or photocopying a part or the whole of an architectural work.
6. "Owner of architectural work" is an individual or legal person that owns the copyright under the provisions of law.
7. An "architectural work of co-authorship" is a work jointly created by two or more authors.

8. An "anonymous architectural work" is a published architectural work on which the name of the author (real name or pen name) is not indicated.
9. An "architectural work of unidentified author" is a published architectural work whose author is not identified.
10. A "posthumous architectural work" is an architectural work that is published or disseminated for the first time after the death of the author.
11. "To publish or disseminate an architectural work" means to make the work known to the public through publication, oral representation, display or presentation on mass media.

II. PROTECTED ARCHITECTURAL WORKS:

1. Architectural works protected in Vietnam:

- 1.1. Architectural works whose authors are nationals of Vietnam.
- 1.2. Architectural works owned by Vietnamese nationals, legal persons or organizations.
- 1.3. Architectural works owned by foreign persons or legal persons where such works are created and expressed in Vietnam as stipulated in point 1 Section I of this Circular.
- 1.4. Architectural works owned by foreign persons or legal persons, which are published or disseminated for the first time in Vietnam.
- 1.5. Architectural works owned by foreign persons or legal persons, which are protected in Vietnam under international treaties signed or acceded to by Vietnam.

2. Architectural works that are protected in Vietnam as stipulated in point 1 Section I of this Circular and that neither fall under the subject-matters of protection of industrial property nor contain a matter among those stipulated in paragraph 1 Article 749 of the Civil Code.

III. AUTHOR OF ARCHITECTURAL WORK

1. Author of architectural work:
A person who personally creates the whole or a part of an architectural work shall be the author of the architectural work.
2. Co-author of architectural work:
Persons who personally and jointly create an architectural work shall be the co-authors of the architectural work.
3. A person shall not be regarded as the author or co-author of an architectural work where such a person provides assistance, makes suggestions, supplies materials, performs instructed designing works, manages designing works or gives advices for another person who personally creates the architectural work.

IV. OWNER OF ARCHITECTURAL WORK

1. Owner of architectural work who simultaneously is author:
Where the creation of an architectural work is completed on the expense of the author in regard of time, money and material provisions, the author shall simultaneously be the owner of the architectural work in the following cases:

- 1.1. The author is the owner of the whole or a part of the work by his or her creation except where the work is created in the fulfillment of an assigned duty or in the performance of a contract.

- 1.2. The co-authors are the joint owners of the work they have jointly made except where the work is created in the fulfillment of an assigned duty or in the performance of a contract.

2. Owner of architectural work who simultaneously is not author:
A person or organization responsible for providing funds and other determinant conditions to an author for the creation of an architectural work shall be the owner of the architectural work in the following cases except where the parties have agreed otherwise:

- 2.1. Where an architectural work is created in the fulfillment of an assigned duty, the organization or institution that assigned the duty shall be the owner of the architectural work.

- 2.2. Where an architectural work is created in the performance of a contract concluded between the author, or the designing organization that is a legal person and for which the author works, as one party, and the individual or organization that commissioned the design, as the other party, provided that the later-mentioned party has paid a lump sum in exchange of the ownership right over the architectural work.

- 2.3. Where an architectural work is created for a contest and the regulations thereof provide that the ownership right over the architectural work does not belong to the author.

- 2.4. Where the author or owner of an architectural work has transferred the work to another person by means of a contract, as a gift or present, or as a legacy in accordance with the provisions of law.

V. RIGHTS OF AUTHOR AND RIGHTS OF OWNER OF ARCHITECTURAL WORK

1. Moment at which copyright arises:
Copyright in an architectural work arises immediately after the creative idea of the author is expressed in the form of design drawings whether or not the work is published or registered for protection.
2. Rights of author of architectural work:
Under the provisions in Articles 750, 751, 752 and 755 of the Civil Code, Articles 8 and 10 of the Decree No 76/CP, and in Section III of the Circular No 27/2001/TT-BVHTT of 10th May 2001 of the Ministry of Culture and Information on Guidance to the Implementation of Decree No 76/CP of 29th November 1996 and Decree No 60/CP of 6th June 1997 of the Government on Guidance to the Implementation of a Number of Provisions on Copyright in the Civil Code (hereinafter referred to as

Circular 27/2001/TT-BVHTT), the rights of the authors of architectural works include personal and property rights.

2.1. Where the author simultaneously is the owner of architectural work:

2.1.1. The author who simultaneously is the owner of architectural work shall have those personal rights that are not transferable to another person, including the right:

- a. To title the work;
- b. To indicate his or her real or pen name on the work, to be mentioned by real or pen name when the work is published, disseminated or used;
- c. To protect the integrity of the work, to authorize or prohibit another person to modify the content of the work.

