

Ha Noi, 19 June 2009

LAW ON AMENDMENTS TO THE LAW ON INTELLECTUAL PROPERTY

**National Assembly of the
Socialist Republic of Viet Nam
Legislature XII, 5th Session
(19 June 2009)**

Pursuant to the 1992 Constitution of the Socialist Republic of Viet Nam as amended by Resolution 51-2001-QH10;

The National Assembly hereby promulgates the *Law on Amendments to the Law on Intellectual Property*.

Article 1

To amend a number of articles of the *Law on Intellectual Property*:

1. To amend and add to article 3 as follows:

"Article 3 *Subject matter of intellectual property rights*

1. The subject matter of copyright shall comprise literary, artistic and scientific works; the subject matter of copyright related rights shall comprise performances, audio and visual fixation [or sound and video recordings], broadcasts and satellite signals carrying coded programmes.
2. The subject matter of industrial property rights shall comprise inventions, industrial designs, designs of semi-conducting closed circuits, trade secrets, marks, trade names and geographical indications.
3. The subject matter of rights to plant varieties shall comprise plant varieties and their reproductive and harvested materials."

2. To amend and add to article 4 as follows¹:

"Article 4 *Interpretation of terms*

In this Law, the following terms shall be construed as follows:

¹ Allens Arthur Robinson footnote note: Only clauses 26 and 27 are new.

1. *Intellectual property rights* means rights of an organization or individual to intellectual assets comprising copyright and copyright related rights, industrial property rights and rights to plant varieties.
2. *Copyright* means rights of an organization or individual to works which such organization or individual created or owns.
3. *Copyright related rights* (hereinafter referred to as *related rights*) means rights of an organization or individual to performances, audio and visual fixation, and broadcasts and satellite signals carrying coded programmes.
4. *Industrial property rights* means rights of an organization or individual to inventions, industrial designs, designs of semi-conducting closed circuits, marks, trade names, geographical indications and trade secrets which such organization or individual created or owns, and the right to prevent unfair competition.
5. *Rights to plant varieties* means rights of an organization or individual to new plant varieties which such organization or individual has selected and created, or discovered and developed, or which they own.
6. *Intellectual property right holder* means an owner of intellectual property rights or an organization or individual to whom intellectual property rights are assigned by the owner.
7. *Work* means a creation of the mind in the literary, artistic or scientific sector, expressed in any mode or form.
8. *Derivative work* means a work translated from one language into another; or an adapted, modified, transformed, compiled, annotated or selected work.
9. *Published work, audio and visual fixation* means a work or audio and visual fixation which has been published with the permission of the copyright holder or related right holder in order to distribute it to the public in a reasonable amount of copies.
10. *Reproduction* means the making of one or more copies of a work, audio and visual fixation by whatever mode or in whatever form, including permanent or provisional backup of the work in electronic form.
11. *Broadcasting* means the transmission of sound or image or both sound and image of a work, performance, audio and visual fixation or broadcast to the public by wireless or landline means including satellite transmission, in such a way that the public may access such work from any place and time the public selects.
12. *Invention* means a technical solution in the form of a product or process which is intended to solve a problem by application of natural laws.
13. *Industrial design* means the outward appearance of a product embodied in three dimensional configuration, lines, colours or a combination of such elements.
14. *Semiconductor integrated circuit* means a product in its intermediate or final form in which the elements, at least one of which is an active element, and some or all of the interconnections, are integrally formed in or on a piece of semiconductor material and which is intended to perform an electronic function. Integrated circuit is synonymous with IC, chip and micro-electronic circuit.

15. *Design of semi-conducting closed circuits* (hereinafter referred to as *layout design*) means a three dimensional disposition of circuit elements and their interconnections in a semi-conducting closed circuit.
16. *Mark* means any sign used to distinguish goods or services of different organizations or individuals.
17. *Collective mark* means a mark used to distinguish goods or services of members of an organization which is the owner of such mark from marks of non-members of such organization.
18. *Certification mark* means a mark which is authorized by its owner to be used by another organization or individual on the latter's goods or services in order to certify the origin, raw materials, materials, mode of manufacture of goods or manner of provision of services, and the quality, accuracy, safety or other characteristic of goods or services bearing such mark.
19. *Integrated marks* means identical or similar marks registered by the same entity and intended for use on products or services which are of the same, similar or interrelated type.
20. *Well known mark* means a mark widely known by consumers throughout the territory of Vietnam.
21. *Trade name* means the designation of an organization or individual used in business activities in order to distinguish the business entity bearing such trade name from other business entities in the same business sector and area.

