

## **THE STATE PRESIDENT**

### **Order No. 12/2009/L-CTN of June 29, 2009, on the promulgation of law**

THE PRESIDENT OF THE SOCIALIST REPUBLIC OF VIETNAM

*Pursuant to Articles 103 and 106 of the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001, of the X<sup>th</sup> National Assembly, the 10<sup>th</sup> session;*

*Pursuant to Article 91 of the Law on Organization of the National Assembly;*

*Pursuant to Article 57 of the Law on Promulgation of Legal Documents,*

#### **PROMULGATES:**

#### **the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property,**

which was passed on June 19, 2009, by the XII<sup>th</sup> National Assembly of the Socialist Republic of Vietnam at its 5<sup>th</sup> session.

President of the Socialist Republic of Vietnam

*NGUYEN MINH TRIET*

### **Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property**

*(No. 36/2009/QH12)*

*Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10;*

*The National Assembly promulgates the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property.*

#### **Article 1.**

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

#### **1. To amend and supplement Article 3 as follows:**

“**Article 3.** Subject matters of intellectual property rights

1. Subject matters of copyright include literary, artistic and scientific works; subject matters of copyright-related rights include performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals.

2. Subject matters of industrial property rights include inventions, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, marks, trade names and geographical indications.

3. Subject matters of rights to plant varieties include reproductive and harvested materials.”

**2. To amend and supplement Article 4 as follows:**

**“Article 4. Interpretation of terms**

In this Law, the terms below are construed as follows:

1. *Intellectual property rights* means rights of organizations and individuals to intellectual assets, including copyright and copyright-related rights, industrial property rights and rights to plant varieties.

2. *Copyright* means rights of organizations and individuals to works they have created or own.

3. *Copyright-related rights* (below referred to as related rights) means rights of organizations and individuals to performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals.

4. *Industrial property rights* means rights of organizations and individuals to inventions, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, marks, trade names, geographical indications and trade secrets they have created or own, and the right to repression of unfair competition.

5. *Rights to plant varieties* means rights of organizations and individuals to new plant varieties they have selected, created or discovered and developed, or own.

6. *Intellectual property right holder* means an owner of intellectual property rights or an organization or individual that is assigned intellectual property rights by the owner.

7. *Work* means a creation of the mind in the literary, artistic or scientific domain, whatever may be the mode or form of its expression.

8. *Derivative work* means a work which is translated from one language into another, adapted, modified, transformed, compiled, annotated or selected.

9. *Published work, phonogram or video recording* means a work, phonogram or video recording which has been made available in a reasonable quantity of copies to the public with the permission of the copyright holder or related right holder.

10. *Reproduction* means the making of one or many copies of a work or a phonogram or video recording by whatever mode or in whatever form, including the backup of the work in electronic form.

11. *Broadcasting* means the transmission of the sound or image or both of a work, a performance, a phonogram, a video recording or a broadcast to the public by wire or wireless means, including satellite transmission, in such a way that members of the public may access that work from a place and at a time they themselves select.

12. *Invention* means a technical solution in the form of a product or a process which is intended to solve a problem by application of laws of nature.

13. *Industrial design* means a specific appearance of a product embodied by three-dimensional configurations, lines, colors, or a combination of these elements.

14. *Semiconductor integrated circuit* means a product, in its final form or an intermediate 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 to IC, chip and microelectronic circuit.

15. *Layout-design of semiconductor integrated circuit* (below referred to as layout-design) means a three-dimensional disposition of circuit elements and their interconnections in a semiconductor integrated 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 from those of non-members of an organization which is the owner of such mark.

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, for the purpose of certifying the origin, raw materials, materials, mode of manufacture of goods or manner of provision of services, quality, accuracy, safety or other characteristics of goods or services bearing the mark.

19. *Integrated mark* means identical or similar marks registered by the same entity and intended for use on products or services which are of the same type or similar types or interrelated.

20. *Well-known mark* means a mark widely known by consumers throughout the Vietnamese territory.

21. *Trade name* means a designation of an organization or individual in business activities, capable of distinguishing the business entity bearing it from another entity in the same business domain and area.

A business area mentioned in this Clause means a geographical area where a business entity has its partners, customers or earns its reputation.

