

**CIRCULAR
GUIDING THE VERIFICATION OF COPYRIGHTS AND RELEVANT RIGHTS**

Pursuant to the Law on Intellectual property 2005; the Law on amending and supplementing a number of articles of the Law on Intellectual property 2009;

Pursuant to the Government's Decree No. 100/2006/ND-CP dated September 21st 2006, detailing and guiding the implementation of a number of articles of the Civil Code, the Law on Intellectual property applicable to copyrights and relevant rights; the Government's Decree No. /2011/ND-CP dated September 20th 2011, amending and supplementing a number of articles of the Decree No. 100/2006/ND-CP;

Pursuant to the Government's Decree No. 105/2006/ND-CP dated September 22nd 2006, detailing and guiding the implementation of a number of articles of the Law on Intellectual property applicable to the protection of intellectual property and the State management of intellectual property; the Government's Decree No. 119/2010/ND-CP dated December 30th 2010, amending and supplementing a number of articles of the Decree No. 105/2006/ND-CP;

Pursuant to the Government's Decree No. 185/2007/ND-CP dated December 25th 2007, defining the functions, tasks, powers and organizational structure of the Ministry of Culture, Sports and Tourism;

At the proposal of the Director of the Copyright Office of Vietnam,

The Minister of Culture, Sports and Tourism issues a Circular guiding the verification of copyrights and relevant rights.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

1. This Circular guides the verification of copyright and relevant rights, including the issuance, reissuance, and revocation of the verifier's card, the issuance, reissuance, and revocation of the Certificate of organization in charge of the verification of copyright and relevant rights; the verification of copyrights and relevant rights at the requests of organizations and individuals

2. The judicial verification of copyrights and relevant rights shall be carried out in accordance with the laws on judicial verification.

Article 2. Subjects of application

This Circular is applicable to the organizations and individuals related to the verification of copyrights and relevant rights within Vietnam's territory.

Article 3. The verification of copyrights and relevant rights

1. The verification of copyright and relevant rights (hereinafter referred to as verification) is the use of knowledge and professional skills of competent organizations and individuals for assessing and giving conclusion about the issues related to the copyrights and relevant rights at the requests of other organizations and individuals.

2. The verification of copyright and relevant rights prescribed in Point a Clause 2 Article 39 of the Government's Decree No. 105/2006/ND-CP dated September 22nd 2006, detailing and guiding the implementation of a number of articles of the Law on Intellectual property applicable to the protection of intellectual property and the State management of intellectual property (hereinafter referred to as the Decree No. 105/2006/ND-CP) amended and supplemented in the Government's Decree No. 119/2010/ND-CP dated December 30th 2010 (hereinafter referred to as the Decree No. 119/2010/ND-CP), includes:

a) The verification of copyrights on literary, artistic, and scientific works prescribed in Article 4 of the Law on Intellectual property;

b) The verification of relevant rights over relevant subjects prescribed in Article 17 of the Law on Intellectual property.

Article 4. The verification principles

1. Conformable with law.
2. Accurate, objective
3. Only giving professional conclusions about the issues related to the copyrights and relevant rights within the requested scope.
4. Responsible before Law for the verification result.

Chapter II

THE ISSUANCE, REISSUANCE, AND REVOCATION OF THE VERIFIER'S CARD

Article 5. The verifiers of copyrights and relevant rights

The verifiers of copyrights and relevant rights are the individuals that satisfy the conditions prescribed in Clause 2 Article 44 of the Decree No. 105/2006/ND-CP, amended and supplemented in the Decree No. 119/2010/ND-CP, and are issued with the verifier's cards.

Article 6. The authority to issue, reissue, and revoke the verifier's card

The Director of the Copyright Office of Vietnam – The Ministry of Culture, Sports and Tourism – is authorized to issue, reissue, and revoke the verifier's cards.

Article 7. The procedure for issuing, reissuing, and revoking the verifier's card

1. The applicant for the verifier's card shall submit 01 dossier of application for the verifier's card by post or at the Copyright Office of Vietnam – the Ministry of Culture, Sports and Tourism. The dossier includes:

- a) The written application for the verifier's card (according to the form in Annex No. 1 enclosed with this Circular);
- b) The copy of the certificate of satisfactory results of the test on verification skills or the written approval for the exemption from the test on verification skills issued by the Board of examiners;
- c) The copy of the ID card;
- d) 01 3x4 cm color pictures

2. Within 15 working days from the date on which the complete and valid dossier is received, The Director of the Copyright Office of Vietnam shall make the decision on issuing the verifier's card. The Copyright Office of Vietnam must notify and explain in writing the refusal to issue the verifier's card. The form of the verifier's card is provided in Annex No. 2 enclosed with this Circular.