Business area as stipulated in this clause means the geographical area in which a business entity has its partners, customers or reputation.
22. *Geographical indication* means the sign used to identify a product as originating from a specific region, locality, territory or country.
23. *Trade secret* means information obtained from activities of financial or intellectual investment, which has not yet been disclosed and which is able to be used in business.
24. *Plant variety* means a plant grouping within a single botanical taxon of the lowest known rank, which is morphologically uniform and suitable for being propagated unchanged, and can be defined by the expression of phenotypes resulting from a genotype or a combination of given genotypes, and distinguished from any other plant grouping by the expression of at least one inheritable phenotype.
25. *Protection title* means a document granted by the competent State body to an organization or individual in order to establish industrial property rights to an invention, industrial design, layout design, mark or geographical indication; or in order to establish rights to a plant variety.
26. *Reproductive materials* means plants or parts of plants able to develop into a new plant used for reproduction or sewing.
27. *Harvested materials* means plants or parts of plants gathered after the sewing of reproductive materials."

3. To amend and add to article 7 as follows:

"Article 7 *Limitations on intellectual property rights*

1. Intellectual property right holders shall only be permitted to exercise their rights within the scope and term of protection provided for in this Law.
2. The exercise of intellectual property rights must not infringe the interests of the State, the public interest or the legitimate rights and interests of other organizations and individuals, and must not breach other relevant laws.
3. In order to assure objectives of national defence and security, the people's livelihood and other interests of the State and society stipulated in this Law, the State may prohibit or restrict the exercise of intellectual property rights by the holders thereof or may compel such holders to license one or more of their rights to other organizations or individuals on appropriate terms; restriction on rights to inventions in the category of State secrets shall be implemented in accordance with Government regulations.
4. To amend and add to article 8 as follows:

"Article 8 *Policies of the State on intellectual property:*

1. To recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing the interests of intellectual property right holders and the public interest; and not to protect intellectual property objects which are contrary to social ethics and public order or which harm national defence and security.
2. To encourage and promote activities of creation and utilization of intellectual assets aimed at contributing to socio-economic development and improving the people's material and spiritual life.
3. To provide financial support for the receipt and use of transferred intellectual property rights servicing the public interest; to encourage both Vietnamese and foreign organizations and individuals to provide financial aid for creative activities and for protection of intellectual property rights.
4. To prioritize investment in training and fostering senior officials, public servants and other relevant subjects engaged in the work of protecting intellectual property rights and to prioritize research into and application of science and techniques for the protection of intellectual property rights.
5. To mobilize social resources for investment in raising the capability of the intellectual property right protection system, satisfying the requirements for socio-economic development and international economic integration."
5. To amend and add to article 14 as follows:

"Article 14 *Types of works which are protected by copyright*

1. Literary, artistic and scientific works which are protected by copyright comprise:
 - (a) Literary works, scientific works, textbooks, teaching courses and other works expressed in written language or in other characters;

- (b) Lectures, addresses and other speeches;
 - (c) Press works;
 - (d) Musical works;
 - (dd) Stage works;
 - (e) Cinematographic works and works created by a process analogous to cinematography (hereinafter all referred to as *cinematographic works*);
 - (g) Plastic art works and applied art works;
 - (h) Photographic works;
 - (i) Architectural works;
 - (k) Sketches, plans, maps and drawings related to topography, architectural or scientific works;
 - (l) Folklore and folk art works;
 - (m) Computer programs and data collections.
2. Derivative works shall only be protected pursuant to the provisions of clause 1 of this article if such protection is not prejudicial to the copyright in the works used to create such derivative works.
 3. Protected works as stipulated in clauses 1 and 2 of this article must be created personally by authors through their intellectual labour and without copying the works of others.
 4. The Government shall provide detailed guidelines on the types of works stipulated in clause 1 of this article."
 6. To amend and add to article 25 as follows:

"Article 25 *Cases when published works may be used without having to seek permission or pay royalties or remuneration*

1. Published works may be used without having to seek permission or pay royalties or remuneration in the following cases:
 - (a) Making one copy of the work of an author for scientific research or teaching purposes;
 - (b) Reasonable quoting from a work in order to comment on or illustrate one's own work, without misrepresenting the author's views;
 - (c) Quoting from a work in order to write an article published in a newspaper or periodical, in a radio or television broadcast or in a documentary, without misrepresenting the author's views;
 - (d) Quoting from a work in school or university for lecturing purposes without misrepresenting the author's views and not for commercial purposes;
 - (dd) Copying of a work by a library for archival and research purposes;

