**LEGAL UPDATE (May 16th, 2023)**

**The Government promulgates a new decree guiding the Intellectual Property Law on copyright and related rights**

In a rapidly developing digital environment, the risk of stolen works and copyrights is increasingly common, threatening intellectual property rights in general and copyright and related rights in particular. Therefore, in order to protect the rights of authors and related people, the Government has issued Decree No. 17/2023/ND-CP guiding the Intellectual Property Law on copyright and related rights, taking effect from April 26th, 2023, prominent in the Decree must mention the identification of elements infringing upon copyright and related rights.

**1. What are copyright and related rights?**

First of all, what are copyright and related rights?

**Copyright**means rights of an organization or individual to works which such organization or individual created or owns, the subject matters of copyright include literary, artistic and scientific works.

**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, subject matters of copyright-related rights include performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals.

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**2. Decree No. 17/2023/ND-CP detailing how to identify elements infringing copyright and related rights**

**Identification of copyright infringement factors, provided at article 66.**

Acts of copyright infringement can take one of the following forms:

* **Infringing on the right to name and name on the work** such as impersonating the author, forging the author's name and signature, not stating or intentionally stating the wrong author's name and the origin of the work when exploiting;
* **Infringes the right to publish a work**, such as publishing the work without the consent of the copyright owner, co-owner of the copyright;
* **Infringing upon the right to protect the integrity of the work to the detriment of the author's honor and reputation**, for example, misrepresenting the work; modify or mutilate the work to the detriment of the author's honor and reputation;
* **Infringing upon the right to make derivative works,** existing works are used as derivative works without the consent of the copyright owner or co-owner as prescribed by law;
* **Infringing on the right to perform a work in public** by performing, reading, displaying, exhibiting, showing or performing the work in a public place or at a place where tickets are sold or collected, without the consent of the copyright holders, co-owners of copyrights as prescribed by law, unless otherwise provided.
* **Infringing upon the right to copy**, duplicate or make copies of works without consent; copying parts of works, excerpts or assembly is not allowed, unless otherwise specified.
* **Infringing upon the right to distribute or import for distribution to the public**, distribute or import for distribution to the public the original or a tangible copy of the work without consent, except for other cases prescribed by the Intellectual Property Law.
* **Infringing on the right to broadcast or communicate to the public**: broadcasting or communicating to the public a work via telecommunications networks and the Internet without consent, except for other cases prescribed by the Intellectual Property Law.
* **Infringing upon the right to lease originals or copies of cinematographic works, computer programs**: renting originals or copies of cinematographic works or computer programs without consent.
* Failure to perform or inadequately perform the legal responsibilities specified in Articles 25, 25a and 26 of the Intellectual Property Law;
* **Deliberately canceling or invalidating effective technological measures** taken by authors or copyright holders on originals or copies of works to protect copyright in their works according to regulations of the law, except for other cases prescribed by the Intellectual Property Law;
* **Manufacturing, distributing, importing, offering for sale, selling, promoting, advertising, marketing, renting or possessing for commercial purposes** equipment, products or components, introducing or providing services when knowing or having grounds to know that such equipment, products, components or services are manufactured or used in order to nullify effective technological measures to protect copyright in accordance with law;
* **Deliberately deleting, removing or changing rights management information without the permission** of the author, the copyright owner knowing or having grounds to know that the performance of such act will instigate, create the possibility, facilitate or conceal acts of copyright infringement as prescribed by law;
* **Intentionally distributing, importing for distribution, broadcasting, communicating or providing to the public a copy of the work** when knowing or having grounds to know that rights management information has been deleted, removed, changed without permission of the copyright owner; knowing or having grounds to know that the performance of such acts will instigate, enable, facilitate or conceal acts of copyright infringement as prescribed by law;
* **Failure to comply or incompletely complying with regulations to be exempt from legal liability** for copyright of the intermediary service provider for works specified in Clause 3, Article 198b of the Intellectual Property Law , Articles 113 and 114 of this Decree and other relevant laws.