22. *Geographical indication* means a sign which identifies a product as originating from a specific region, locality, territory or country.

23. *Trade secret* means information obtained from financial or intellectual investment activities, which has not yet been disclosed and can be used in business.

24. *Plant variety* means a plant grouping within a single botanical taxonomy 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 a competent state agency to an organization or individual in order to establish industrial property rights to an invention, industrial design, layout-design, trademark or geographical indication; or rights to a plant variety.

26. *Reproductive material* means a plant or a part thereof capable of growing into a new plant for use in reproduction or cultivation.

27. *Harvested material* means a plant or a part thereof obtained from the cultivation of a reproductive material.”

### **3. To amend and supplement Article 7 as follows:**

“**Article 7.** Limitations on intellectual property rights

1. Intellectual property right holders may only exercise their rights within the scope and term of protection provided for in this Law.
2. The exercise of intellectual property rights must neither prejudice the State’s interests, public interests, legitimate rights and interests of other organizations and individuals, nor violate other relevant provisions of law.
3. In the circumstances where the achievement of defense, security, people’s livelihood objectives and other interests of the State and society specified in this Law needs to be guaranteed, the State may prohibit or restrict the exercise of intellectual property rights by the holders or compel the licensing by the holders of one or several of their rights to other organizations or individuals under appropriate terms. The limitation on rights to inventions classified as state secrets complies with regulations of the Government.”

### **4. To amend and supplement Article 8 as follows:**

“**Article 8.** The State’s intellectual property policies

1. To recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing benefits of intellectual property rights holders and public interests; not to protect intellectual property objects which are contrary to social ethics and public order and prejudicial to defense and security.
2. To encourage and promote the creation and utilization of intellectual assets in order to contribute to socio-economic development and improvement of the people’s material and spiritual life.
3. To provide financial supports for the receipt and exploitation of assigned intellectual property rights in public interests; to encourage organizations and individuals at home or abroad to provide financial aid for creative activities and the protection of intellectual property rights.
4. To prioritize investment in training and retraining the contingent of cadres, civil servants, public employees and other relevant subjects engaged in the protection of

intellectual property rights and the research into and application of sciences and technologies to the protection of intellectual property rights.

5. To mobilize social resources for investment in raising the capacity of the system to protect intellectual property rights, thereby meeting requirements of socio-economic development and international economic integration.”

**5. To amend and supplement Article 14 as follows:**

“**Article 14.** Types of works eligible for copyright protection

1. Literary, artistic and scientific works eligible for copyright protection include:

a/ Literary and scientific works, textbooks, teaching courses and other works expressed in written languages or other characters;

b/ Lectures, addresses and other sermons;

c/ Press works;

d/ Musical works;

e/ Dramatic works;

f/ Cinematographic works and works created by a process analogous to cinematography (below collectively referred to as cinematographic works);

g/ Plastic-art works and works of applied art;

h/ Photographic works;

i/ Architectural works;

j/ Sketches, plans, maps and drawings related to topography, architecture or scientific works;

k/ Folklore and folk art works of folk culture;

l/ Computer programs and data compilations.

2. Derivative works shall be protected under Clause 1 of this Article only if it is not prejudicial to the copyright to works used to create these derivative works.

3. Protected works defined in Clauses 1 and 2 of this Article must be created personally by authors through their intellectual labor without copying others’ works.

4. The Government shall guide in detail the types of works specified in Clause 1 of this Article.”

**6. To amend and supplement Article 25 as follows:**

“**Article 25.** Cases of use of published works in which permission and payment of royalties or remunerations are not required

1. Cases of use of published works in which permission or payment of royalties or remunerations is not required include:

- a/ Duplication of works for personal scientific research or teaching purpose;
- b/ Reasonable recitation of works without misrepresenting the authors' views for commentary or illustrative purpose;
- c/ Recitation of works without misrepresenting the authors' views in articles published in newspapers or periodicals, in radio or television broadcasts, or documentaries;
- d/ Recitation of works in schools for lecturing purpose without misrepresenting the authors' views and not for commercial purpose;
- e/ Reprographic reproduction of works by libraries for archival and research purpose;
- f/ Performance of dramatic works or other performing-art works in mass cultural, communication or mobilization activities without collecting any charges in any form;
- g/ Audiovisual recording of performances for the purpose of reporting current events or for teaching purpose;
- h/ Photographing or televising of plastic art, architectural, photographic, applied-art works displayed at public places for the purpose of presenting images of these works;
- i/ Transcription of works into Braille or characters of other languages for the blind;
- j/ Importation of copies of others' works for personal use.