- (e) Performing a stage work or other art work in mass cultural, communication or mobilization activities without collecting fees in any form;
 - (g) Audio-visual recording of a performance in order to report current events or for teaching purposes;
 - (h) Photographing or televising plastic art; or an architectural, photographic, or applied art work displayed at a public place in order to present images of such work;
 - (i) Transcribing a work into Braille or into characters of other languages for the blind;
 - (k) Importing copies of another's work for personal use.
2. Organizations and individuals who use the works stipulated in clause 1 of this article must neither affect the normal use of such works nor cause prejudice to the rights of the author or copyright holder, and must provide information being the author's name and the source and origin of the work.
 3. The provisions in clauses 1(a) and 1(dd) of this article shall not apply to architectural works, plastic works and computer programs."
 7. To amend and add to article 26 as follows:

"Article 26 *Cases when published works may be used without having to seek permission but royalties or remuneration must be paid*

1. Any broadcasting organization which uses a published work to make a sponsored broadcast, a broadcast with advertisements or to collect money in any form shall not be required to seek permission but must pay royalties or remuneration to the copyright holder as from the date of such use. The rate of royalties, remuneration and other material benefits and their method of payment shall be as agreed between the parties, but if agreement cannot be reached then [these matters] shall be implemented in accordance with Government regulations or court proceedings may be instituted in accordance with law.

Any broadcasting organization which uses a published work to make a broadcast which is not sponsored or does not contain advertisements or not to collect money in any form shall not be required to seek permission but must pay royalties or remuneration to the copyright holder as from the date of such use in accordance with Government regulations.

2. Organizations and individuals who use works stipulated in clause 1 of this article must neither affect the normal use of such works nor cause prejudice to the rights of the author or copyright holder, and must provide information being the author's name and the source and origin of the work.
3. The use of works in the cases stipulated in clause 1 of this article shall not apply to cinematographic works."
8. To amend and add to article 27 as follows:

"Article 27 *Term of copyright protection*

1. The moral rights stipulated in clauses 1, 2 and 4 of article 19 of this Law shall be protected for an indefinite term.

2. The moral rights stipulated in article 19.3 and the economic rights stipulated in article 20 of this Law shall enjoy the following terms of protection:
 - (a) Cinematographic works, photographic works, stage works, applied art works and anonymous works shall have a term of protection of seventy five (75) years as from the date of first publication. If a cinematographic work, photographic work, stage work or fine art work has not been published within twenty five (25) years from the date of its formulation, the term of protection shall be one hundred (100) years calculated from the date of its formulation. When information on the author of an anonymous work appears, the term of protection of such work shall be calculated pursuant to sub-clause (b) below;
 - (b) Any work not stipulated in sub-clause (a) above shall be protected for the whole life of the author and for fifty (50) years after his or her death. In the case of a work of joint authors, the term of protection shall expire in the fiftieth year after the death of the last surviving co-author;
 - (c) The term of protection stipulated in sub-clauses (a) and (b) of this clause shall expire at 24:00 hours on 31 December of the year of expiration of the copyright protection term."
9. To amend and add to article 30 as follows:

"Article 30 *Rights of producers of audio and visual fixation [or sound and video recordings]*

1. Producers of audio and visual fixation shall have the exclusive right to exercise, or to authorize others to exercise, the following rights:
 - (a) To directly or indirectly copy their audio and visual fixation;
 - (b) To import [and/or] distribute to the public their original audio and visual fixation and copies thereof by sale, rent or distribution by whatever technical means which are accessible by the public.
 2. Producers of audio and visual fixation shall be entitled to material benefits when such recording is distributed to the public."
10. To amend and add to article 33 as follows:

"Article 33 *Cases when related rights may be exercised without having to seek permission but royalties or remuneration must be paid*

1. Organizations and individuals who directly or indirectly use published audio and visual fixation for commercial purposes in order to make a broadcast which is sponsored or contains advertisements or to collect money in any form shall not be required to seek permission but must pay agreed royalties or remuneration to the author, copyright holder, performer, producer of the audio and visual fixation and to the broadcast organization as from the date of such use; if agreement cannot be reached then [royalties or remuneration] shall be paid in accordance with Government regulations or court proceedings may be instituted in accordance with law.

Any organization or individual who directly or indirectly uses a published audio and visual fixation for commercial purposes in order to make a broadcast which is not sponsored or does not contain advertisements or not to collect money in any form shall not be required to seek permission but must pay royalties or remuneration to the author, copyright holder, performer, producer of the audio and visual fixation and to the broadcast organization as from the date of such use in accordance with Government regulations.

