

JOINT CIRCULAR No. 58/2003/TTLT-BVHTT-BTC

BETWEEN MINISTRY OF CULTURE-INFORMATION AND MINISTRY OF FINANCE ON GUIDANCE TO COPYRIGHT PROTECTION AT CUSTOMS AUTHORITIES IN RELATION TO EXPORT GOODS, IMPORT GOODS

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

Pursuant to the Customs Law No 29/2001/QH 10 of 29th June 2001;

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 of the Civil Code (hereinafter referred to as Decree No 60/CP);

Pursuant to the Decree No 101/2001/ND-CP of 31st December 2001 of the Government on Providing Detailed Implementation of a Number of Provisions of the Customs Law in Relation to Customs Procedures, Checking Regime, Inspecting Regime (hereinafter referred as the Decree No 101/ND-CP).

The Ministry of Culture and Information and the Ministry of Finance provide the following guidance to copyright protection at customs authorities in relation to export and import goods:

I. INTERPRETATION OF TERMINOLOGIES

A number of terminologies used in this Circular shall be construed as follows:

1. "Authors" are persons defined in Article 745 of the Civil Code.
2. "Owners of work" are individuals, organizations defined in Article 746 of the Civil Code.
3. "Works protected in Vietnam" include works belonging to genres of work protected under the provisions in Article 747 of the Civil Code, Article 4 of the Decree No 76/CP, whose contents do not comprise any matters stipulated in paragraph 1 Article 749 of the Civil Code and which pertain to one of the following:
 - 3.1. Works whose authors are Vietnamese nationals;
 - 3.2. Works owned by Vietnamese nationals, legal persons, organizations;
 - 3.3. Works of foreign individuals, legal persons, which are created and expressed in a certain material form in Vietnam;
 - 3.4. Works of foreign individuals, legal persons, which are published or disseminated for the first time in Vietnam;
 - 3.5. Works of foreign individuals, legal persons, which are protected in Vietnam under international treaties signed or acceded to by Vietnam;

Protected works are required to be expressed in a certain material form, irrespective of the forms of expression, the language used, the work's quality, and whether the work is published or not, whether the work is granted a Copyright Certificate or not.

4. The "publication or dissemination" of a work means the presentation of the work before the public in the form of an oral speech, display, publication, performance, radio broadcast, television broadcast, or in any other material forms.

5. "A work is published or disseminated for the first time in Vietnam" is a work of a foreign person or organization, which has not been published or disseminated in any foreign country prior to being published or disseminated in Vietnam.

A work is considered as being published or disseminated first in Vietnam if that work is published or disseminated in Vietnam within a period of 30 days counted from the date of its first publication or dissemination in any countries.

6. "Suspension of customs procedures" means the customs authorities' temporary adjournment of customs procedures for lots of export or import goods falling under suspicion of infringing copyright.

7. "Customs clearance" means the decisions of customs authorities to allow goods to be exported or imported.

8. "Export or import goods infringing copyright" means export or import goods that infringe the personal rights, property rights of authors, owners of work, including the following goods:

8.1. Export or import goods that are copies of works, which are made and/or circulated without the authorization of the owners of work.

8.2. Export or import goods being copies of works whose contents infringe copyright.

II. PERSONS ENTITLED TO THE RIGHT TO REQUEST AND SCOPE OF REQUEST FOR COPYRIGHT PROTECTION AT CUSTOMS AUTHORITIES

1. Persons entitled to the right to request for copyright protection at customs authorities:

The following persons shall be entitled to the right to request the customs authorities to protect copyright:

1.1. Authors, owners of work, whose works are protected in Vietnam;

1.2. Individuals, organizations licensed to use works that are protected in Vietnam;

1.3. Individuals, organizations practicing in copyright services, who are empowered by persons mentioned in points 1.1. and 1.2. Section II of this Circular;

1.4. Related collective copyright management organizations.

2. Extent of copyright protection in charge of customs authorities:

This Circular shall be applicable to all export and import goods that are involved with protected copyright, except for the following cases:

2.1. Goods in humanitarian aids;

2.2. Goods temporarily imported and to be re-exported within a time limit, which are in services of works and activities of foreign organizations, individuals while being in Vietnam;

2.3. Goods temporarily imported and to be re-exported or temporarily exported and to be re-imported within a time limit, which are put on displays, exhibitions, shows or used for assisting consumers in distinguishing, identifying goods that infringe copyright;

2.4. Goods in transit;

2.5. Goods that are tax-exempted offered presents, gifts, and goods contained in personal luggage as stipulated in the Customs Law.

