



CHAPTER 2 COPYRIGHT AND RELATED RIGHTS

Le Thi Thu Ha- FTU

CHAPTER OUTLINE

1

- Overview Of Copyright And Related Rights

2

- Protection Of Copyright And Related Rights

3

- Exploitation Of Copyright And Related Rights

READING MATERIALS

- WIPO, Overview of Intellectual Property, Copyright And Related Rights (P.40-65)
- M Blakeney, Copyright
- Lê Nết, Intellectual Property Rights, Chapter II: Introduction about Copyright And Related Rights
- Vietnam, IP law 2005
- Vietnam, Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property 2009
- Viet Nam, Decree No. 100/2006/ND-CP, Detailing and Guiding the Implementation of a Number of Articles of the Civil Code and the Intellectual Property Law Regarding the Copyright and Related Rights

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3

MODULE 1: OVERVIEW OF COPYRIGHT AND RELATED RIGHTS

1

- What is copyright ?

2

- International law
- National law

3

- Case study
- Group working

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4

OVERVIEW OF COPYRIGHT AND RELATED RIGHTS



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-Literature
-Science
-Art

Rights that creators have over their

Works

Means to
communicate works
to the public



-Performances
-Voice/ Image Records
-Broadcasting
-Satellite signals
- Encrypted programs

CONCEPT OF COPYRIGHT AND RELATED RIGHTS

Copyright is a legal system which regulates the interests of authors, right-holders and the users of creative the works

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Related rights to copyright (**Related rights**) is defined to protect the legal interests of certain persons and legal entities, who produce subject matter which contain sufficient creativity or technical and organizational skill to justify recognition of a copyright-like property right, like performances, records, broadcasting programs, satellite signals, encrypted programs.

HISTORY OF COPYRIGHT AND RELATED RIGHTS

French Copyright Law in 1791, Prussia in 1837, Germany in 1837

BERNE CONVENTION 1886

Queen Anne's copyright regulations 1709

Exclusive printing for the author, not the publisher.
(The "copy" was the sole liberty of printing and reprinting a book)

14 years after the first edition and be renewed
in the next 14 years if the author is alive

'Theft is prohibited, but copy is not',
quoted by 'Sachsenspiegel' of Author
Eike Von Regow

Printer invented by Johannes
Gutenberg in 1440

CHARACTERISTICS OF COPYRIGHT AND RELATED RIGHTS

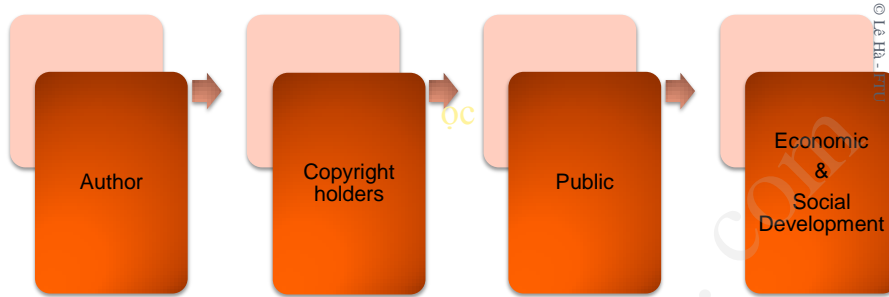
- Copyright shall subsist at the moment when a work is **created** and expressed in a **given form**, irrespective of its content, quality, form, and language; whether published or unpublished, **registered or unregistered** (Art 6- IPL)
- Quyền tác giả phát sinh kể từ khi tác phẩm được sáng tạo và được thể hiện dưới một hình thức vật chất nhất định, không phân biệt nội dung, chất lượng, hình thức, phương tiện, ngôn ngữ, đã công bố hay chưa công bố, đã đăng ký hay chưa đăng ký (Điều 6 – Luật SHTT)

Originality
(Nguyên gốc)

Fixation
(Định hình)

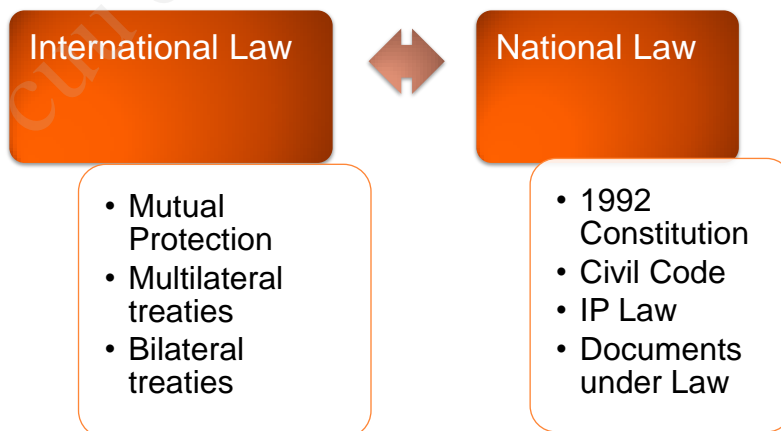
Automatic
(Tự động)

ROLE OF COPYRIGHT AND RELATED RIGHTS



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LAW SYSTEM ON COPYRIGHT AND RELATED RIGHTS



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INTERNATIONAL LAW ON COPYRIGHT AND RELATED RIGHTS

- Berne Convention For The Protection Of Literary And Artistic Works
- Agreement On Trade-related Aspects Of Intellectual Property Rights
- WIPO Copyright Treaty (WCT)
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms 1971, Geneva
- Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite . Brussel 1974
- Universal Copyright Convention 1952
- WIPO Performances & Phonograms Treaty (WPPT)