2. Organizations and individuals that use works defined in Clause 1 of this Article may neither affect the normal utilization of these works nor prejudice the rights of the authors or copyright holders; and shall indicate the authors' names, and sources and origins of these works.

3. The provisions of Points a and e, Clause 1 of this Article are not applicable to architectural works, plastic works and computer programs.”

**7. To amend and supplement Article 26 as follows:**

**“Article 26.** Cases of use of published works in which permission is not required but the payment of royalties or remunerations is required

1. Broadcasting organizations that use published works in making their broadcasts, which are sponsored, advertised or charged in whatever form, are not required to obtain permission but have to pay royalties or remunerations to copyright holders from the date of use. Levels of royalties, remunerations or other material benefits and modes of payment shall be agreed upon by involved parties. If no agreement is reached, involved parties shall comply with regulations of the Government or institute lawsuits at court under law.

Broadcasting organizations that use published works in making their broadcasts, which are not sponsored, advertised or charged in whatever form, are not required

to obtain permission but have to pay royalties or remunerations to copyright holders from the date of use under regulations of the Government.

2. Organizations and individuals that use works under Clause 1 of this Article must neither affect the normal utilization of these works nor prejudice the rights of the authors or copyright holders; and shall indicate the authors' names, and sources and origins of the works.

3. The use of works in the cases specified in Clause 1 of this Article does not apply to cinematographic works.”

**8. To amend and supplement Article 27 as follows:**

“**Article 27.** Term of copyright protection

1. The moral rights provided for in Clauses 1, 2 and 4, Article 19 of this Law shall be protected for an indefinite term.

2. The moral rights provided for in Clause 3, Article 19 and the economic rights provided for in Article 20 of this Law enjoy the following term of protection:

a/ Cinematographic works, photographic works, works of applied art and anonymous works have a term of protection of seventy five years from the date of first publication. For cinematographic works, photographic works and works of applied art which remain unpublished within twenty five years from the date of fixation, the term of protection is one hundred years from the date of fixation. For anonymous works, when information on their authors is published, the term of protection will be calculated under Point b of this Clause.

b/ A work not specified at Point a of this Clause is protected for the whole life of the author and for fifty years after his/her death. For a work under joint authorship, the term of protection expires in the fiftieth year after the death of the last surviving co-author;

c/ The term of protection specified at Points a and b of this Clause expires at 24:00 hrs of December 31 of the year of expiration of the copyright protection term.”

**9. To amend and supplement Article 30 as follows:**

“**Article 30.** Rights of producers of phonograms and video recordings

1. Producers of phonograms and video recordings have the exclusive right to exercise or authorize others to exercise the following rights:

a/ To directly or indirectly reproduce their phonograms and video recordings;

b/ To import and distribute to the public their original phonograms and video recordings and copies thereof by sale, rent or distribution by whatever technical means accessible by the public.

2. Producers of phonograms and video recordings will enjoy material benefits when their phonograms and video recordings are distributed to the public.”

**10. To amend and supplement Article 33 as follows:**

“**Article 33.** Cases of use of related rights in which permission is not required but payment of royalties or remunerations is required

1. Organizations and individuals that directly or indirectly use phonograms or video recordings already published for commercial purposes in making their broadcasts, which are sponsored, advertised or charged in whatever form, are not required to obtain permission but have to pay agreed royalties or remunerations to authors, copyright holders, performers or producers of phonograms or video recordings, or broadcasting organizations from the date of use. In case no agreement is reached, they shall comply with regulations of the Government or institute lawsuits at court under law.

Organizations and individuals that directly or indirectly use phonograms or video recordings already published for commercial purposes in making their broadcasts, which are not sponsored, advertised or charged in whatever form, are not required to obtain permission but have to pay agreed royalties or remunerations to authors, copyright holders, performers or producers of phonograms or video recordings, or broadcasting organizations from the date of use under regulations of the Government.