III. PROCEDURES FOR ENFORCING COPYRIGHT PROTECTION AT CUSTOMS AUTHORITIES

1. Filing Applications for requesting copyright protection at customs authorities (hereinafter referred as "Application for requesting protection"):

In order to be entitled to copyright protection by customs authorities, persons mentioned in point 1 Section I of this Circular (hereinafter referred to as "requesting persons") may file Applications for requesting protection, pursuant to the provisions in points 1.1. or 1.2. Section III of this Circular:

1.1. Filing Long-term Applications for requesting protection: In case requesting persons do not have information on specific export or import lots of goods, which infringe copyright, they may file Long-term Applications for requesting protection. Such Applications for requesting protection shall be accompanied by the following papers:

1.1.1. Application for requesting copyright protection at customs authorities (Conforming to the form shown in Annex 1 to this Circular).

1.1.2. Letter of power (In case the applicants are persons provided in points 1.3. and 1.4. Section II of this Circular).

1.1.3. Documents for proving the right to make request:

1.1.3.1. Copyright Certificate (if any). If the requests for protection are made without accompanying Copyright Certificate, the requesting persons shall prove and assure their copyright in works for which they request the protection in the Applications for requesting protection;

1.1.3.2. Contract for use of work (In case the applicants are persons provided in point 1.2. Section II of this Circular);

1.1.3.3. Papers proving the transfer or inheritance of copyright (In case the applicants are the transferees of rights or heirs)

1.1.3.4. Other papers proving the right to make request under the law of Vietnam or international treaties signed or acceded to by Vietnam (In the case of authors, owners of works stipulated in points 3.3., 3.4. and 3.5. Section I of this Circular);

1.1.4. Descriptions of works and models or photographs of works, which shall provide signs that enable the clear identification, distinction of genuine goods and infringing goods.

1.1.5. Deposits or security documents issued by credit organizations for guaranteeing the payment of expenses and damages that arise in case the customs authorities have temporarily suspended procedures in respect of export or import goods on the request of the requesting persons but the suspended goods are found not to be involved in infringement of copyright. The provisions applicable to deposits or security documents in this case are as follows:

1.1.5.1. The deposit shall be a specific amount of money, at least of a value of 20 million Dong; or

1.1.5.2. The security documents shall be for a specific amount of money, at least of a value of 50 million Dong; or

1.1.5.3. The security documents issued by credit organizations for guaranteeing the payment of all the expenses and damages that arise in case the customs authorities have temporarily suspended procedures in respect of export or import goods on the request of the requesting persons but the suspended goods are found not to be involved in infringement of copyright.

In case the requesting persons who filed Applications for requesting protection at customs authorities in accordance with formalities stipulated in point 1.1. Section III of this Circular have information on specific lots of goods that infringe their copyright, they may file Case-by-case Applications for requesting protection with customs authorities to suspend procedures for such lots of goods that are suspected of infringing copyright pursuant to the provisions in point 1.2. Section III of this Circular. In such cases the requesting persons are exempted from submitting the papers and documents stipulated in point 1.2.4. Section III of this Circular>

1.2. Filing Case-by-case Applications for requesting protection: In case the requesting persons suspect specific lots of export or import goods to be involved in copyright infringement, they may file Case-by-case Applications for requesting protection to request the customs authorities to suspend the customs procedures for such specific lots of export or import goods that are mentioned in their Applications for requesting protection. The Applications for requesting protection shall be accompanied by the following papers:

1.2.1. Applications for requesting copyright protection at customs authorities (Conforming to the form shown in Annex 1 to this Circular), in which the information on the specific lots of goods requested to be suspended is sufficiently provided so as to enable the customs authorities to identify the lots of goods, such as: the name and address of the exporter or importer of goods; the country of export or import; the country of origin of goods; the means of transportation, detailed information on the means of transportation, carrier, number of bill of lading; the intended port of export or import; the expected customs authority to complete procedures; the detailed descriptions of suspected goods or models or photographs of suspected goods; the name of producer and distributor of goods suspected to be involved in infringement.