2.1.2. The author who simultaneously is the owner of architectural work shall have those personal rights that are wholly or partly transferable to another person by means of a written contract, as a gift or present, or as a legacy inherited pursuant the provisions of law, including the right:

- d. To publish or disseminate the work or to authorize or prohibit another person to do so, in such a form as publication, re-publication or making copies, to display the work before the public, to communicate the work to the public in any forms or manners, to distribute the work or copies thereof by sale, rental, or otherwise, and to import copies of his or her work from foreign countries into Vietnam;
- e. To authorize or prohibit another person to use his or her work in any form, such as construction, copying or photocopying.

2.1.3. The author who simultaneously is the owner of architectural work shall have the property rights which are wholly or partly transferable to another person by means of a written contract, as a gift or present, or as a legacy inherited pursuant the provisions of law, including the right:

- f. To be entitled to royalty;

- g. To be entitled to remuneration when the work is used;
- h. To be entitled to material benefit by authorizing another person to use the work in such a form as construction, publication, re-publication, display, exhibition or rental;
- i. To be entitled to receive award for his or her work except where the work is not protected by the State.

2.2. Where the author simultaneously is not the owner of architectural work:

2.2.1. The author who simultaneously is not the owner of architectural work shall have the personal rights which are not transferable to another person, including the right:

- j. To title the work;
- k. To indicate his or her real or pen name on the work, to be mentioned by real or pen name when the work is published, disseminated or used;
- l. To protect the integrity of the work, to authorize or prohibit another person to modify the content of the work.

2.2.2. The author who simultaneously is not the owner of architectural work shall have those property rights which are wholly or partly transferable to another person by means of a written contract, as a gift or present, or as a legacy inherited pursuant the provisions of law, including the right:

- m. To be entitled to royalty;
- n. To be entitled to remuneration when the work is used;
- o. To be entitled to receive award for his or her work except where the work is not protected by the State.

The enjoyment of the property rights of the author who simultaneously is not the owner of architectural work, as provided for in this point, shall be based on a contract between the author and owner of the architectural work.

2.3. Co-authors of architectural work are the co-owners thereof and shall have the author's rights under the provisions in point 2 Section V of this Circular. The use and disposal of the architectural work shall be subject to the agreement of all the co-authors and, where a co-author died, the agreement of the heir of that co-author.

Where an architectural work, created by co-authors, includes individual parts that may be separated for independent use, each author shall have the right to use his or her own individual part and be entitled to the copyright in that part, as provided for in point 2 Section V of this Circular, except the co-authors have agreed otherwise.

3. Rights of owner of architectural work

Pursuant to the provisions in Articles 753 and 756 of the Civil Code, Article 9 of the Decree 76/CP, and in Section III Circular 27/2001/TT-BVHTT, the rights of the owner who simultaneously is not the author of architectural work shall include the following personal and property rights:

3.1. The personal rights which are wholly or partly transferable to another person by means of a written contract, as a gift or present, or as a legacy inherited pursuant the provisions of law, including the right:

3.1.1. To publish or disseminate the work, or to authorize or prohibit another person to do so, in such a form as publication, re-publication or making copies, to display the work before the public, to communicate the work to the public in any forms or manners, to distribute the work or copies thereof by sale, rental or otherwise, and to import copies of his or her work from foreign countries into Vietnam except the author and owner have agreed otherwise;

3.1.2. To authorize or prohibit another person to use his or her work in any form such as construction, copying or photocopying except the author and owner have agreed otherwise.

3.2. The property rights which are wholly or partly transferable to another person by means of a written contract, as a gift or present, or as a legacy inherited pursuant the provisions of law, including the right:

3.2.1. To construct, publish, re-publish, display, and exhibit;

3.2.2. To rent.

The enjoyment of the property rights of the owners who simultaneously are not the authors of architectural works, as provided for in this point, shall be based on contracts between the authors and owners of architectural work.

4. Right to request the protection of author's rights and owner's rights in architectural works:

Pursuant to the provisions in Article 759 of the Civil Code and Article 7 of

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the Decree 76/CP, in case the copyright or the right of the owner of work is infringed, the author or owner of work shall have the right to request the infringing person, or to request the competent State organization to force that person, to desist from infringing, to make public apology and correction and to compensate for damages.

The right to request the competent State organization to protect the lawful right and interest of the authors and owners of architectural work shall be exercised in accordance with applicable orders and procedures relating to complaints, denunciations, or relating to actions at administrative, civil or criminal courts.

The detailed provisions on jurisdiction for the settlement of complaints or denunciations that have been made by authors or owners of work are stipulated in Section VIII of this Circular.

5. Limitations on copyright

5.1. The rights of the authors and owners of architectural work shall be protected on the basis of the contractual agreements of the authors, owners, and the parties using the architectural works, as stipulated in Section VI of this Circular, and on the basis of legal provisions on construction.

