

**JOINT CIRCULAR No. 01/2008/TTLT-TANDTC-VKSNDTC-BCA-BTP OF
FEBRUARY 29, 2008, GUIDING THE EXAMINATION OF PENAL
LIABILITY FOR ACTS OF INFRINGING UPON INTELLECTUAL
PROPERTY RIGHTS**

In order to ensure the proper and unified examination of penal liability for acts of infringing upon intellectual property rights, contributing to protecting intellectual property rights in Vietnam, the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security and the Ministry of Justice jointly provide the following guidance:

1. Examination of penal liability for acts of infringing upon copyright and related rights

1.1. Those who intentionally commit one of acts of infringing upon copyright or related rights specified in Article 28 or Article 35 of the Law on Intellectual Property and fall into one of the following cases will be considered “having caused serious consequences” and examined for penal liability for the crime of “infringing upon copyright” under Clause 1, Article 131 of the Penal Code if their act involves all other crime-constituting elements:

a/ Committing violations on a commercial scale and for commercial purposes;

b/ Causing to holders of copyright or related rights material damage of between VND 50,000,000 and under VND 150,000,000 (including damage due to infringement of copyright or related rights and expenses paid by holders of copyright or related rights to remedy consequences caused by the infringement) ;

c/ Goods involved in the violation valued at between VND 50,000,000 and under VND 150,000,000.

1.2. Those who intentionally commit one of acts of infringing upon copyright or related rights specified in Article 28 or Article 35 of the Law on Intellectual Property and fall into one of the following cases will be considered “having caused very serious consequences” and examined for penal liability for the crime of “infringing upon copyright” under Clause 2, Article 131 of the Penal Code if their act involves all other crime-constituting elements:

a/ Committing violations on a commercial scale and for commercial purposes and having earned profits of between VND 30,000,000 and under VND 100,000,000;

b/ Causing to holders of copyright or related rights material damage of between VND 150,000,000 and under VND 450,000,000 (including damage due to infringement of



copyright or related rights and expenses paid by holders of copyright or related rights to remedy consequences caused by the infringement);

c/ Goods involved in the violation valued at between VND 150,000,000 and under VND 500,000,000.

1.3. Those who intentionally commit one of acts of infringing upon copyright or related rights specified in Article 28 or Article 35 of the Law on Intellectual Property and fall into one of the following cases will be considered “having caused particularly serious consequences” and examined for penal liability for the crime of “infringing upon copyright” under Clause 2, Article 131 of the Penal Code if their act involves all other crime-constituting elements:

a/ Committing violations on a commercial scale and for commercial purposes and having earned profits of VND 100,000,000 or more;

b/ Causing to holders of copyright or related rights material damage of VND 450,000,000 or more (including damage due to infringement of copyright or related rights and expenses paid by holders of copyright or related rights to remedy consequences caused by the infringement);

c/ Goods involved in the violation valued at VND 500,000,000 or more.

1.4. If a person intentionally commits one of acts of infringing upon copyright or related rights specified in Article 28 or Article 35 of the Law on Intellectual Property which does not constitute a crime specified in Article 131 of the Penal Code but constitutes a crime prescribed in other articles of the Penal Code, he/she will be examined for penal liability for the crime prescribed in the relevant article of the Penal Code.

2. Examination of penal liability for acts of infringing upon industrial property rights

2.1. Those who, for business purposes, intentionally commit one of acts of infringing upon industrial property rights involving goods with counterfeit marks specified in Clause 2, Article 213 of the Law on Intellectual Property and fall into one of the following cases will be considered “having caused serious consequences” and examined for penal liability for the crime of “infringing upon industrial property rights” under Clause 1, Article 171 of the Penal Code:

a/ Having earned profits of between VND 10,000,000 and under VND 50,000,000;

b/ Causing to mark owners material damage of between VND 50,000,000 and under VND 150,000,000;

c/ Goods involved in the violation valued at between VND 50,000,000 and under VND 150,000,000.



2.2. Those who, for business purposes, intentionally commit one of the acts of infringing upon industrial property rights involving goods with counterfeit marks specified in Clause 2, Article 213 of the Law on Intellectual Property and fall into one of the following cases will be considered “having caused very serious consequences” and examined for penal liability for the crime of “infringing upon industrial property rights” under Clause 1, Article 171 of the Penal Code:

- a/ Having earned profits of between VND 50,000,000 and under VND 150,000,000;
- b/ Causing to mark owners material damage of between VND 150,000,000 and under VND 450,000,000;
- c/ Goods involved in the violation valued at between VND 150,000,000 and under VND 500,000,000.

2.3. Those who, for business purposes, intentionally commit one of the acts of infringing upon industrial property rights involving goods with counterfeit marks specified in Clause 2, Article 213 of the Law on Intellectual Property and fall into one of the following cases will be considered “having caused particularly serious consequences” and examined for penal liability for the crime of “infringing upon industrial property rights” under Clause 1, Article 171 of the Penal Code:

- a/ Having earned profits of VND 150,000,000 or more;
- b/ Causing material damage of VND 450,000,000 or more to mark owners;
- c/ Goods involved in the violation valued at VND 500,000,000 or more.

3. Conditions for penal liability examination

Under Clause 1, Article 105 of the Criminal Procedure Code, penal liability examination will only be carried out:

- a/ At the request of holders of copyright or related rights, for cases guided at Item 1.1, Section 1 of this Circular (Clause 1, Article 131 of the Penal Code);
- b/ At the request of mark owners or geographical indication-managing organizations, for cases guided at Item 2.1, Section 2 of this Circular (Clause 1, Article 171 of the Penal Code).

4. Disposal of exhibits

4.1. The disposal of exhibits specified in Article 41 of the Penal Code and Article 76 of the Criminal Procedure Code in cases related to crimes of infringing upon intellectual property rights must be pursuant to Clause 5, Article 202 of the Law on Intellectual Property and the guidance in Chapter IV of the Government’s Decree No. 105/2006/ND-CP of September 22,



2006, detailing and guiding the implementation of a number of articles of the Law on Intellectual Property regarding the protection of intellectual property rights and state management of intellectual property.

4.2. In case it is stipulated by Vietnamese law or treaties to which the Socialist Republic of Vietnam is a contracting party that exhibits must be destroyed, procedure-conducting agencies shall decide to destroy exhibits as stipulated, even if these exhibits are usable.

5. Implementation effect

5.1. This Circular takes effect 15 days after its publication in “CONG BAO.”¹

5.2. Any matters arising in the course of implementation which need to be explained or additionally guided should be reported to the Supreme People’s Court, the Supreme People’s Procuracy, the Ministry of Public Security and the Ministry of Justice for timely explanation or additional guidance.

For the President of
the Supreme People’s Court
Vice President
DANG QUANG PHUONG

For the Chairman of
the Supreme People’s Procuracy
Vice Chairman
HOANG NGHIA MAI

For the Minister of Public Security
Vice Minister
Senior Lieutenant-General
LE THE TIEM

For the Minister of Justice
Vice Minister
DINH TRUNG TUNG

¹ CONG BAO Nos 179-180 (18-3-2008)