3. The verifier's card takes effect on its issuance date.

4. The reissuance of the verifier's card

a) The verifier's card is only reissued when the verifier's card is lost or damaged.

b) The verifier that requests the reissuance of the verifier's card shall submit a written explanation and the documents prescribed in Point a, c and d Clause 1 this Article by post or at the Copyright Office of Vietnam – the Ministry of Culture, Sports and Tourism. If the card is lost, the certification made by a competent agency of the loss of the card is required. The damaged verifier's card must be submitted.

c) The verifier's card shall be issued within 10 working days from the date on which the complete and valid application is received.

5. The revocation of the verifier's card

The verifier's card shall be revoked in one of the following cases:

a) The holder of the verifier's card no longer satisfies the conditions prescribed in Article 5 of this Circular;

b) The holder of the verifier's card commits violations of laws during the verification, and the competent State agency request the revocation of the verifier's card as prescribed by law;

c) There are grounds to conclude that the verifier's card is illegally issued.

6. The Copyright Office of Vietnam shall make the list of verifiers according to the Decisions on the issuance, reissuance, and revocation of the verifier's cards, and post it on the website of the Copyright Office of Vietnam.

Article 8. Testing the verification skills

1. The applicant for the verifier's card that does not have the certificate of satisfactory results of the test on verification skills, prescribed in Point b Clause 1 Article 7 of this Circular, shall submit 01 application for the test on the verification skills by post or at the Copyright Office of Vietnam – the Ministry of Culture, Sports and Tourism. The dossier includes:

a) The written application for the test on verification skills (according to the form in Annex No. 3 enclosed with this Circular);

b) The resume of the applicant, certified by their workplace or the local authority;

c) The authenticated copy of the bachelor's degree or postgraduate degree;

d) The written certification issued by the workplace of the professional experience in the field of verification of at least 05 consecutive years or 15 consecutive years (applicable to the subjects eligible for exemption from the test on verification skills prescribed in Clause 5 this Article);

dd) The certificate of health;

e) 02 3x4 cm color pictures

g) The written request for the exemption from the test on verification skills (applicable to the subjects eligible for exemption from the test on verification skills prescribed in Clause 5 this Article).

2. Within 15 working days from the date on which the complete and valid dossier is received, The Director of the Copyright Office of Vietnam notify the reception of the dossier. The Copyright Office of Vietnam must notify and explain in writing the refusal to receive the dossier.

3. The Board of examiners

a) The Minister of Culture, Sports and Tourism shall make the decisions on establishing the Board of examiners (hereinafter referred to as the Board of examiners) according to the request of The Director of the Copyright Office of Vietnam.

b) The Board of examiners has a president and members. The number of members of the Board of examiners must be an odd number. The Board must have at least 05 members. The president of the Board of examiners is the Director of the Copyright Office of Vietnam or a Deputy Director authorized by the Director; the members of the Board of Examiners are the people experience and proficient in the fields of the copyrights and relevant rights.

4. The test on verification skills

The test on the verification skills include the test on the knowledge of law, the verification of copyright and relevant rights, and professional knowledge about the field of verification prescribed in Clause 2 Article 3 of this Circular.

5. The subjects eligible for exemption from the test on verification skills

The people that have at least 15 years of experience in compiling and guiding the implementation of law documents on copyrights and relevant rights; inspecting and resolving the disputes, complaints, and denunciations about copyrights and relevant rights at the State management agencies in charge of copyrights and relevant rights are eligible for exemption from the test on verification skills.

6. Notifying the result of the test on verification skills

The result of the test on verification skills shall be posted on the website of the Copyright Office of Vietnam. The Copyright Office of Vietnam shall certify the results of the people that pass the test on verification skills.