5.2. The realization in construction of the design drawings of architectural works shall be carried out in compliance with legal provisions on construction.

6. Duration of copyright protection

Pursuant to the provisions in Article 766 of the Civil Code and Article 14 of the Decree 76/CP, the duration of protection of copyright in architectural works shall be the life of the authors and 50 years following the death of the authors. In case of architectural works of co-authorship, the 50-year period shall be counted from the date of the death of the last surviving author.

7. Transfer and inheritance of copyright:

7.1. Pursuant to the provisions in Article 763 of the Civil Code and paragraph 1 Article 8 of the Decree 76/CP, the rights that may be transferred in whole or in part to another person by means of written contracts, as a gift or present, or as an inherited legacy shall include: the personal and property rights of the authors who simultaneously are the owners of architectural work, as stipulated in points 2.1.2.(a), 2.1.2.(b), and 2.1.3.(a) through 2.1.3.(d) this Section, the property rights of the authors who simultaneously are not the owners of architectural work, as stipulated in points 2.2.2.(a) through 2.2.2.(c) this Section, and the personal and property rights of the owners of architectural work, as stipulated in point 3 this Section.

7.2. Pursuant to the provisions in Articles 764 and 765 of the Civil Code and Article 13 of the Decree 76/CP, the heir of the author who simultaneously is the owner of architectural work shall be entitled to the personal rights stipulated in points 2.1.2.(a) and 2.1.2.(b) this Section and the property rights stipulated in points 2.1.3.(a) through 2.1.3.(d) this Section; the heir of the author who simultaneously is not

the owner of architectural work shall be entitled to the property rights stipulated in points 2.2.2.(a) through 2.2.2.(c) this Section; the heir of the owner who simultaneously is not the author shall be entitled to the personal and property rights stipulated in point 3 this Section.

Where an author or co-author has no heir or the heir refuses to receive the legacy or is not entitled to the legacy, the above-mentioned rights shall be vested in the State.

Where the heir of the author or owner of work died before the termination of the duration of copyright protection, the heir of the deceased heir shall be entitled to the rights of the author or owner of work, as stipulated in this point, for the remaining period of the duration of protection. A person who is entitled to be the heir of the rights of the author or owner of work shall have the right to transfer the whole or a part of the rights to another person.

In the case of architectural works of co-authorship and where the co-authors simultaneously are the joint owners of architectural work, if a co-author died without heir, or the heir refuses to receive or is not entitled to the legacy, the property rights of the deceased co-author shall be vested in the State.

VI. USE OF ARCHITECTURAL WORK

The use of architectural works shall be governed by contracts for use of architectural work concluded between the author, or the designing organization which is a legal person and for which the author works, as one party, and an individual or organization commissioning the design, as the other party.

Pursuant to the provisions in Articles 767 through 772 of the Civil Code and Articles 15 through 18 of the Decree 76/CP, the content of contracts for use of architectural work shall include substantial terms on: the form of use, the scope and duration of use, the rate of royalty, remuneration and other material benefit, the mode of payment, the liability of the parties in case of breach, and other terms agreed upon by the parties in accordance with the provisions of applicable law on contracts.

The conclusion of contracts for use of work of co-authorship shall be subject to the agreement between all the co-authors, or the transferees of the rights of the co-authors, and the using parties. All the co-authors or transferees of the rights of the co-authors and the using parties shall place their signatures on the contracts.

VII. REGISTRATION OF COPYRIGHT AND OWNERSHIP RIGHT OVER ARCHITECTURAL WORK

1. Registration:

Pursuant to the provisions in point a paragraph 1 Articles 762 of the Civil Code, in Chapter V of the Decree 76/CP, and in Section V of the Circular 27/2001/TT-BVHTT, individuals or organizations that are the authors, co-authors, or owners of work shall have the right to apply, either personally or through empowered individuals or copyright service organizations or organizations for collective management of copyright, to the Copyright Office or the Department of Culture and Information of the province or city subordinated to the Central Government where the applicants reside, for Copyright Certificates.

2. Application files for Copyright Certificate shall include:

2.1. A petition for registration of copyright or ownership right over work;

A petition for granting a Copyright Certificate shall be in written form in Vietnamese and signed by the author or owner of work or by the person empowered to file the petition. Where the applicant is a legal person, the signature and seal shall be placed in accordance with relevant regulations;

2.2. Two exemplars of the architectural work that is intended to be registered, in which the creative idea of the architectural work shall be sufficiently and clearly expressed by means of design drawings and, in case of a maquette and a model (if any), two sets of black and white photographs;

2.3. Lawful copies of related documents or papers. Where the documents or papers are in a foreign language, they shall be accompanied by a duly notarized translation into Vietnamese.