11

NATIONAL LAW ON COPYRIGHT AND RELATED RIGHTS

CONSTITUTION 1992

• CIVIL CODE 2005

- Part Six: Intellectual Property Rights And Technology Transfer; Chapter XXIV: Copyright And Related Rights
- Part Seven: Civil Relations Involving Foreign Elements

IP LAW 2005 & 2009

PART 1: GENERAL PROVISIONS

PART 2: COPYRIGHT AND RELATED RIGHTS

PART 5: PROTECTION OF COPYRIGHT AND RELATED RIGHTS

12

NATIONAL LAW ON COPYRIGHT AND RELATED RIGHTS

- **Decree No. 100/2006/ND-CP of September 21, 2006, Detailing and Guiding the Implementation of a Number of Articles of the Civil Code and the Intellectual Property Law Regarding the Copyright and Related Rights**

- Quyết định số 88 /2006/QĐ-BVHTT Về việc ban hành các mẫu tờ khai, giấy chứng nhận đăng ký QTG, QLQ (17/10/2006)
- Thông tư số 02/2008/ TTLT-TANDTC-VKSNDTC-BVHTTDL-BKHCN-BTP Hướng dẫn áp dụng một số quy định của pháp luật trong việc giải quyết các tranh chấp về QSHTT tại Tòa án nhân dân (03/04/2008)
- Thông tư số 01/2008/TTLT-TANDTC-VKSNDTC-BCA-BTP Hướng dẫn việc truy cứu trách nhiệm hình sự đối với các hành vi xâm phạm
- Nghị định số 105/2006/NĐ-CP Quy định chi tiết và hướng dẫn thi hành một số điều của Luật SHTT về bảo vệ quyền sở hữu trí tuệ và quản lý NN về SHTT (22/9/2006)
- Nghị định số 56/2006/NĐ-CP Về xử phạt vi phạm hành chính trong hoạt động văn hoá -thông tin (6/6/2006)

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APPLICABLE LAW

- The provisions of the Civil Code shall apply to intellectual property related civil matters which are not regulated by this Law.
- Where there are any differences between the provisions on intellectual property in this Law and the provisions in other laws, the provisions in this Law shall apply.
- Where an international treaty of which the Socialist Republic of Vietnam is a member contains provisions different from those in this Law, such international treaty shall apply.

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(ART.5, IPL)

14

Module 2

Protection of

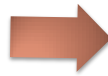
Copyright and Related Rights



PROTECTION OF COPYRIGHT & RELATED RIGHTS

COPYRIGHT

- Subject Matters
- Holders
- Contents
- Limitations



RELATED RIGHTS

- Subject Matters
- Holders
- Contents
- Limitations

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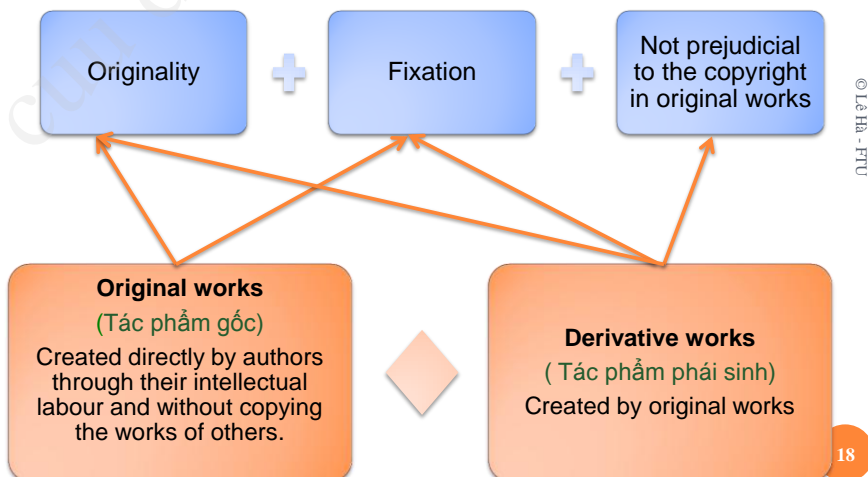


COPYRIGHT AND RELATED RIGHTS

SUBJECT MATTERS



CONDITIONS FOR PROTECTION OF COPYRIGHT



CONDITIONS FOR PROTECTION OF COPYRIGHT

Originality (Nguyên gốc)

- A work must originate from author; it must have its origin in the labor of the author.
- The ideas in the work do not need to be new but the form, be it literary or artistic, must be an original creation of the author
- It mean the work is the product of at least minimal level of creativity

Fixation (Định hình)

- In the countries of the Union, works shall not be protected unless they have been fixed in some material form (Art 2.2-BC). (the work exists in a medium from which the author's expression can be read, seen, or heard, either directly or by the aid of a machine)
- It shall not protect ideas or concept, but forms to demonstrate them

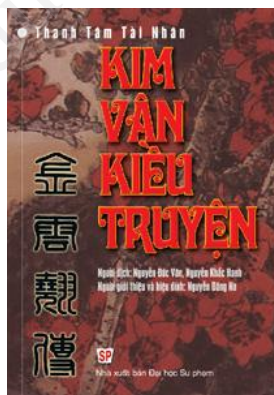
Derivative works

- Not prejudicial to the copyright in original works

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19

ORIGINALITY



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20

Not

WHAT
to write?