1.2.2. Initial evidences leading to suspicion that export or import goods infringe copyright, such as:

1.2.2.1. The source of origin of goods is not in the country or region where individuals or organizations are authorized to produce lawful copies of works;

1.2.2.2. Models or photographs of infringing copies (if any).

1.2.3. Deposits or security documents issued by credit organizations for guaranteeing the payment of all the expenses and damages that arise in case the customs authorities have temporarily suspended

procedures in respect of export or import goods on the request of the requesting persons but the suspended goods are found not to be involved in infringement of copyright. The provisions applicable to deposits and security documents in this case shall be as follows:

1.2.3.1. Deposits or security documents of value equal to 20% of the value of the lots of goods, which is calculated in accordance with the price indicated in the contract, are put into holding accounts of the customs authorities at the State treasury; or

1.2.3.2. Specified deposits or security documents issued by credit organizations, at least of a value of 20 million Dong (in case the value of the lots of goods suspected to be infringing goods is not known); or

1.2.3.3. Security documents issued by credit organizations for guaranteeing the payment of all the expenses and damages that arise in case the customs authorities have temporarily suspended procedures in respect of export or import goods on the request of the requesting persons but the suspended goods are found not to be involved in infringement of copyright.

1.2.4. All papers, documents stipulated in points 1.1.2., 1.1.3. and 1.1.4. Section III of this Circular.

1.3. The requesting persons shall pay the fees prescribed by the Ministry of Finance.

2. Receipt and handling of Applications for requesting protection

2.1. Authorities in charge of the receipt and handling of Applications for requesting protection:

2.1.1. The General Department of Customs shall be in charge of receiving Applications in case the filing of Applications is made according to the formalities stipulated in point 1.1. Section III of this Circular, provided that the requested protection by customs enforcement authorities against infringements is in charge of the Customs Departments of two or more provinces or cities.

2.1.2. The Customs Departments of provinces and cities shall be in charge of receiving Applications in case the filing of Applications is made according to the formalities stipulated in point 1.1. and 1.2. Section III of this Circular, provided that the requested protection by customs enforcement authorities against infringements is in charge of the Customs Department of one province or city.

2.1.3. The Sub-Departments of Customs shall be in charge of receiving Applications in case the filing of Applications is made according to the formalities stipulated in point 1.1. and 1.2. Section III of this Circular, provided that the requested protection by customs enforcement authorities against infringements is in charge of only one Sub-Department of Customs.

2.2. Receipt and handling of Applications for requesting protection:

After the receipt of Applications for requesting protection, the customs authorities shall check the Applications and accompanying files and documents for the purpose of making decisions on whether or not to accept the Applications for requesting protection.

2.2.1. Conditions for acceptance of Applications for requesting protection:

2.2.1.1. The requesting persons are entitled to the right to file Applications for requesting protection under the provisions in point 1. Section II of this Circular;

2.2.1.2. The requested protection is within the scope of the rights of the requesting persons;

2.2.1.3. The duration of and the moment at which the request for protection is made is within the duration of copyright protection provided in Article 766 of the Civil Code, Article 14 of the Decree No 76/CP, bilateral agreements and international treaties signed or acceded to by Vietnam;

2.2.1.4. The works requested to be protected are works protected in Vietnam;

2.2.1.5. The Applications for requesting protection and accompanying files contain information sufficient to provide the basis for the customs authorities to take copyright protection measures stipulated in this Circular;

2.2.1.6. The requesting persons make the deposits or provide security documents issued by credit organizations, as stipulated in point 1.1.5. or 1.2.3. Section III of this Circular.

2.2.2. Time limit for acceptance of Applications for requesting protection:

2.2.2.1. In the case of Applications for requesting protection filed pursuant to point 1.1. Section III of this Circular, the acceptance or refusal of Applications shall be notified to the requesting persons in writing, within a period of 10 days. In the case of refusals, the reasons for doing so shall be stated.

2.2.2.2. In the case of Applications for requesting protection filed pursuant to point 1.2. Section III of this Circular, the refusal of Applications shall be notified the same day to the requesting persons and the reasons for doing so stated. In such cases, the notification shall be made through facsimile or telephone and also in written form addressed to the requesting persons.

3. Inspecting, discovering export or import goods suspected to infringe copyright:

Having accepted Applications for requesting protection, the customs authorities shall proceed in the following way:

3.1. Sending information on requests for protection to customs units, for actions.

3.2. Inspecting export or import goods suspected to infringe copyright:

Based on the information provided in the Applications and files for requesting protection, the customs authorities for which the information is provided shall be charged with the supervisor's responsibility in conducting inspections and discovering export or import goods suspected to infringe copyright.

3.3. Making decision on suspension of customs procedures:

3.3.1. The Heads of Sub-Departments of Customs at the place where the export or import goods suspected to infringe copyright are discovered shall make the decisions on suspension of customs procedures (Conforming to the form shown in Annex 2 to this Circular).