2. Organizations and individuals that use phonograms or video recordings already published in their business or commercial activities are not required to obtain permission but have to pay agreed royalties or remunerations to authors, copyright holders, performers or producers of phonograms or video recordings, or broadcasting organizations from the date of use. In case no agreement is reached, they shall comply with regulations of the Government or institute lawsuits at court under law.

3. Organizations and individuals that use the rights provided for in Clauses 1 and 2 of this Article must neither affect the normal utilization of performances, phonograms, video recordings or broadcasts, nor prejudice the rights of performers, producers of phonograms and video recordings, and broadcasting organizations.”

**11. To amend and supplement Article 41 as follows:**

“**Article 41.** Copyright holders being right assignees

1. Organizations and individuals that are assigned one, several or all of the rights specified in Article 20 and Clause 3, Article 19 of this Law under contracts are copyright holders.

2. Organizations and individuals that are managing anonymous works enjoy rights of owners until the names of authors of these works are identified.”

**12. To amend and supplement Article 42 as follows:**

“**Article 42.** Copyright holders being the State

1. The State is the holder of copyright to the following works:

a/ Anonymous works, except those specified in Clause 2, Article 41 of this Law;

b/ Works of which terms of protection have not expired but their copyright holders die without heirs, their heirs renounce succession or are deprived of the right to succession.

c/ Works over which the ownership right has been assigned by their copyright holders to the State.

2. The Government shall specify the use of works under state ownership.”

**13. To amend and supplement Article 87 as follows:**

“**Article 87.** Right to register marks

1. Organizations and individuals may register marks to be used for goods they produce or services they provide.

2. Organizations and individuals that conduct lawful commercial activities may register marks for products they are marketing but produced by others, provided that the producers neither use such marks for their products nor object to such registration.

3. Lawfully established collective organizations may register collective marks to be used by their members under regulations on use of collective marks. For signs indicating geographical origins of goods or services, organizations that may register them are collective organizations of organizations or individuals engaged in production or trading in relevant localities. For other geographical names or signs indicating geographical origins of local specialties of Vietnam, the registration must be permitted by competent state agencies.

4. Organizations with the function of controlling and certifying the quality, properties, origin or other relevant criteria of goods or services may register certification marks, provided that they are not engaged in the production or trading of these goods or services. For other geographical names or signs indicating geographical origins of local specialties of Vietnam, the registration thereof must be permitted by a competent state agency.

5. Two or more organizations or individuals may jointly register a mark in order to become its co-owners on the following conditions:

a/ This 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 this mark causes no confusion to consumers as to the origin of goods or services.

6. Persons having the registration right defined in Clauses 1, 2, 3, 4 and 5 of this Article, including those having filed registration applications, may assign the registration right to other organizations or individuals in the form of written contracts, bequeathal or inheritance under law, provided that the assigned organizations or individuals satisfy the relevant conditions on the persons having the registration right.

7. For a mark protected in a country being a contracting party to a treaty which prohibits the representative or agent of a mark owner to register such mark and to which the Socialist Republic of Vietnam is also a contracting party, this representative or agent is not permitted to register the mark unless it is so agreed by the mark owner, unless a justifiable reason is available.”

**14. To amend and supplement Article 90 as follows:**

“**Article 90.** The first-to-file principle

1. In case many applications are filed for registration of the same invention or similar inventions, or for registration of industrial designs identical with or insignificantly different from one another, the protection title may only be granted to the valid application with the earliest priority or filing date among applications satisfying all the conditions for the grant of a protection title.

2. In case there are many applications filed by different persons for registration of identical or confusingly similar marks for identical or similar products or services, or in case there are many applications filed by the same person for registration of identical marks for identical products or services, the protection title may only be granted for the mark in the valid application with the earliest priority or filing date among applications satisfying all the conditions for the grant of a protection title.

3. In case there are many registration applications specified in Clauses 1 and 2 of this Article and satisfying all the conditions for the grant of a protection title and having the same earliest priority or filing date, the protection title may only be granted for the object of a single application out of these applications under an agreement of all applicants. Without such agreement, all relevant objects of these applications will be refused for the grant of a protection title.”