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But

**How
to
write**

(ARISTOLE)

TO FOREIGN WORKS

CONDITIONS FOR PROTECTION OF COPYRIGHT

Works published for the first time in Vietnam and not yet published in any other country

Works also published in Vietnam within thirty days after publication for the first time in another country

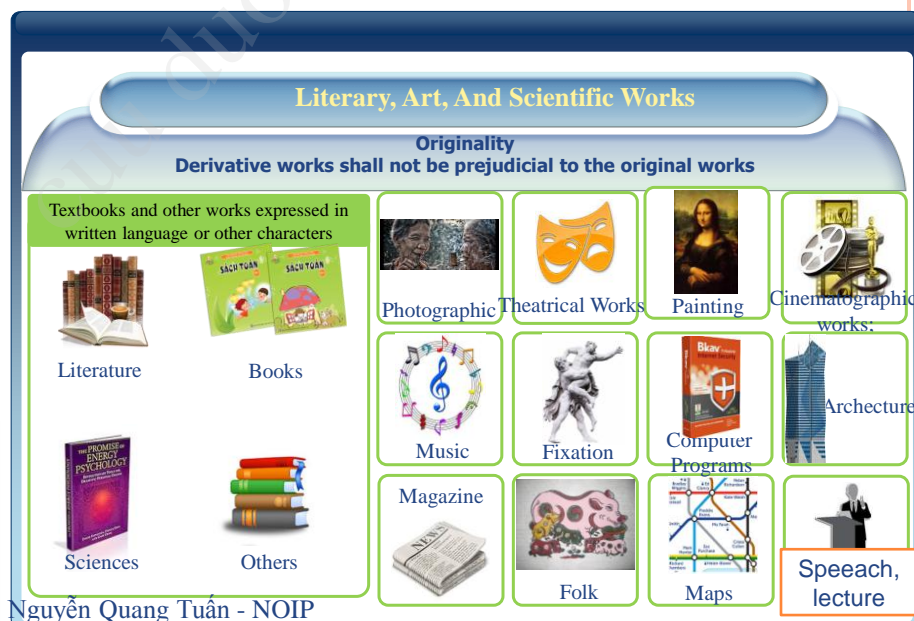
Pursuant to an international treaty on copyright of which the Socialist Republic of Vietnam is a member

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COPYRIGHTABLE SUBJECT MATTERS

- Every production in the literary, scientific and artistic domain, whatever may be the mode or forme of its expression. (Art 2- BC)
- Mọi sáng tạo trong các lĩnh vực văn học, khoa học và nghệ thuật dưới bất kỳ hình thức hoặc cách thức thể hiện nào.
- Objects of copyright shall include literary, artistic and scientific works (Art 3.1 – IPL)
- Đối tượng bảo hộ của QTG là các tác phẩm văn học, khoa học và nghệ thuật.

PROTECTED WORKS



PLASTIC-ART WORKS AND WORKS OF APPLIED ART

Plastic-art works/
Tác phẩm tạo hình

Works of applied art
Tác phẩm mỹ thuật ứng dụng

- works presented by lines, colors, three-dimensional figures or layouts, such as works of fine-arts, graphic arts, sculpture, installation arts and similar forms of presentation, which are available in unique copies. Particularly, a work of graphic art may be presented in as many as 50 copies which are ordinarily numbered and bear the author's signature.

- works presented by lines, colors, three-dimensional figures or layouts, having useful features associated with useful objects, and being mass-produced by hand or by machines, such as: logos; handicraft and fine-arts articles; expressions on products or packages

Copy pictures?



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PHOTOGRAPHIC WORKS - ARCHITECTURAL WORKS

TÁC PHẨM NHIẾP ẢNH- TÁC PHẨM KIẾN TRÚC

Photographic works

Architectural works

- Works showing images of the objective world on photosensitive materials or other media on which images are created or can be created by any technical methods
- Still images taken from a cinematographic work or a work created by a process analogous to cinematography **shall not be regarded as photographic work but part of that cinematographic work.**

- Design drawings in any forms conveying creative ideas about houses, construction works or spatial plans (construction plans), completely built or not.
- Models or relief plans of houses, construction works or spatial plans shall be **recognized as independent architectural works.**

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COMPUTER PROGRAM

1. A set of instructions expressed in the form of commands, codes, diagrams and other forms which, when incorporated in a device readable by a computer, are capable of enabling such computer to perform a job or achieve a specific result.

- Computer programs shall be protected the same as literary works, irrespective of whether the computer programs are expressed in the form of source codes or machine codes.

2. *Data collection* means a set of data selected or arranged in a creative way and expressed in electronic or other forms.

- Copyright protection of data collections shall not extend to protection of the data itself, and must not be prejudicial to copyright in the data itself.

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27

EXCLUSIONS

Ideas or concept, Facts or information

Tin tức thời sự thuần túy

Official texts of a legislative, administrative and legal nature, and to official translations of such texts

Văn bản quy phạm pháp luật, VB hành chính, VB khác thuộc lĩnh vực tư pháp và bản dịch chính thức của VB đó

Political speeches and speeches delivered in the course of legal proceedings

Diễn văn chính trị hay bài phát biểu

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28



GROUP DISCUSSION



? Bài viết về “Tham nhũng ở Vinalines - chỉ là phần nổi của tảng băng chìm” đăng trên trang <http://citinews.net> ngày 30/10/13 giống hết bài viết trên trang <http://dantri.com.vn> đăng cùng ngày, thì có vi phạm quyền SHTT đối với bài viết đó không?