3.3.1.1. In the case of suspensions relating to Long-term Applications for requesting protection, the customs authorities shall make decisions on suspension without requiring the requesting persons to submit additional applications.

3.3.1.2. In the case of suspensions relating to Case-by-case Applications for requesting protection, when having information on specific lots of goods the customs authorities shall make decisions on suspension in accordance with the Applications for requesting protection filed in regard of such cases.

3.3.2. Decisions on suspension shall be made at the time the owners of export or import goods come to complete customs procedures.

3.3.3. Decisions on suspension of customs procedures shall be sent to the requesting persons and owners of export or import goods.

3.3.4. Decisions on the duration and prolongation of suspension of customs procedures shall be made pursuant to the provisions in Article 14 of the Decree No 101/2001/ND-CP of the Government (Decisions on the prolongation shall be in conformity with the form shown in Annex 3 to this Circular).

4. Checking and determining the legal status of copyright and handling suspended goods:

The verification of the legal status of copyright in regard of suspended goods is to inspect actual goods, files, accompanying evidences and to determine whether the lots of export or import goods infringe copyright or not.

4.1. Rights and responsibilities of interested individuals or organizations in checking and determining the legal status of copyright in regard of suspended goods:

4.1.1. Rights and responsibilities of requesting persons:

4.1.1.1. To request the customs authorities to order the taking of samples from suspended export or import goods for the purpose of determining whether the lots of export or import goods infringe copyright or not.

4.1.1.2. To present and provide truthful information and evidences to the customs authorities to an extent sufficient to prove that the lots of export or import goods infringe the requesting persons' copyright.

4.1.1.3. To present evidences or the findings of competent authorities (if any) to the customs authorities to prove that the lots of export or import goods infringe copyright.

4.1.2. Rights and responsibilities of owners of goods:

4.1.2.1. To request the customs authorities to order the taking of samples from suspended export or import goods for the purpose of proving that the lots of export or import goods do not infringe copyright.

4.1.2.2. To present and provide truthful information and evidences to the customs authorities to prove that the lots of export or import goods do not infringe copyright.

4.1.2.3. To present evidences or the findings of competent authorities to the customs authorities to prove that the lots of export or import goods do not infringe copyright.

4.1.3. Rights and responsibilities of customs authorities:

4.1.3.1. To make finding whether the lots of goods infringe copyright or not, on the basis of actual goods, evidences and information that have been provided.

4.1.3.2. To request the requesting persons to prove that the lots of goods infringe copyright, if unable to do so.

4.1.3.3. To handle the case according to the findings provided by competent authorities on the legal status of copyright in regard of the lot of goods.

4.1.4. Rights and responsibilities of state authorities in charge of culture and information affairs:

4.1.4.1. To participate in the examination and studies of files and samples of goods;

4.1.4.2. To set up examination boards, if needed. The requesting persons and owners of export or import goods shall have the opportunity to give consultative opinions on the composition of examination boards.

4.1.4.3. To make conclusions and recommendations in regard of measures to be taken to handle the lots of export or import goods.

4.2. Grounds for determining the legal status of copyright in regard of suspended goods:

4.2.1. Grounds for finding that the suspended export or import goods infringe copyright:

4.2.1.1. Conclusions made by state competent authorities stating that suspended export or import goods infringe copyright; or

4.2.1.2. Evidences provided by parties are sufficient to justify the findings of the customs authorities that the suspended export or import goods infringe copyright.

4.2.2. Grounds for finding that the suspended export or import goods do not infringe copyright:

The suspended export or import goods are considered not to infringe copyright in the following cases:

4.2.2.1. The requesting persons unilaterally withdraw the Applications for requesting protection or recommend that the decisions on suspension (if any) be repealed; or

4.2.2.2. Conclusions made by state competent authorities stating that suspended export or import goods do not infringe copyright; or

4.2.2.3. The duration provided in the decisions on suspension terminated, provided that the requesting persons are neither able to present clear evidences to the customs authorities nor present the conclusions or decisions of competent state authorities on whether the suspended export or import goods infringe copyright.

5. Settlements of cases after the determination of the legal status of copyright in regard of suspended export or import goods:

5.1. In case the suspended export or import goods are found to infringe copyright:

5.1.1. Grounds for settlement:

5.1.1.1. Decisions on the settlement of administrative violations in regard of the exportation or importation of goods infringing copyright, which have been made by the customs authorities pursuant to the provisions of law on punishments in relation to violations of administrative regulations in the field of culture and information.

5.1.1.2. In case the competent state authorities have made their decisions on the settlements of cases relating to the exportation or importation of goods that infringe copyright, the customs authorities shall accomplish the settlements according to such decisions.