**15. To amend and supplement Article 119 as follows:**

“**Article 119.** Time limit for processing industrial property registration applications

1. An industrial property registration application will have its form examined within one month from the filing date.

2. An industrial property registration application shall be substantively examined within the following time limits:

a/ For an invention, eighteen months from the date of its publication if a request for substantive examination is filed before the date of application publication, or from the date of receipt of a request for substantive examination if such request is filed after the date of application publication;

b/ For a mark, nine months from the date of application publication;

c/ For an industrial design, seven months from the date of application publication;

d/ For a geographical indication, six months from the date of application publication.

3. The time limit for re-examination of an industrial property registration application is equal to two-thirds of the time limit for the initial examination and may, in complicated cases, be prolonged but must not exceed the time limit for the initial examination.

4. The duration for modification or supplementation of applications by applicants will not be counted into the time limit specified in Clause 1, 2 or 3 of this Article. The time limit for processing requests for modification or supplementation of applications must not exceed one-third of the corresponding time limit specified in Clause 1 or 2 of this Article.”

**16. To amend and supplement Article 134 as follows:**

“**Article 134.** Right of prior use of inventions and industrial designs

1. In case a person has, before the filing date or priority date (if any) of an invention or industrial design registration application, used or prepared necessary conditions for using an invention or industrial design identical with the protected invention or industrial design stated in that registration application but created independently (below referred to as prior use right holder), then after a protection title is granted, he/she may continue using such invention or industrial design within the scope and volume of use or use preparations without having to obtain permission of or paying compensations to the owner of the protected invention or industrial design. The exercise of the right of prior users of inventions or industrial designs is not regarded as an infringement upon the right of invention or industrial design owners.

2. Holders of prior use right to inventions or industrial designs may not assign such right to others, unless that right is assigned together with the transfer of business or production establishments which have used or are prepared to use the inventions or industrial designs. Prior use right holders may not expand the use scope and volume unless it is so permitted by invention or industrial design owners.”

**17. To amend and supplement Article 154 as follows:**

“**Article 154.** Conditions for industrial property representation service business

Organizations that satisfy the following conditions may provide industrial property representation services as industrial property representation service organizations:

1. Being law-practicing businesses, cooperatives or organizations, or scientific and technological service organizations lawfully established and operating, except foreign law-practicing organizations operating in Vietnam;

2. Having the function of providing industrial property representation services, which is stated in their business registration certificates or operation registration certificates (below collectively referred to as business registration certificates);

3. Their heads or persons authorized by their heads must satisfy the conditions for industrial property representation service practice, specified in Clause 1, Article 155 of this Law.”

**18. To amend and supplement Article 157 as follows:**

“**Article 157.** Organizations and individuals that have rights to plant varieties protected

1. Organizations and individuals that have rights to plant varieties protected are those that select and breed or discover and develop plant varieties or invest in the selection and breeding or the discovery and development of plant varieties or are transferred rights to plant varieties.

2. Organizations and individuals defined in Clause 1 of this Article include Vietnamese organizations and individuals; organizations and individuals of foreign countries which have concluded with the Socialist Republic of Vietnam agreements on the protection of plant varieties; foreign organizations and individuals that have permanent offices or residences in Vietnam or have establishments producing or trading in plant varieties in Vietnam; foreign organizations and individuals that have permanent offices or residences or establishments producing or trading in plant varieties in countries which have concluded with the Socialist Republic of Vietnam agreements on the protection of plant varieties.”

**19. To amend and supplement Article 160 as follows:**

“**Article 160.** Distinctness of plant varieties

1. A plant variety will be considered distinct if it is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the time of filing the application or 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 are those falling into one of the following cases:

a/ Their reproductive or harvested materials have been widely used in the market of any country at the time of filing of the protection registration application;

b/ They have been protected or registered in the list of plant varieties in any country;

c/ They are subject matters of protection registration applications or applications for registration in the list of plant varieties in any country, provided that these applications are not rejected.”

**20. To amend and supplement Article 163 as follows:**

“**Article 163.** Denominations of plant varieties

1. The registrant shall designate with the state management agency in charge of rights to plant varieties a proper denomination for a plant variety which must be the same as the denomination already registered for protection in any country which has concluded with the Socialist Republic of Vietnam an agreement on the protection of plant varieties.

2. The denomination of a plant variety shall be considered proper if it is distinguishable from those of other plant varieties of common knowledge in the same or similar species.