? Trong bài tiểu luận, Phú trích dẫn **bài phát biểu của Thủ tướng** nhưng không ghi rõ nguồn, vậy Phú có vi phạm quyền SHTT đối với bài phát biểu ấy không?

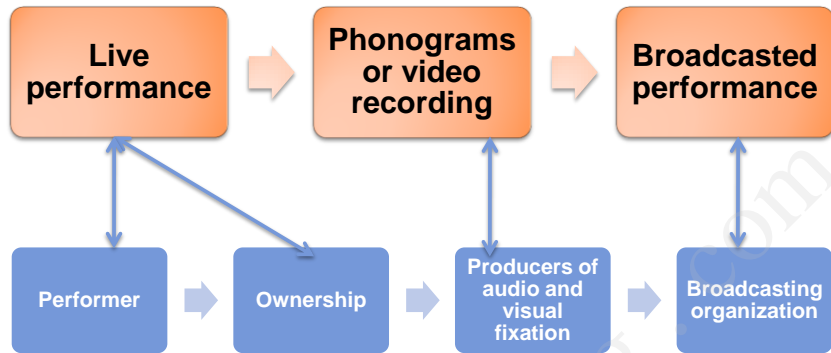
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29

SUBJECT MATTERS OF RELATED RIGHTS



RELATED RIGHTS SUBJECT MATTERS



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31

RELATED RIGHTS SUBJECT MATTERS

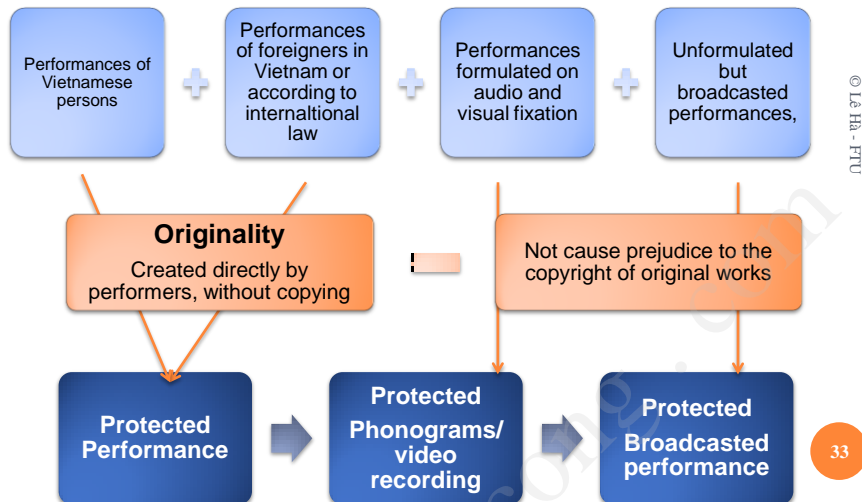
Live performance, Phonograms/ video recording, Broadcasted performance

Not cause prejudice to the copyright



Nguyễn Quang Tuấn - NOIP

CONDITIONS FOR PROTECTION OF RELATED RIGHTS



CASE STUDY “THE VOICE” VIỆT NAM 2013

- Sao Mai điểm hẹn 2010 Nguyễn Đình Thanh Tâm mua độc quyền ca khúc “**Chạy mưa**”
 - Trong vòng thi đối đầu, 2 thí sinh My Hoàn và Thảo Nhi, thuộc đội của diva Hồng Nhung, đã cover lại ca khúc “**Chạy mưa**” mà chưa xin phép
 - Ai là chủ SH ca khúc “Chạy mưa”, ai là chủ SH chương trình “The Voice” Việt Nam 2013, My Hoàn, Thảo Nhi và Hồng Nhung có vai trò như thế nào trong tình huống này?
 - Xác định hành vi vi phạm trong tình huống trên? Đây là điểm mấu chốt của vấn đề? Ai là người chịu trách nhiệm chính?
- ? Theo bạn, nên xử lý tình huống này như thế nào?
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COPYRIGHT HOLDERS

**Authors/
Co-authors**



Ownership

COPYRIGHT HOLDERS

AUTHOR, OWNERSHIP OF COPYRIGHT

**Authors –
Co-authors**



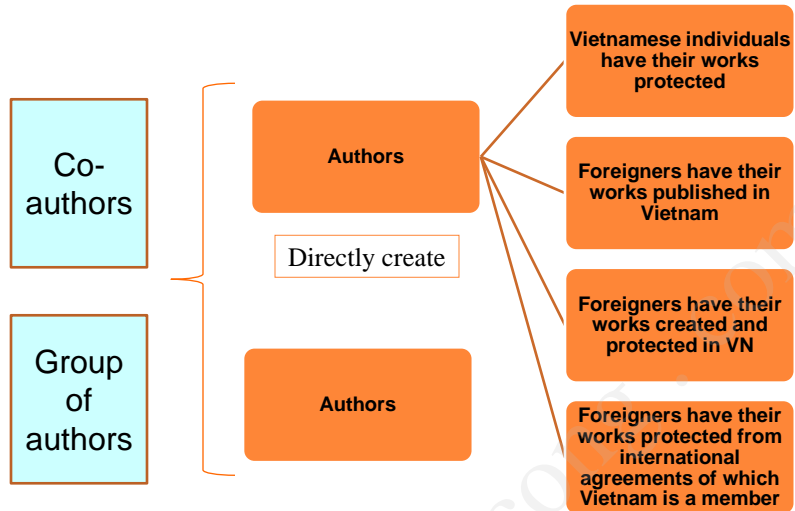
Ownership

- Directly create works
- Jointly create works

- Use their time and make a financial investment in or use their material and technical facilities to create works