3. Responsibility for granting registration of copyright:

3.1. The Copyright Office shall be responsible for considering the application files for registration of copyright and deliver the results within a period of 10 working days counted from the date of receipt of complete and due files, at the place where the files were received. Refusals of copyright registrations shall be notified in written replies and the reasons explained.

3.2. The Departments of Culture and Information of provinces and cities subordinated to the Central Government shall be responsible for guiding the applicants to complete registration procedures, for receiving the application files for registration of copyright, and for sending duly filed applications to the Copyright Office immediately after their receipt, as stipulated in this point, for collecting the registration fees prescribed by the competent authority and expenses due to the transmission of files, and for remitting the results to the persons who applied for registration immediately after their receipt from the Copyright Office of the Ministry of Culture and Information.

4. For registration of copyright, individuals or organizations shall pay the fees prescribed by the State.

5. The Director General of the Copyright Office shall have the right to issue Copyright Certificates and revoke the issued Copyright Certificates in case the applicants are found to be neither the authors nor owners of work, or the work does not fall under the subject matters protected by the legal provisions on copyright.

6. The Copyright Certificates issued by the Copyright Protection Agency, the Copyright Protection Organization, and the Copyright Office, prior to the effective date of the Civil Code, shall remain valid. Authors and owners of work shall be entitled to the rights provided for in the Civil Code. Authors or owners of work, who wish to have their Copyright Certificates reissued or changed, shall provide clear reasons in petitions and submit

the application files in accordance with the provisions in point 2 Section V of this Circular.

VIII. INSPECTION, SUPERVISION, AND SETTLEMENT OF DISPUTES AND VIOLATIONS

1. According to the provisions in Articles 33 and 36 of the Decree No 76/CP:
 - Authors or owners of architectural work, when finding that their copyright or ownership right over work is infringed upon by a third party, shall have the right to request the infringer to discontinue the act of violation, to make public apology and correction and to pay compensation for damages, or to request or make a complaint to the State Inspectorate of culture and information (Inspectorate of the Ministry of Culture and Information, Inspectorate of the Departments of Culture and Information) or the People's courts for settlement pursuant to their competence.
 - Individuals or organizations, when discovering an act of infringement on copyright or ownership right over work, shall have the right to present a resolution or denunciation to the Ministry of Culture and Information (the Copyright Office), to the Departments of Culture and Information or to other competent State organizations for settlement in accordance with the provisions of law.
 - The Copyright Office of the Ministry of Culture and Information and the Departments of Culture and Information shall co-operate with the Department of Architecture Management and Planning of the Ministry of Construction, the Specialized Construction Inspectorate, the Departments of Construction or Departments of Planning and Architecture of provinces or cities subordinated to the Central Government in the settlement pursuant to their competence.

2. The Copyright Office, as the competent organization of the Ministry of Culture and Information exercising the State management on copyright protection, shall have the following duties:
 - 2.1. To guide and supervise the implementation of the legal provisions on copyright over the country;
 - 2.2. To response to letters of complaint or denunciation relating to copyright protection, or to forward such letters to the Inspectorate of the Ministry of Culture and Information, the Inspectorate of the Departments of Culture and Information and the competent State organizations for settlement in accordance with the provisions of law and regulations.
 - 2.3. To co-operate with the Departments of Culture and Information, the Inspectorate of the Ministry of Culture and Information and the related organizations for the purpose of timely settlement of violations of legal provisions on copyright.

3. The Departments of Culture and Information or the Departments of Culture-Information-Sport shall be the competent organizations which assist the People's Committees of provinces or cities subordinated to the Central Government to exercise the State management on copyright protection and have the following duties:
 - 3.1. To guide and supervise the implementation of legal provisions on copyright in their locality;
 - 3.2. To response to letters of complaint or denunciation relating to copyright protection, or to request the competent State organizations for settlement in accordance with the provisions of law;
 - 3.3. To co-operate with the Copyright Office, the Inspectorate of the Ministry of Culture and Information, the Specialized Construction Inspectorate and the related organizations for the purpose of timely settlement of violations of legal provisions on copyright.
4. The Inspectorate of the Ministry of Culture and Information, the Inspectorate of the Departments of Culture and Information shall carry out the function of specialized inspectorate pursuant to the provisions of Article 34 of the Decree No 76/CP.

IX. ORGANISATION OF IMPLEMENTATION

1. The Copyright Office of the Ministry of Culture and Information, the Department of Architectural Management and Planning of the Ministry of Construction shall be responsible for guiding the implementation of the protection of copyright in architectural works under this Circular.
2. This Circular shall take effect 15 days after its signature.
3. In the course of the implementation of this Circular, individuals or organizations that are entangled or face with unclear problems shall make timely reports to the Ministry of Culture and Information or the Ministry of Construction to seek further guidance.

The Minister of Culture and Information

Pham Quang Nghi
(Signed)

The Minister of Construction

Nguyen Hong Quan
(Signed)