5.1.2. Settlements:

In the settlement of cases the customs authorities shall act in the following way:

5.1.2.1. To issue decisions on the settlement of administrative violations in regard of the exportation or importation of goods that infringe copyright, or to carry out the decisions made by the competent authorities (if any).

5.1.2.2. To order the payment of expenses that arise out of the suspension of customs procedures and compensation of damages to the requesting persons, by the infringers and pursuant to the provisions of law.

5.1.2.3. To reimburse the deposited security money to persons who requested the suspension, in case the persons who requested copyright protection have filed their Applications according to the provisions in point 1.2. Section III of this Circular.

5.2. In case the suspended export or import goods are found not to infringe copyright:

The Heads of the Sub-Departments of Customs shall make the decisions on:

5.2.1. The continuation of completing the customs procedures for the lots of goods.

5.2.2. The use of the deposits for paying expenses and damages that arise out of the suspension of the lots of export or import goods. If the deposits are not sufficient to make such payments, the requesting persons are required to provide the additional amount thereto.

5.2.3. In the case of requesting persons who have filed the Applications for requesting protection pursuant to the provisions in point 1.2. Section III of this Circular: to reimburse the requesting persons the rest of the deposited money after the payment of expenses and damages to the owners of export or import goods has been made.

5.2.4. In the case of requesting persons who have filed the Applications for requesting protection pursuant to the provisions in point 1.1. Section III of this Circular: to request the persons who request the protection to provide additional deposits to comply with the provisions on deposits and securities in point 1.1.5. Section III of this Circular.

6. Settlement of a number of other cases that may arise:

6.1. In case the courts request in writing that the customs authorities deliver the suspended export or import goods, the customs authorities shall deliver the suspended export or import goods to the courts for the purpose of settlement pursuant to civil or criminal procedures under the applicable law.

6.2. In case the persons who request the suspension withdraw the Application, for the reasons that the requesting persons and the owners of suspended export or import goods have reached agreements on the settlement in relation to the lots of export or import goods, the customs authorities shall request the interested parties to present the agreements and accept the performance of such agreements. After having made the payment of expenses and compensation of damages, arising out of the suspension, the customs authorities shall reimburse the deposits or return the security documents issued by credit organizations to the persons requesting the suspension and proceed with the completion of customs procedures, as stipulated, in respect of the lots of export or import goods.

IV. COMPLAINTS AND SETTLEMENT OF COMPLAINTS

In case the owners of export or import goods or the owners of related copyright disagree with the conclusions on the settlement of infringements, they shall have the right to make complaints to competent authorities in charge of the settlement of complaints.

Procedures and prescriptions for making complaints, and time limits, procedures, jurisdictions for settling complaints shall comply with the provisions of law on complaints and other provisions of relevant laws.

V. MEASURES TO ASSIST IN INCREASING THE CAPABILITY OF CUSTOMS AUTHORITIES TO ENFORCE COPYRIGHT

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

1.1. Owners of copyright shall act on their own initiatives to provide information relating to copyright they request to be protected by customs authorities.

1.2. Owners of copyright shall collaborate with customs authorities in the organization of training and formation courses, on identification of lawful export or import goods and export or import goods that infringe copyright, for customs officers.

1.3. Owners of copyright may provide financial assistance to customs authorities in handling the destruction of the lots of export or import goods that infringe copyright.

2. Enhancement of customs officers' knowledge on copyright:

The Ministry of Culture and Information, collective copyright management organizations, authors and owners of protected works shall have the responsibility for enhancing and updating the knowledge on copyright of customs officers.

3. Setting up electronic copyright protection databases:

The Office of Copyright in Literature and Art (Ministry of Culture and Information) and the General Department of Customs (Ministry of Finance) shall collaborate in setting up databases that serve the needs of protection activities at customs authorities.

VI. ORGANIZATION OF IMPLEMENTATION

1. The General Department of Customs (Ministry of Finance), the Office of Copyright in Literature and Art and Specialized Culture and Information Inspectorate (Ministry of Culture and Information) shall be in charge of providing guidance to the implementation of this Circular for interested individuals and organizations.

2. Interested individuals and organizations shall implement the provisions and guidance set forth in this Circular.

3. This Circular shall take effect 15 days after its publication in the Official Gazette.

4. 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 Finance to seek further guidance.

On behalf of the Minister of Finance

**On behalf of the Minister of Culture and
Information**

Signed Truong Chi Trung

Signed Tran Chien Thang