3. Denominations of plant varieties shall be considered improper in the following cases:

a/ They consist of numerals only, unless such numerals are relevant to characteristics or the breeding of such varieties;

b/ They violate social ethics;

c/ They may easily cause misleading as to features or characteristics of such varieties;

d/ They may easily cause misleading as to identifications of the breeders;

e/ They are identical or confusingly similar to marks, trade names or geographical indications protected before the date of publication of protection registration applications of such plant varieties;

f/ They affect prior rights of other organizations or individuals.

4. Organizations and individuals that offer for sale or market reproductive materials of plant varieties shall use the denominations of such plant varieties as stated in their protection titles even after the expiration of the term of protection.

5. When denominations of plant varieties are combined with trademarks, trade names or indications similar to denominations of plant varieties already registered for sale offer or marketed, such denominations must still be distinguishable.”

**21. To amend and supplement Article 165 as follows:**

“**Article 165.** Registration of rights to plant varieties

1. Organizations and individuals defined in Article 157 of this Law may file applications for registration of rights to plant varieties (below referred to as protection registration applications) directly or through their lawful representatives in Vietnam.

2. Organizations that satisfy the following conditions may provide services of representing rights to plant varieties in the capacity as rights-to-plant varieties representation service organizations:

a/ Being Vietnamese law-practicing businesses, cooperatives or organizations, scientific and technological service organizations which are lawfully established and operating, except foreign law-practicing organizations practicing in Vietnam;

b/ Having the function of providing rights-to-plant varieties representation services as stated in their business registration certificates or operation registration certificates (below collectively referred to as business registration certificates);

3. Heads of those organizations or persons authorized by heads of those organizations who satisfy the conditions specified in Clauses 4 and 5 of this Article may provide services of representing rights to plant varieties.

4. Individuals shall be allowed to provide services of representing rights to plant varieties when satisfying the following conditions:

a/ Possessing a rights-to-plant varieties representation service practice certificate;

b/ Working in a rights-to-plant varieties representation service organization.

5. Individuals who satisfy the following conditions will be granted rights-to-plant varieties representation service practice certificates:

a/ Being a Vietnamese citizen and having the full civil act capacity;

b/ Permanently residing in Vietnam;

c/ Possessing a university degree;

d/ Having personally conducted legal activities related to rights to plant varieties for five or more consecutive years, or personally examined various applications for registration of rights to plant varieties in a national or international office for rights to plant varieties for five or more consecutive years, or graduated from a training course on the law on rights to plant varieties as recognized by a competent agency;

e/ Being other than civil servants or public employees currently working in state agencies competent to establish and secure the enforcement of rights to plant varieties;

f/ Having passed an examination of the profession of representing rights to plant varieties, organized by a competent agency.

6. The Government shall specify lawful representatives for filing applications and rights-to-plant varieties representation service organizations.”

## **22. To amend and supplement Article 186 as follows:**

“**Article 186.** Rights of protection certificate holders

1. A protection certificate holder has 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 them for the purpose of propagation;

c/ To offer them for sale;

d/ To sell them or conduct other marketing activities;

e/ To export them;

f/ To import them;

g/ To store them for conducting acts specified at Points a, b, c, d, e and f of this Clause.

2. Rights of a plant variety protection title holder provided for in Clause 1 of this Article are applicable to materials harvested from the illegal use of reproductive materials of a protected plant variety, unless the protection title holder does not exercise his/her rights to reproductive materials though having an opportunity to do so.
3. To prevent others from using the plant variety under Article 188 of this Law.
4. To pass by inheritance or bequeath or assign the rights to the plant variety under Chapter XV of this Law.”

**23. To amend and supplement Article 187 as follows:**

“**Article 187.** Extension of rights of protection certificate holders

Rights of a protection certificate holder may be extended to the following plant varieties:

1. Plant varieties which originate mainly from the protected plant variety, unless such protected plant variety itself originates from another protected plant variety.

A plant variety is considered originating from a protected plant variety if such plant variety still retains the expression of the essential characteristics resulting from the genotype or combination of genotypes of the protected variety, except differences resulting from impacts 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 supplement and supplement Article 190 as follows:**

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

1. The following acts are not regarded as infringements of rights to protected plant varieties:

a/ Using plant varieties for personal and non-commercial purposes;

b/ Using plant varieties for testing purposes;

c/ Using plant varieties to create new plant varieties, except the case specified in Article 187 of this Law;

d/ Using harvested materials of protected plant varieties by individual production households for self-propagation and cultivation in the next season on their own land areas.