2. Any organization or individual who directly or indirectly uses a published audio and visual fixation during business or commercial activities shall not be required to seek permission but must pay royalties or remuneration to the author, copyright holder, performer, producer of the audio and visual fixation and to the broadcast organization as from the date of such use; and if agreement cannot be reached then [royalties or remuneration] shall be implemented in accordance with Government regulations or court proceedings may be instituted in accordance with law.
3. Organizations and individuals who use works stipulated in clauses 1 and 2 of this article must neither affect the normal use of performances, audio and visual fixation or broadcasts; nor cause prejudice to the rights of performers, producers of audio and visual fixation or broadcasting organizations."

11. To amend and add to article 41 as follows:

"Article 41 *Copyright holders being assignees of rights*

1. Any organization or individual who is contractually assigned one, several or all of the rights stipulated in articles 19.3 and 20 of this Law shall be the copyright holder.
2. Any organization or individual currently managing an anonymous work shall be entitled to the rights of the copyright holder until the identity of the author is ascertained."

12. To amend and add to article 42 as follows:

"Article 42 *Copyright holder being the State*

1. The State shall be the holder of copyright in the following works:
 - (a) Anonymous works, except in the cases prescribed in article 41.2 of this Law;
 - (b) Works for which the term of protection has not expired but the copyright holder died without leaving an heir or the heir renounced the inheritance or was deprived of the right to inherit;
 - (c) Works for which the ownership right was assigned to the State by the copyright holder.
2. The Government shall issue detailed regulations governing the use of works under State ownership."

13. To amend and add to article 87 as follows:

"Article 87 *Right to register marks*

1. Organizations and individuals shall have the right to register marks to be used for goods which they [such organization or individual] produce or for services which they provide.
2. Any organization or individual lawfully engaged in commercial activities shall have the right to register a mark for a product which the latter [such organization or individual] puts onto the market but which was manufactured by others, on condition that the manufacturer does not use such mark for a product and does not object to such registration.

3. Lawfully established collective organizations shall have the right to register collective marks to be used by the members of the collective organization pursuant to the regulations of the collective organization on use of collective marks. For signs indicating geographical origins of goods or services, *organization with the registration right* means a local collective organization of [other] organizations or individuals engaged in production or trading in the relevant locality; registration of any other geographical name and other signs indicating the geographical origin of various local specialties of Viet Nam must be approved by the authorized State body.
4. Organizations with the function of controlling and certifying quality, properties, origin or other relevant criteria of goods or services shall have the right to register certification marks, provided that such organizations are not engaged in producing or trading such goods or services; registration of any other geographical name and other signs indicating the geographical origin of various local specialties of Viet Nam must be approved by the authorized State body.
5. Two or more organizations or individuals shall have the right to jointly register a mark in order to become its co-owners on the following conditions:
 - (a) Such mark is used in the names of all co-owners or used for goods or services which are produced or traded with the participation of all co-owners;
 - (b) The use of such mark does not cause confusion to consumers as to the origin of goods or services.
6. Persons with the registration right stipulated in clauses 1, 2, 3, 4 and 5 of this article, including those who have already filed registration applications, may assign the registration right to other organizations or individuals by a written contract, bequest or inheritance in accordance with law, on condition that the assignee satisfies the conditions applicable to persons with the registration right.
7. For a mark protected in a country being a member of an international treaty which prohibits the representative or agent of the mark owner from registering such mark and the Socialist Republic of Viet Nam is also a member [of the treaty], then such representative or agent shall not be permitted to register such mark without agreement from the mark owner unless there is a justifiable reason."
14. To amend and add to article 90 as follows:

"Article 90 *"First to file" principle*

1. Where several inventions are identical or similar or where several industrial designs are identical with or not significantly different from each other, a protection title may only be granted to the invention or the industrial design stated in the valid application with the earliest priority or filing date among the applications which satisfy all conditions for the grant of a protection title.
2. Where several marks in various registration applications of different applicants are identical or similar to the extent there might be confusion when they are used for identical or similar products or services, or where several identical marks are used for identical products or services in various registration applications of one sole applicant, a protection title shall only be granted to the mark stated in the valid application with the earliest priority or filing date among the applications which satisfy all conditions for the grant of a protection title.

3. Where two or more applications referred to in clauses 1 and 2 of this article jointly satisfy all conditions for grant of a protection title and jointly have the earliest priority or filing date, a protection title may only be granted for the object stated in a single application amongst such applications in accordance with the agreement of all applicants. Without such an agreement, the grant of a protection title shall be refused for the relevant objects stated in such applications."