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AUTHORS/CO-AUTHORS OF COPYRIGHT



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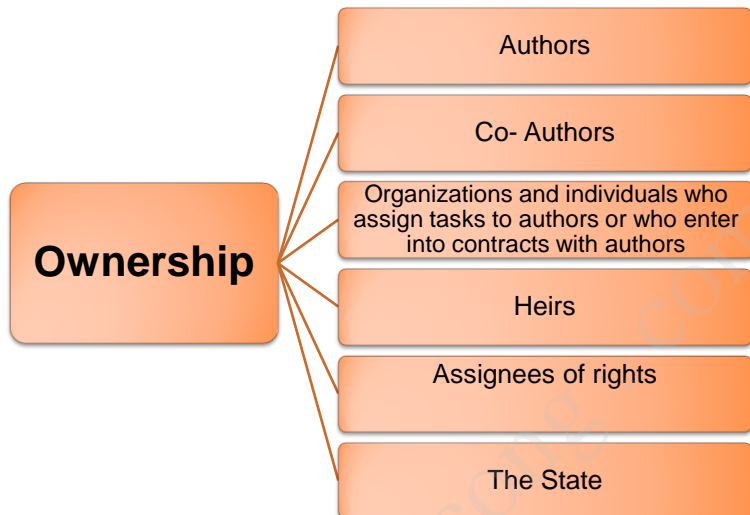
37

CASE TÝ QUẬY

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38

OWNERSHIP OF COPYRIGHT



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39

RELATED RIGHTS HOLDERS



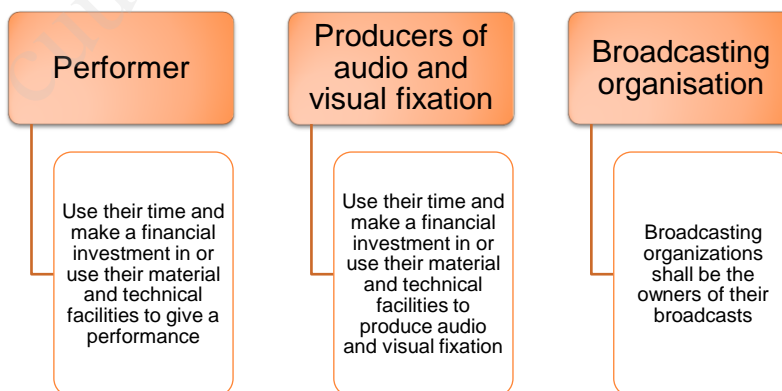
PEFORMERS

- Actors and actresses, singers, instrumentalists, dancers and other persons who perform literary and artistic works

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41

OWNERSHIP OF RELATED RIGHTS



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42

COPYRIGHT CONTENTS

Moral rights



Economic rights

RIGHTS COMPRISED IN COPYRIGHT

- Protect author's reputation and work's integrity
- Bảo vệ danh tín của tác giả và sự toàn vẹn của tác phẩm

Moral rights
Quyền nhân thân

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- Protect economic rights for work
- Bảo vệ quyền khai thác kinh tế đối với tác phẩm

Economic Rights
Quyền tài sản

44

MORAL RIGHTS

1. Give titles to their works

2. Attach their real names or pseudonyms to their works

3. Publish their works

4. Protect the integrity of their works

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45

RIGHT TO TITLE WORKS

Works translated from one language into another

Inapplicable
(22.1)

Computer programs

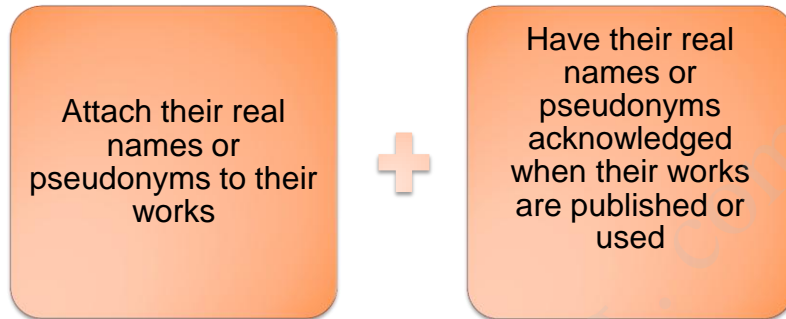
Cinematographic/ dramatic works

Negotiable
(19.1, 22.4)