Chapter III

THE ISSUANCE, REISSUANCE, AND REVOCATION OF THE CERTIFICATE OF ORGANIZATION IN CHARGE OF THE VERIFICATION OF COPYRIGHT AND RELEVANT RIGHTS

Article 9. The organization in charge of the verification of copyright and relevant rights

The organizations in charge of the verification of copyright and relevant rights are the organizations that satisfy the conditions prescribed in Article 42 of the Decree No. 105/2006/ND-CP, amended and supplemented in the Decree No. 119/2010/ND-CP, and are issued with the Certificates of organization in charge of the verification of copyright and relevant rights (hereinafter referred to as the Certificate of verifying organization)

Article 10. The authority to issue, reissue, and revoke the Certificate of verifying organization

The Director of the Copyright Office of Vietnam – the Ministry of Culture, Sports and Tourism – is authorized to issue, reissue, and revoke the Certificate of verifying organization.

Article 11. The procedure for issuing, reissuing, and revoking the Certificate of verifying organization

1. The applicant for the Certificate of verifying organization shall submit 01 dossier of application for the issue of the Certificate of verifying organization by post or at the Copyright Office of Vietnam – the Ministry of Culture, Sports and Tourism. The dossier includes:

a) The written application for the Certificate of verifying organization (according to the form in Annex No. 4 enclosed with this Circular);

b) The authenticated copy of the certificate of operation registration or the Establishment Decision issued by a competent State agency;

c) The authenticated copies of the decisions on employment and labor contracts between the verifying organization and the its verifiers.

2. Within 15 working days from the date on which the complete and valid dossier is received, the Director of the Copyright Office of Vietnam shall make the decision on issuing the Certificate of verifying organization. The Copyright Office of Vietnam must notify and explain in writing the refusal to issue the Certificate of verifying organization. The form of the Certificate of verifying organization is provided in Annex No. 5 enclosed with this Circular.

3. The Certificate of verifying organization takes effect on its issuance date.

4. The reissuance of the Certificate of verifying organization

The Certificate of verifying organization is only reissued if it is lost damaged, or there are changes of the information in the Certificate of verifying organization.

The verifying organization b) The verifier that requests the reissuance of the verifier's card shall submit a written explanation and the documents prescribed in Point a, c and d Clause 1 this Article by post or at the Copyright Office of Vietnam – the Ministry of Culture, Sports and Tourism. The lost of the certificate must be certified by a competent agency. The damaged Certificate of verifying organization must be submitted. The changes of the information must be proven in writing, and the old Certificate of verifying organization must be submitted.

c) The Certificate of verifying organization shall be reissued within 10 working days from the date on which the complete dossier is received.

5. The revocation of the Certificate of verifying organization

The Certificate of verifying organization shall be revoked in one of the following cases:

a) The verifying organization no longer satisfies the conditions prescribed in Article 9 of this Circular;

b) The verifying organization commits violations of laws during the verification, and the competent State agency request the revocation of the Certificate of verifying organization as prescribed by law;

c) There are grounds to conclude that the Certificate of verifying organization is illegally issued.

d) The verifying organization ceases its operation.

6. The Copyright Office of Vietnam shall make the list of verifying organizations according to the Decisions on the issuance, reissuance, and revocation of the Certificate of verifying organization, and post it on the website of the Copyright Office of Vietnam.

Chapter IV

THE VERIFICATION OF COPYRIGHTS AND RELEVANT RIGHTS

Article 12. Sending and receiving the request for verification

1. The organizations and individuals that need the verification as prescribed in Clause 2 and Clause 3 Article 40 of the Decree No. 105/2006/ND-CP, amended and supplemented in the Decree No. 119/2010/ND-CP, shall submit 01 dossier of application for the verification to an independent verifier or an verifying organization. The dossier includes:

- a) The written application for the verification, providing:
 - The name and address of the individual or organization that requests the verification;
 - The ID number or the number of the Establishment Decision or the number of the certificate of operation registration, the date and place of issue of the individual or organization that requests the verification.
 - The phone number, fax number, or email of the individual or organization that requests the verification;
 - The status of the requester (author; owner of copyright, owner of relevant rights; the person that have relevant rights and interests; other status);
 - The bases for the request;
 - The verification content;
 - the relevant contents;
- b) The enclosed documents:
 - The samples that need verification;
 - The documents proving the copyright, the ownership of the copyright, the ownership or relevant rights, works, and the subjects of relevant rights;
 - The relevant documents.