15. To amend and add to article 119 as follows:

"Article 119 *Time-limit for processing applications for registration of industrial property*

1. An application for registration of industrial property shall have its form examined within one month from the filing date.
2. An application for registration of industrial property shall be substantively examined within the following time-limits:
 - (a) For an invention, no more than eighteen (18) months from the date of its publication if a request for substantive examination is filed before the date of publication of the application, or from the date of receipt of a request for substantive examination if such request is filed after the date of publication of the application;
 - (b) For a mark, no more than nine (9) months from the date of publication of the application;
 - (c) For an industrial design, no more than seven (7) months from the date of publication of the application;
 - (d) For a geographical indication, no more than six (6) months from the date of publication of the application.
3. The time-limit for re-examination of an application for registration of industrial property shall be equal to two-thirds of the time-limit for the initial examination, and may, in complicated cases, be extended but must not exceed the time-limit for the initial examination.
4. The duration for amendment or supplementation of an application by the applicant shall not be included in the time-limits specified in clauses 1, 2 and 3 of this article. The time-limit for dealing with requests for amendment or supplementation of applications shall not exceed one third of the relevant time-limit for examination as set out in clauses 1 and 2 of this article."

16. To amend and add to article 134 as follows:

"Article 134 *Right of prior use of inventions and industrial designs*

1. Where a person has, before the filing date or priority date, if any, of an application for registration of an invention or industrial design, used or prepared necessary conditions for use of an invention or industrial design identical with the protected invention or industrial design stated in such application for registration, but created independently (hereinafter referred to as the *prior use right holder*), then after a protection title is granted, such person shall be entitled to continue using such invention or industrial design within the scope and volume of use or use preparations without having to obtain permission or pay compensation to the owner of the protected invention or industrial design. The exercise of rights by prior use right holders of inventions or industrial designs shall not be deemed an infringement of the right of the owner of the invention or industrial design.

2. Prior use right holders to inventions or industrial designs must not assign such rights to others, except where such right is assigned together with the transfer of a business or production establishment which has used or has prepared to use the invention or industrial design. Prior use right holders must not expand the use scope and volume unless so permitted by the owner of the invention or industrial design."

17. To amend and add to article 154 as follows:

"Article 154 *Conditions applicable to industrial property representation services businesses*

Organizations which satisfy the following conditions shall be permitted to conduct industrial property representation business services as industrial property representation service organizations:

1. Being an enterprise, co-operative, legal practice organization or a scientific and technological services organization lawfully established and operating in accordance with law, except for a foreign law organization practising in Viet Nam.
2. Having the function of providing industrial property representation services which is stated in its business registration certificate or operational registration certificate (hereinafter both referred to as *business registration certificate*).
3. The head of such organization or person authorized by such head must satisfy the conditions for industrial property representation service practice stipulated in article 155.1 of this Law."

18. To amend and add to article 157 as follows:

"Article 157 *Organizations and individuals whose rights to plant varieties are eligible for protection*

1. *Organizations and individuals whose rights to plant varieties are eligible for protection* means those who select and breed or discover and develop plant varieties or who invest in the selection and breeding or the discovery and development of plant varieties or to whom rights to plant varieties are transferred.
2. Organizations and individuals defined in clause 1 of this article shall include Vietnamese organizations and individuals; foreign organizations and individuals of countries which have concluded agreements on the protection of plant varieties with the Socialist Republic of Viet Nam; foreign organizations and individuals with headquarters [or] permanent residential addresses in Viet Nam or with establishments producing or trading plant varieties in Viet Nam; and foreign organizations and individuals which have headquarters [or] permanent residential addresses or with establishments producing or trading plant varieties in a country which has concluded an agreement on protection of plant varieties with Viet Nam".

19. To amend and add to article 160 as follows:

"Article 160 *Distinctness of a plant variety*

1. A plant variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing the application or on the priority date, as the case may be.
2. Plant varieties whose existence is a matter of common knowledge defined in clause 1 of this article mean those falling into one of the following cases:

- (a) Their reproductive materials or harvested materials have been widely used in the market of any country at the time of filing of the application for registration for protection;
- (b) They have been protected or registered on the list of plant varieties in any country;
- (c) They are the subject matter of an application for registration for protection or registration on the list of plant varieties in any country, provided that such application has not been rejected."