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RIGHT TO ATTACH REAL NAMES OR PSEUDONYMS TO THE WORKS



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47

RIGHT TO PUBLISH WORKS

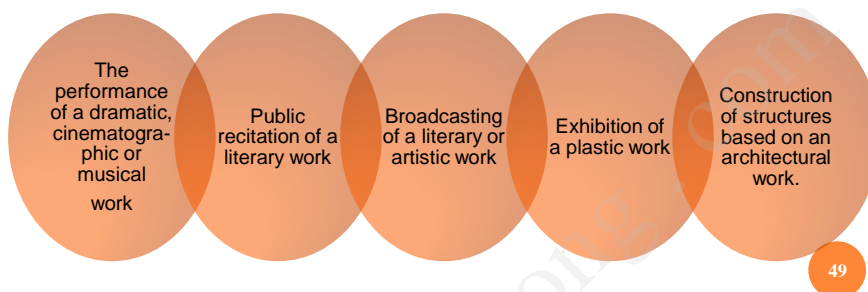
- Make a work available to the public in a **sufficient amount of copies** to satisfy the reasonable demand of the public
- Là việc phát hành tác phẩm đến công chúng với **số lượng bản sao đủ để đáp ứng nhu cầu hợp lý** của công chúng
- Author or copyright holder of work or another individual or organization authorized by the author or copyright holder
- Do tác giả, chủ sở hữu quyền tác giả thực hiện hoặc cho phép thực hiện

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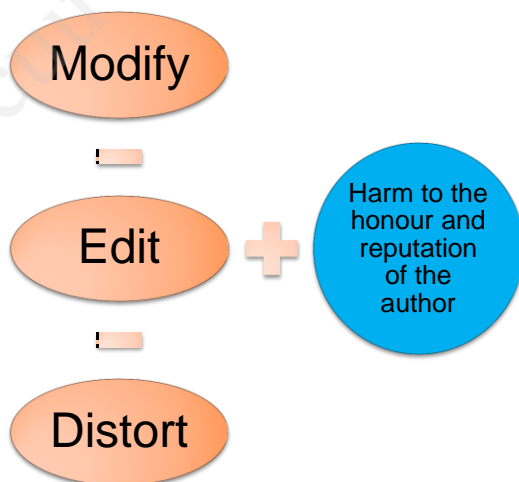
48

RIGHT TO PUBLISH WORKS

Publishing works does **NOT** include



PROTECTING THE INTEGRITY OF WORK



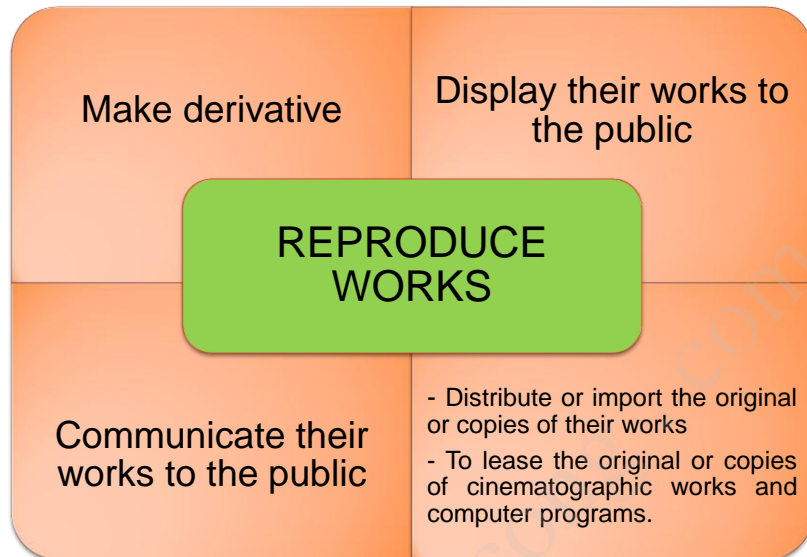
- To protect the integrity of their works; and to forbid other persons to modify, edit or distort their works in whatever form, causing harm to the honour and reputation of the author

- Bảo vệ sự toàn vẹn của tác phẩm, không cho người khác sửa chữa, cắt xén hoặc xuyên tạc tác phẩm dưới bất kỳ hình thức nào gây phương hại đến danh dự và uy tín của tác giả.

- ... (Art.19.4)

50

ECONOMIC RIGHTS



51

COMMUNICATING WORKS TO THE PUBLIC

- To perform works either directly or through phonograms or video recordings or with whatever technical devices accessible by the public.
- Applied to:
 - ❖ Copyright holders or their authorized persons
 - ❖ Performance of works is anywhere except in the family.
(ART 23.1 – Decree No.100/CP)

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52

RIGHT TO REPRODUCE WORKS

- The right to reproduce works means the exclusive, basic right of copyright holders or their authorized persons.
- Make copies of works by whatever means or in whatever form, including permanent or provisional backup of works in electronic form
(Art.23.2 - Decree No.100/CP)

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53

TO DISTRIBUTE OR IMPORT ORIGINAL WORKS OR COPIES THEREOF

- The right to distribute original works or copies thereof means the exclusive right of copyright holders or their authorized persons in whatever forms or with the assistance of whatever technical devices accessible by the public to sell, lease or otherwise assign their original works or copies thereof.
- For plastic or photographic works, the distribution of works also means the public display or exhibition thereof.
(Art. 23.3 -Decree No.100/CP)

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54

Situation of rights out of date after the first sale.