2. The independent verifier or the verifying organization shall receive the dossier of application for the verification, estimate the cost of verification, reach an agreement and sign the verification contract with the organization or individual that requests the verification, unless the verification is refused as prescribed in Clause 3 this Article.

3. The independent verifier or the verifying organization shall refuse to carry out the verification in one of the following cases:

- a) Not belonging to the field of verification prescribed in Clause 2 Article 3 of this Circular;
- b) The regulations in Point b Clause 3 and Point d Clause 4 Article 44 of the Decree No. 105/2006/ND-CP are amended and supplemented in the Decree No. 119/2010/ND-CP.

Article 13. The verification contract

The verification contract shall contain:

1. The name and address of the organization or individual that requests the verification, the name and address of the independent verifier or the verifying organization;
2. The verification content;
3. The location and time of the verification;
4. The cost of verification and the method of payment;

5. The rights and obligations of both parties;
6. The acceptance of the contract;
7. The responsibility to pay compensation, the method of dispute settlement;
8. Other conditions (if any).

Article 14. The cost of verification

1. The cost of verification include one or all of the following costs:
 - a) The cost of testing;
 - b) The cost of machinery and equipment serving the verification;
 - c) The cost of examining documents;
 - d) The cost of the discussion and judgment;
 - dd) The cost of management and other costs.
2. The collection, management, and use of the verification cost must comply with law.

Article 15. The verification consultation council

1. During the verification the independent verifier and the verifying organization may establish a verification consultation council.
2. The independent verifier or the verifying organization shall select the members of the verification consultation council that are related to the field of verification, and decide the establishment of the verification consultation council.

The verification consultation council has a president and members. The number of members of verification consultation council must be an odd number. The Council must have at least 03 members.

3. The verification consultation council works in a democratic manner, based on unanimous votes. The members of the verification consultation council shall discuss about the technical matters. The members' opinions must be written in the minutes of meeting of the verification consultation council.

4. The advices of the verification consultation council must be recorded in writing, and signed by the president and members. The advices on the discussion of the verification consultation council must be promptly, sufficiently, and accurately recorded, and kept in the verification dossier.

Article 16. The verification conclusion

1. According to the time agreed in the verification contract, the independent verifier or the verifying organization shall make a written conclusion and send it to the organization or individual that requests the verification. The independent verifier or the verifying organization must sign and append the stamp on the written conclusion, and shall take responsibility for the verification conclusion.

2. If extra time is necessary for the verification, the independent verifier or the verifying organization must send a written notification to the organization or individual that requests the verification.

Chapter V

IMPLEMENTATION ORGANIZATION

Article 17. Implementation responsibilities

1. The Copyright Office of Vietnam – the Ministry of Culture, Sports and Tourism shall:

- a) Perform the State management of the verification of copyright and relevant rights;
- b) Guide and inspect the implementation of this Circular nationwide;
- c) Formulate and send a scheme to the Ministry of Culture, Sports and Tourism for establishing a verifying organization being a public non-business unit that verify copyrights and relevant rights as prescribed in Article 42 of the Decree No. 105/2006/ND-CP, amended and supplemented in the Decree No. 119/2010/ND-CP.

2. The independent verifiers and verifying organizations must comply with the regime for sending reports on the verification activities every 6 months and every year to the Copyright Office of Vietnam – the Ministry of Culture, Sports and Tourism.

Article 18. Complaints, denunciations, and handling of violations

1. The complaints, denunciations, and settlement of the violations of the laws on the procedures for issuing, reissuing, and revoking the verifier's cards and Certificate of verifying organization, the verification of copyrights and relevant rights prescribed in this Circular must comply with the laws on complaints and denunciations.

2. The independent verifiers and verifying organizations that violate the Law on Intellectual property, the Decree No. 105/2006/ND-CP, the Decree No. 119/2010/ND-CP, and this Circular shall be handle in accordance with law depending on the nature and seriousness of the violations.

Article 19. Effect

1. This Circular takes effect on February 01st 2013.

2. Organizations and individuals are recommended to send feedbacks on the difficulties arising during the course of implementation to the Ministry of Culture, Sports and Tourism for consideration and settlement./.

THE MINISTER

Hoang Tuan Anh