20. To amend and add to article 163 as follows:

"Article 163 *Denominations [or names] of plant varieties*

1. The registrant must designate a proper denomination [or name] for the plant variety with the State administrative body for rights to plant varieties, which denomination must be the same as that already registered in any country which has signed a treaty on protection of plant varieties with the Socialist Republic of Viet Nam.
2. The denomination of a plant variety shall be deemed proper if it is distinguishable from those of other plant varieties of common knowledge within the same or similar species.
3. Denominations of plant varieties shall be deemed improper in the following cases:
 - (a) They consist of numerals only, except where such numerals are relevant to characteristics or the breeding of such variety;
 - (b) They violate social ethics;
 - (c) They may easily mislead as to features or characteristics of such variety;
 - (d) They may easily mislead as to identification of the breeder;
 - (dd) They are identical or confusingly similar to marks, trade names or geographical indications protected before the date of publication of the application for registration for protection of such plant variety;
 - (e) They affect prior rights of other organizations or individuals.
4. Organizations and individuals who offer for sale or bring onto the market reproductive materials of plant varieties must use the denominations of such plant varieties as stated in protection titles even after expiration of the protection terms.
5. When denominations of plant varieties are combined with marks, trade names or indications similar to denominations of plant varieties already registered for offer for sale or brought onto the market, such denominations must still be distinguishable."

21. To amend and add to article 165 as follows:

"Article 165 *Method of filing applications for registration of rights to plant varieties*

1. Any organization or individual referred to in article 157 of this Law may file an application for registration of rights to a plant variety (hereinafter referred to as *protection registration application*) either directly or by a lawful representative in Viet Nam.

2. Organizations which satisfy the following conditions shall be permitted to conduct business as service organizations representing rights to plant varieties:
 - (a) Being a Vietnamese enterprise, co-operative, legal practice organization or scientific and technological services organization lawfully established and operating in accordance with law, except for a foreign law organization practising in Viet Nam;
 - (b) Having the function of providing services being representation of rights to plant varieties which is stated in its business registration certificate or operational registration certificate (hereinafter both referred to as *business registration certificate*).
3. The head of such organization or person authorized by such head must satisfy the conditions stipulated in clauses 4 and 5 of this article to practise as a service provider representing rights to plant varieties.
4. Individuals who satisfy the following conditions shall be permitted to practise as service providers representing rights to plant varieties:
 - (a) Being a Vietnamese citizen with full capacity for civil acts;
 - (b) Residing permanently in Vietnam;
 - (c) Having a university degree;
 - (d) Having been engaged personally in the sector of rights to plant varieties for five consecutive years or more, or in the examination of assorted plant varieties rights' registration applications at national or international offices for five consecutive years or more, or having graduated from a training course on rights to plant varieties recognized by the competent body;
 - (dd) Not being a civil servant working in the State body competent to establish and enforce rights to plant varieties;
 - (e) Having passed an examination on rights to plant varieties organized by the competent body.
3. The Government shall provide detailed regulations on legal representatives filing applications and on the organization of services as representatives of rights to plant varieties."
22. To amend and add to article 186 as follows:

"Article 186 *Rights of protection certificate holders*

1. A protection certificate holder shall have the right to exercise or authorize others to exercise the following rights to reproductive materials of a protected plant variety:
 - (a) To conduct production or propagation;
 - (b) To process the reproductive materials for the purpose of propagation;
 - (c) To offer the reproductive materials for sale;
 - (d) To sell the reproductive materials or to conduct other marketing activities;
 - (dd) To export the reproductive materials;

- (e) To import the reproductive materials;
 - (g) To stock reproductive materials for the purposes specified in sub-clauses (a) to (e) inclusive of this clause.
2. The rights of a protection certificate holder to a plant variety prescribed in clause 1 of this article shall also apply to harvested materials generated from unlawful use of reproductive materials of the protected plant variety, except where the protection certificate holder has had a reasonable opportunity to exercise his rights over such reproductive materials.
 3. To prevent others from using the plant variety as referred to in article 188 of this Law.
 4. To bequeath or transfer the rights to the plant variety according to the provisions of Chapter XV of this Law."
23. To amend and add to article 187 as follows:

"Article 187 *Extension of rights of protection certificate holders*

The rights of a protection certificate holder shall be extended to the following plant varieties:

1. Plant varieties which in essence originate from the protected plant variety, except where such protected plant variety itself in essence originates from another protected plant variety.

A plant variety shall be deemed to originate in essence from a protected plant variety if such plant variety still retains the expression of the characteristics resulting from the genotype or combination of genotypes of the protected variety, except for distinctive characteristics resulting from an impact on the protected variety.

2. Plant varieties which are not definitely distinct from the protected plant variety.
 3. Plant varieties, the production of which requires the repeated use of the protected plant variety."
24. To amend and add to article 180 as follows:

"Article 190 *Limitations on rights of plant variety protection certificate holders*

1. The following acts shall not be deemed an infringement of the right to a protected plant variety:
 - (a) Using the plant variety for personal and non-commercial purposes;
 - (b) Using the plant variety for scientific research purposes;
 - (c) Using the plant variety to create new plant varieties distinct from the protected plant varieties, except for the cases prescribed in article 187 of this Law;
 - (d) Using harvested materials of the protected plant variety by an individual production household for self-propagation and cultivation in the next season on the land area belonging to such household.