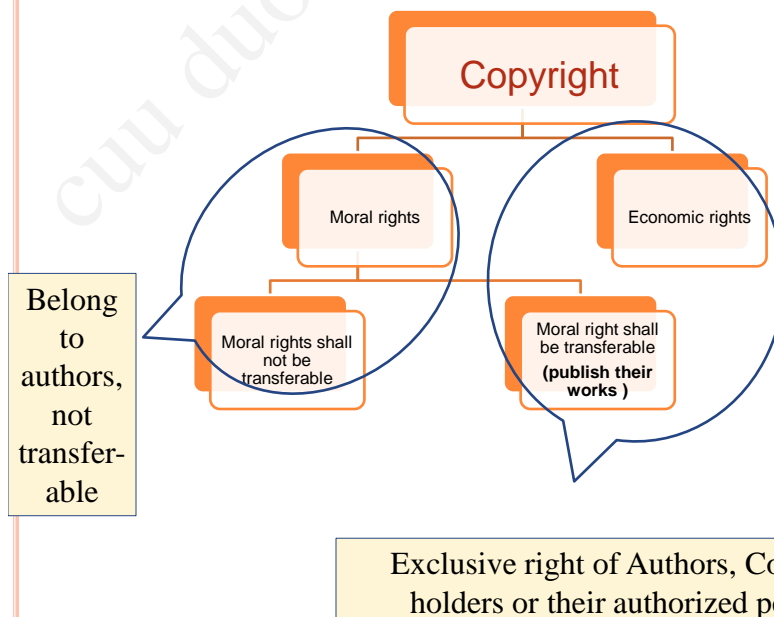
LEASE ORIGINAL CINEMATOGRAPHIC WORKS AND COMPUTER PROGRAMS OR COPIES THEREOF

- The exclusive right of copyright holders or their authorized persons to lease their works for use within a definite term.
 - It shall not apply to computer programs which do not themselves constitute principal objects for lease, such as computer programs conducive to the normal operation of means of transport as well as other machines and technical devices.
- (Art. 23.5-Decree No.100/CP)

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Right to control leasing activities to protect the right of ownership to reproduce

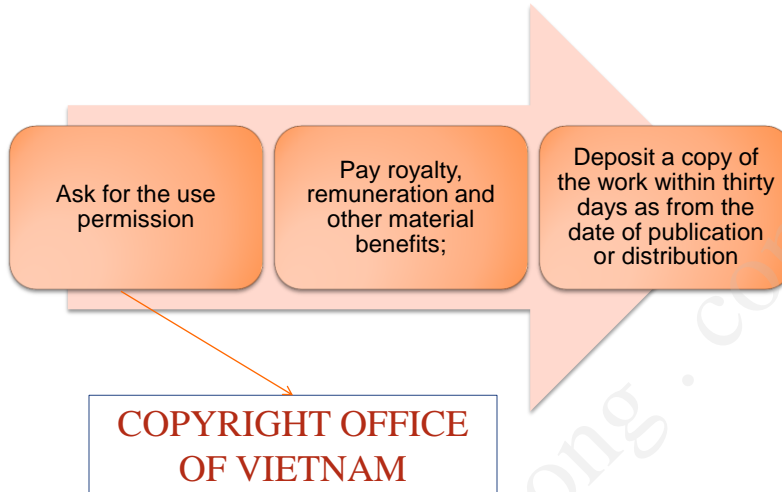
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56

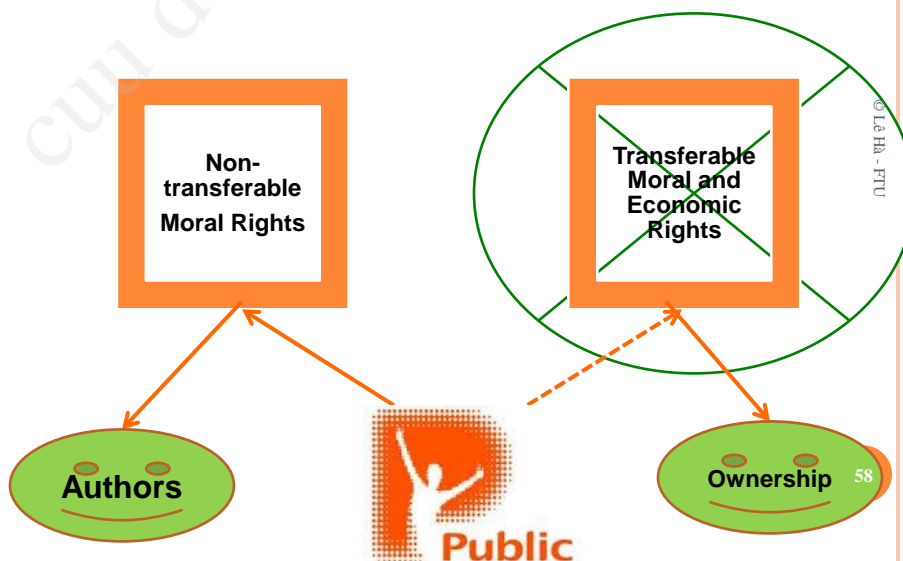
USE OF WORKS BELONGING TO THE STATE



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57

USE OF WORKS BELONGING TO THE PUBLIC



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58

RELATED RIGHTS CONTENTS

Moral rights



Economic rights

MORAL RIGHTS OF PEFORMERS

Have the name acknowledged when performing, when distributing audio and visual fixation or when broadcasting performances



Protect the integrity of the imagery of the performance, and to prevent others from modifying, editing or distorting the work in any way prejudicial to the honour and reputation of the performer

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ECONOMIC RIGHTS OF PERFORMERS

To formulate a live performance on audio and visual fixation;

Directly or indirectly reproduce a performance which has been formulated on audio and visual fixation

Exclusive right, or to authorize others to exercise

Broadcast or to communicate to the public in other ways an unformulated performance