2. Rights to plant varieties are not applicable to acts related to materials of protected plant varieties which have been sold or otherwise brought into the Vietnamese or foreign markets by protection certificate holders or their licensees, except the following acts:

a/ Acts relating to further propagation of such plant varieties;

b/ Acts relating to export of reproductive materials of such plant varieties to countries where the genera or species of such plant varieties are not protected, unless such materials are exported for consumption purpose.”

**25. To amend and supplement 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 of all rights to that plant variety to the assignee. The assignee will become the plant variety protection certificate holder from the date of registration of the assignment contract with a state management agency in charge of rights to plant varieties according to law-prescribed procedures.
2. In case rights to a plant variety are under joint ownership, the assignment of these rights to another person must be agreed upon by all co-owners.
3. The assignment of rights to a plant variety must be effected in the form of written contract.
4. The assignment of rights to a plant variety created with state budget funds complies with the Law on Technology Transfer.”

**26. To amend and supplement Article 201 as follows:**

“**Article 201.** Intellectual property assessment

1. Intellectual property assessment means the use by organizations or individuals defined in Clauses 2 and 3 of this Article of their professional knowledge and expertise to assess and make conclusion on matters related to intellectual property rights.
2. Businesses, cooperatives, non-business units or law-practicing organizations, except foreign law-practicing organizations practicing in Vietnam which satisfy the following conditions may conduct intellectual property assessment:
  - a/ Having personnel and physical-technical foundations meeting law-prescribed requirements on assessment operations;
  - b/ Having the function of conducting intellectual property assessment as stated in their business registration certificates or operation registration certificates;
  - c/ Their heads or persons authorized by their heads possess intellectual property assessor cards.
3. Individuals who fully satisfy the following conditions may be granted intellectual property assessor cards by competent state agencies:
  - a/ Being a Vietnamese citizen and having full civil act capacity;
  - b/ Permanently residing in Vietnam;
  - c/ Possessing good ethical qualities;

d/ Possessing a university or higher degree in a profession relevant to domains in which an assessor card is applied for, having conducted professional activities in these domains for five or more years and passed a professional assessment examination.

4. State agencies competent to handle acts of infringing upon intellectual property rights may request intellectual property assessment when handling cases or matters they have accepted.

5. Intellectual property right holders and other related organizations and individuals may request intellectual property assessment to protect their legitimate rights and interests.

6. The Government shall specify intellectual property assessment organization and activities.”

**27. To amend and supplement Article 211 as follows:**

“**Article 211.** Intellectual property right infringements subject to administrative sanction

1. Organizations and individuals that commit any of the following acts of infringing upon intellectual property rights shall be administratively sanctioned:

a/ Infringing upon intellectual property rights which causes damage to authors, owners, consumers or society;

b/ Producing, importing, transporting or trading in intellectual property counterfeit goods defined in Article 213 of this Law or assigning others to do so;

c/ Producing, importing, transporting, trading in or storing stamps, labels or other articles bearing a counterfeit mark or geographical indication or assigning others to do so.

2. The Government shall specify acts of infringing upon intellectual property rights which shall be administratively sanctioned, sanctioning forms and levels, and sanctioning procedures.

3. Organizations and individuals that commit acts of unfair competition in intellectual property shall be administratively sanctioned under the competition law.”

**28. To amend and supplement Article 214 as follows:**

“**Article 214.** Forms of administrative sanction and remedies

1. Organizations and individuals that commit acts of infringing upon intellectual property rights defined in Clause 1, Article 211 of this Law shall be compelled to terminate their infringing acts and imposed one of the following principal sanctions:

a/ Caution;

b/ Fine.

2. Depending on the nature and seriousness of their infringements, intellectual property rights-infringing organizations or individuals are also subject to either of the following additional sanctions:

a/ Confiscation of intellectual property counterfeit goods, raw materials, materials and means used mainly for the production or trading of these intellectual property counterfeit goods;

b/ Suspension for a definite time of business activities in domains where infringements have been committed.