2. The right to a plant variety shall not apply to acts related to materials of the protected plant variety which are sold on or otherwise brought onto the domestic or overseas market by the protection certificate holder or his licensee, except for the following acts:
 - (a) Acts relating to further propagation of such plant variety;
 - (b) Acts relating to export of reproductive materials of such plant variety to countries where the genus or species of such plant variety is not protected, except where such materials are exported for consumption purposes."

25. To amend and add to article 194 as follows:

"Article 194 *Assignment of rights to plant varieties*

1. *Assignment of rights to a plant variety* means the transfer by the plant variety protection certificate holder to the assignee of all rights to such plant variety. The assignee shall become the plant variety protection certificate holder from the date of registration of the assignment contract with the State administrative body for rights to plant varieties in accordance with procedures stipulated by law.
2. Where rights to a plant variety are under joint ownership, the assignment of such rights to another person must be consented to by all co-owners.
3. The assignment of rights to a plant variety must be effected in the form of written contract.
4. Any assignment of rights to a plant variety created by using State budget funds shall be carried out in accordance with the *Law on Technology Transfer*."

26. To amend and add to article 201 as follows:

"Article 201 *Intellectual property assessment*

1. *Intellectual property assessment* means the use by organizations or individuals prescribed in clauses 2 and 3 of this article of their professional knowledge and expertise to make an assessment of and conclusions on matters related to cases of infringement of intellectual property rights.
2. Enterprises, co-operatives, professional units and legal practice organizations, except for foreign law organizations practising in Viet Nam, which satisfy the following conditions shall be permitted to conduct intellectual property assessment activities:
 - (a) Having the manpower and material and technical facilities which satisfy the requirements for conducting assessment activities in accordance with law;
 - (b) Having the function of conducting intellectual property assessment activities which is stated in their business registration certificate or operational registration certificate.
3. The head of such organization or person authorized by such head must have an intellectual property assessor's card.
4. Individuals who satisfy the following conditions may be issued with an intellectual property assessor's card by the competent State body:
 - (a) Being a Vietnamese citizen with full capacity for civil acts;

- (b) Residing permanently in Vietnam;
 - (c) Having good professional ethics;
 - (c) Having a university or higher degree in the appropriate sector for which a card is requested, and having worked professionally in such sector for five consecutive years or more, and having passed the required training course on intellectual property assessment.
4. A State body competent to deal with acts of infringement of intellectual property rights shall have the right to arrange for an intellectual property assessment while dealing with a case for which such body has accepted jurisdiction.
5. Intellectual property right holders and other related organizations and individuals shall have the right to request an intellectual property assessment in order to protect the legitimate rights and interests of such holder, organization or individual.
6. The Government shall provide detailed regulations on organizing and conducting intellectual property assessments."
27. To amend and add to article 211 as follows:

"Article 211 *Acts infringing industrial property rights which shall be subject to administrative penalties*

1. An organization or individual conducting any one of the following acts infringing industrial property rights shall be subject to an administrative penalty:
- (a) Act of infringement of intellectual property rights which causes loss and damage to the author, rights holder, consumers or society;
 - (b) Producing, importing, transporting or trading counterfeit goods as stipulated in article 213 of this Law or assigning such goods to others to conduct such acts;
 - (c) Producing, importing, transporting, trading or keeping stamps, labels or other objects bearing a counterfeit mark or counterfeit geographical indication, or assigning such goods to others to conduct such acts.
2. The Government shall specify acts infringing intellectual property rights which shall be subject to administrative penalties, the forms and levels of penalties, and the procedures for applying same.
3. Any organization or individual who commits an act of unfair competition in intellectual property shall be subject to an administrative penalty in accordance with the law on competition."

28. To amend and add to article 214 as follows:

"Article 214 *Forms of administrative penalty and measures for remedying consequences*

1. Any organization or individual who commits an act infringing intellectual property rights defined in article 211.1 of this Law shall be compelled to terminate such act and shall be subject to one of the following main penalties:
- (a) A caution;
 - (b) A fine.