**Identification of relevant rights infringing factors, provided at Article 67.**

For a performance, it can be of one of the following forms:

* **Infringing the right to introduce the performer's name**: do not introduce the name or intentionally misrepresent a performer's name when performing, when releasing phonograms, video recordings, or broadcasting the performance, unless cannot be able to fully introduce the name of the performer for objective reasons and the nature, scale and genre of the performance;
* **Infringing upon the right to protect the integrity of the performance image, damaging the honor and reputation of the performer**: distorting the performance image; modifying or mutilating the performance to the detriment of the honor and reputation of the performer;
* **Infringing the right to directly implement the performance**: directly fix the performance without the permission of the performer in accordance with the law;
* **Infringing on the right to reproduce a performance fixed on a phonogram or video recording**: duplicating, copying, extracting, merging, in whole or in part, the fixed version of the performance without the consent of the performer as prescribed by law, except for other cases prescribed by the Intellectual Property Law*;*
* **Infringing upon the right to broadcast, communicate to the public an unfixed performance:** broadcast or convey to the public an unfixed performance without the consent of the performer in accordance with the law, except where such performance is for broadcasting purposes and except for other cases prescribed by the Intellectual Property Law;
* **Infringing the right to distribute, import for distribution to the public the original, a copy of the performance fixation in tangible form**: distribute, import for distribution to the public the original, a copy of the live fixed performing in a tangible form without the consent of the performer as prescribed by law, except for other cases prescribed by the Intellectual Property Law;
* **Infringing on the right of commercial rental to the public of originals, copies of performances fixed in phonograms or video recordings**: commercial rental to the public of originals, copies of fixed performances in phonograms or video recordings without the consent of the performers as prescribed by law;
* **Infringing upon the right to broadcast or communicate to the public the fixation of the performance**: to broadcast or transmit to the public the fixation of the performance without the consent of the performer in accordance with the law; except for other cases prescribed by the Intellectual Property Law;

For sound recordings, video recordings can be of one of the following forms:

* **Infringing upon the right to copy all or part of phonogram, video recording,** such as: duplicating, copying, extracting, merging all or part of phonogram, video recording without the consent of the owner rights to phonograms and video recordings in accordance with the law, except for cases where the rights of producers of phonograms and video recordings and exceptions do not infringe related rights.
* **Infringing on the right to distribute, import for distribution to the public originals, copies of phonograms or video recordings in tangible form**, such as: distribution, import for distribution of originals, copies of phonograms, recording video in a tangible form without the consent of the right holder to the phonogram or video recording as prescribed by law; except for cases where there are rights of producers of phonograms and video recordings and exceptions that do not infringe related rights;
* **Infringing upon the right of commercial rental to the public of originals, copies of phonograms or video recordings**, such as, commercial leasing of originals, copies of phonograms, or video recordings without the consent of the owner. have the right to phonograms and video recordings according to the provisions of law;
* **Infringes upon the right to broadcast, communicates to the public phonograms, video recordings**, such as, broadcasts, communicates to the public phonograms, video recordings without the consent of the right holder and with the recording sound and video recording as prescribed by law, except for exceptional cases that do not infringe related rights specified under the Intellectual Property Law;

For broadcasts, it can be of one of the following forms:

* **Infringing on the right to broadcast or re-broadcast a broadcast**: Broadcast or re-broadcast a broadcast without the consent of the right holder to the broadcast as prescribed by law, except for other cases prescribed by the Intellectual Property Law;
* **Infringement of the right to copy broadcast fixation**: Record, decode, duplicate, copy, extract, merge all or part of a broadcast fixation without the consent of the owner rights to broadcast programs as prescribed by law, except for other cases prescribed by the Intellectual Property Law;
* **Infringing on the right to shape a broadcast**: Fixing a broadcast without the consent of the right holder to the broadcast in accordance with the law;
* **Infringing on the right to distribute, import to distribute to the public the broadcast fixation in tangible form**: distributing, importing to distribute the broadcast fixation in tangible form without prior consent of the right holder to the broadcast as prescribed by law, except for other cases prescribed by the Intellectual Property Law;
* Other cases specified in Clause 4, Article 67 of Decree 17/2023/ND-CP

We hope this Legal Newsletter would bring you useful information.

Best regards.

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