3. In addition to the sanctions specified in Clauses 1 and 2 of this Article, intellectual property rights infringers are also subject to either or both of the following consequence remedies:

a/ Compelled destruction or distribution or use for non-commercial purposes of intellectual property counterfeit goods as well as raw materials, materials and means used mainly for the production or trading of these intellectual property counterfeit goods, provided that the destruction, distribution or use does not affect the exploitation of rights by intellectual property right holders;

b/ Compelled transportation out of Vietnamese territory of transit goods infringing upon intellectual property rights or compelled re-export of intellectual property counterfeit goods, as well as imported means, raw materials and materials used mainly for the production or trading of these intellectual property counterfeit goods, after infringing elements are removed from these goods.

4. Administrative sanctions and the competence to administratively sanction infringements upon intellectual property rights comply with the law on handling of administrative violations.”

**29. To amend and supplement Article 218 as follows:**

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

1. When persons requesting the suspension of customs procedures have fulfilled their obligations specified in Article 217 of this Law, customs offices shall issue decisions on suspension of customs procedures with regard to goods lots in question.

2. The duration of suspension of customs procedures is ten working days after the customs procedure suspension requester receives the customs office’s notice of customs procedures suspension. In case the customs procedure suspension requester has a justifiable reason, this duration may be prolonged but must not exceed twenty working days, provided that the requester deposits a security specified in Clause 2, Article 217 of this Law.

3. Upon the expiration of the duration specified in Clause 2 of this Article, if customs procedure suspension requesters do not institute civil lawsuits and customs offices decide not to accept the cases for handling of administrative violations of

goods lot exporters or importers according to administrative procedures, customs offices have the following responsibilities:

- a/ To continue carrying out customs procedures for goods lots in question;
- b/ To compel customs procedure suspension requesters to compensate all the damage caused to goods lot owners due to their unreasonable requests, and pay expenses for the warehousing and preservation of goods as well as other expenses incurred by customs offices and other related agencies, organizations and individuals under the customs law;
- c/ To refund to customs procedure suspension requesters the remaining security amount after the obligation of paying compensations and expenses specified at Point b of this Clause is fulfilled.”

**30. To amend and supplement Article 220 as follows:**

**“Article 220.** Transitional provisions

1. Copyright and related rights protected under legal documents which took effect before the effective date of this Law continue to be protected under this Law if they remain in the term of protection by that date.
2. Applications for registration of copyright, related rights, inventions, utility solutions, industrial designs, trademarks, appellations of origin of goods, layout-designs or plant varieties, which have been filed with competent agencies before the effective date of this Law, continue to be processed under legal documents effective at the time of their filing.
3. All rights and obligations conferred by protection titles granted under the provisions of law which are effective before the effective date of this Law and procedures for maintenance, renewal, modification, invalidation, licensing, ownership assignment, settlement of disputes relating to these protection titles are governed by this Law, except grounds for invalidation of protection titles which are subject to the provisions of law which are effective at the time of grant of these protection titles. This provision also applies to decisions on registration of appellations of origin of goods issued under the provisions of law which are effective before the effective date of this Law. State management agencies in charge of industrial property rights shall carry out procedures for the grant of geographical indication registration certificates for appellations of origin of goods.
4. Trade secrets and trade names which have been existing and protected under the Government’s Decree No. 54/2000/ND-CP of October 3, 2000, on the protection of industrial property rights to trade secrets, geographical indications, trade names and the protection of the right to repression of industrial property-related unfair competition, 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, may only be protected after they are registered under this Law.”

**Article 2.** To replace the phrase “Ministry of Culture and Information” with the phrase “Ministry of Culture, Sports and Tourism” in Clauses 2, 3 and 5, Article 11; Point a, Clause 2, Article 50; and Clause 4, Article 51 of Law No. 50/2005/QH11 on Intellectual Property.

**Article 3.**

1. This Law takes effect on January 1, 2010.
2. The Government shall detail and guide the implementation of articles and clauses of this Law assigned to it, and guide other necessary contents of this Law to meet state management requirements.

This Law was passed on June 19, 2009, by the XII<sup>th</sup> National Assembly of the Socialist Republic of Vietnam at its 5<sup>th</sup> session.

Chairman of the National Assembly  
*NGUYEN PHU TRONG*