2. Any organization or individual who infringes intellectual property rights may, depending on the nature and seriousness of the infringement, also be subject to one or both of the following additional penalties:
 - (a) Confiscation of the intellectual property infringing goods, raw materials and materials, and facilities used mainly for production or trading of such intellectual property infringing goods;
 - (b) Suspension of business activities for a fixed period in the sector in which the infringement was committed.
 3. In addition to the penalties stipulated in clauses 1 and 2 of this article, any organization or individual who infringes intellectual property rights may also be subject to one or both of the following measures for remedying consequences:
 - (a) Compulsory destruction, distribution or use for non-commercial purposes of the intellectual property infringing goods as well as raw materials and materials, and facilities used mainly for production or trading of such intellectual property infringing goods, on condition that such destruction, distribution or use will not affect the exploitation of rights by the intellectual property right holders;
 - (b) Compulsory transportation out of the territory of Viet Nam of transit goods infringing intellectual property rights or compulsory re-export of intellectual property infringing goods and imported materials and raw materials, and facilities used mainly for production or trading of such intellectual property infringing goods after the infringing elements have been removed from such goods.
 4. The level of penalties and authority to impose administrative penalties for acts infringing intellectual property rights shall be implemented in accordance with the law on dealing with administrative offences."
29. To amend and add to article 218 as follows:

"Article 218 *Procedures for application of the measure of suspension of customs procedures*

1. When an applicant for the suspension of customs procedures has fulfilled the obligations stipulated in article 217 of this Law, the customs office shall issue a decision suspending customs procedures with regard to the goods consignment in question.
2. The duration of suspension of customs procedures shall be ten (10) working days from the date the applicant for such suspension receives a notice from the customs authority about the suspension decision. Where the applicant has justifiable reasons, this duration may be extended but must not exceed twenty (20) working days, on condition that the applicant deposits the security stipulated in article 217.2 of this Law.
3. Upon expiry of the duration stipulated in clause 2 of this article, if the applicant does not initiate civil proceedings and the customs office does not issue a decision accepting jurisdiction to deal with the case in accordance with administrative procedures as an administrative breach by the importer or exporter of the goods, then the customs office shall have the following responsibilities:
 - (a) To continue customs procedures for the goods consignment in question;

- (b) To compel the applicant to compensate for all loss and damage caused to the owner of the goods consignment due to the unreasonable request for suspension of customs procedures, and to pay expenses for warehousing and preservation of the goods as well as other expenses incurred by the customs office and any related body, organization or individual in accordance with the law on customs;
- (c) To refund to the applicant the remaining security amount after the obligation to pay compensation and expenses stipulated in sub-clause (b) above has been fulfilled."

30. To amend and add to article 220 as follows:

"Article 220 Transitional provisions

1. Copyright and related rights protected pursuant to legal instruments which were effective before the effective date of this Law shall continue to be protected pursuant to this Law if they remain within the term of protection on the effective date of this Law.
2. Applications for registration of copyright, related rights, inventions, utility solutions, industrial designs, marks, appellations of origin of goods, layout designs or plant varieties which were filed with the competent bodies before the effective date of this Law shall continue to be processed in accordance with the provisions of the legal instruments effective at the time of filing of such applications.
3. All rights and obligations conferred by protection titles granted according to the provisions of law effective before the effective date of this Law and procedures for maintaining, extending, amending, terminating, rescinding effectiveness [invalidating], licensing, ownership assignment and settlement of disputes relating to such protection titles shall be subject to the provisions of this Law, except for grounds for invalidating protection titles which shall only be subject to the provisions of legal documents effective for application at the time of grant of such protection titles. This provision shall also apply to decisions registering appellations of origin of goods issued in accordance with effective laws prior to the effective date of this Law; the State administrative body for industrial property rights shall conduct procedures to issue certificates of registration of geographical indications applicable to appellations of origin of goods.
4. Trade secrets and trade names which existed and were protected pursuant to Decree No. 54-2000-ND-CP of the Government dated 3 October 2000 on protection of industrial property rights with respect to trade secrets, geographical instructions and trade names and protection of rights to fight against unfair competition relating to industrial property shall continue to be protected under this Law.
5. From the effective date of this Law, geographical indications including those protected under the Decree mentioned in clause 4 of this article shall only be protected after registration in accordance with the provisions of this Law.

Article 2

To replace "the Ministry of Culture and Information" with "the Ministry of Culture, Sports and Tourism" in clauses 2, 3 and 5 of article 11, in clause 2(a) of article 50, and in clause 4 of article 51 of the *Law on Intellectual Property* No. 50-2005-QH11.

Article 3

1. This Law shall be of full force and effect as from 1 January 2010.
2. The Government shall provide detailed regulations and guidelines for implementation of articles assigned in this Law, and guidelines on other items in this Law as necessary for State administration.

This Law was passed by Legislature XII of the National Assembly of the Socialist Republic of Viet Nam in its 5th session on 19 June 2009.

CHAIRMAN OF THE NATIONAL ASSEMBLY
NGUYEN PHU TRONG