Distribute to the public an original performance and copies thereof

Pay remuneration to the performer

61

ECONOMIC RIGHTS OF PRODUCERS OF AUDIO AND VISUAL FIXATION

Exclusive right to exercise or to authorize others to exercise

Directly or indirectly copy their audio and visual fixation

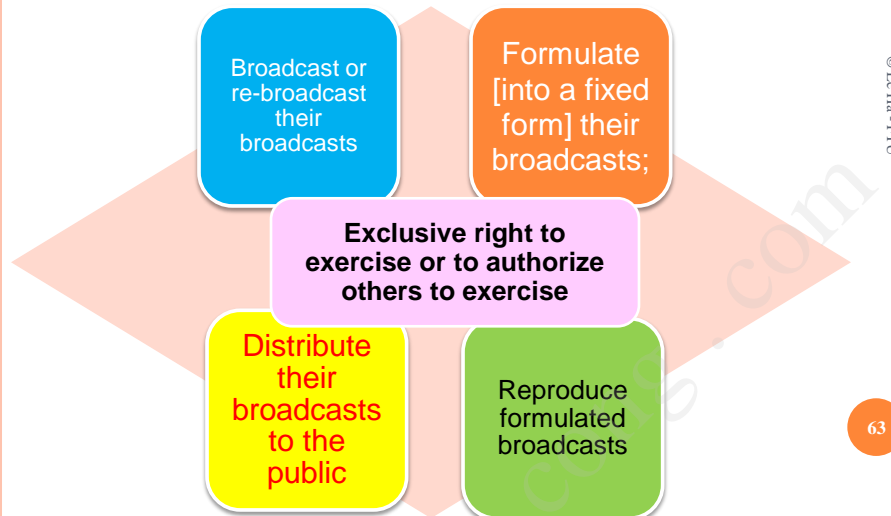
Distribute to the public their original audio and visual fixation and copies thereof

Be entitled to material benefits when the broadcasts are recorded + distributed to the public.

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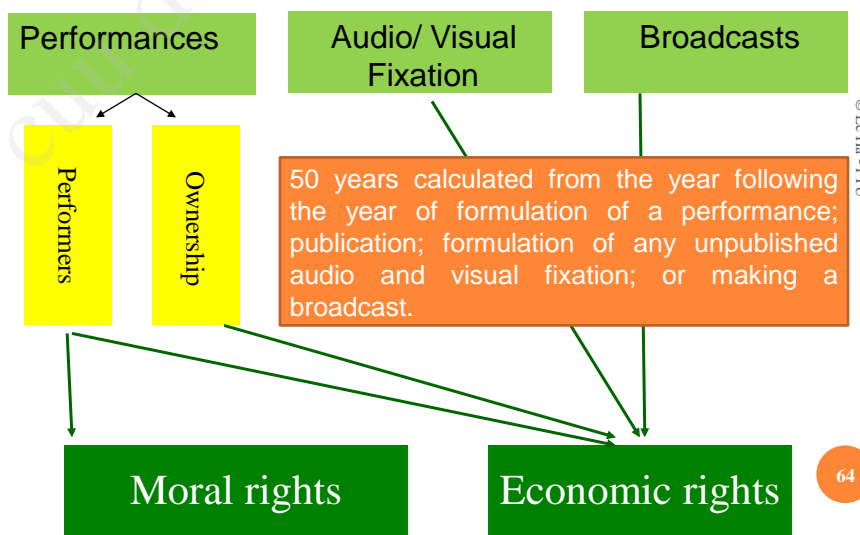
62

ECONOMIC RIGHTS OF BROADCASTING ORGANIZATIONS



SUMMARY

RELATED RIGHTS



LIMITATIONS ON COPYRIGHT /RELATED RIGHTS



TERM OF PROTECTION

The whole life of author and

50

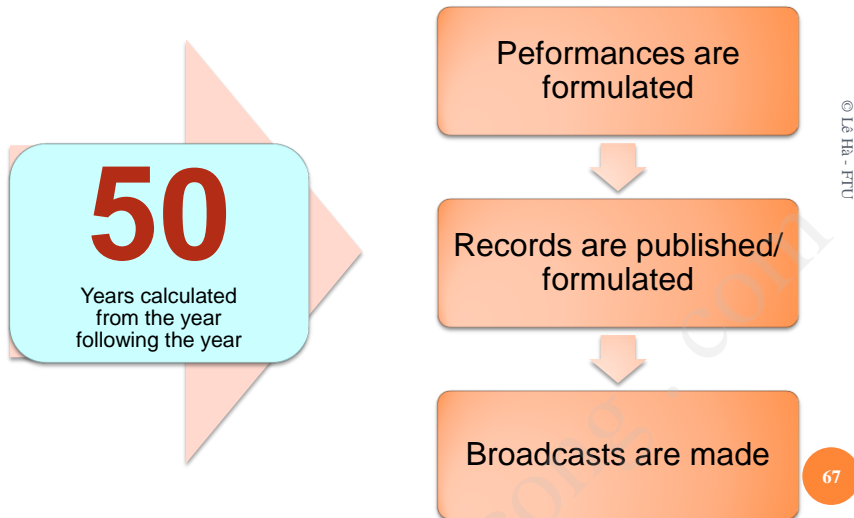
Years after his/
the co-author's
death

Cinematographic works;
Anonymous and
pseudonymous works;
Photographic
works and works of applied art

75 years calculated from the
year following the year of
publication, or formulation of
any unpublished audio and
visual fixation

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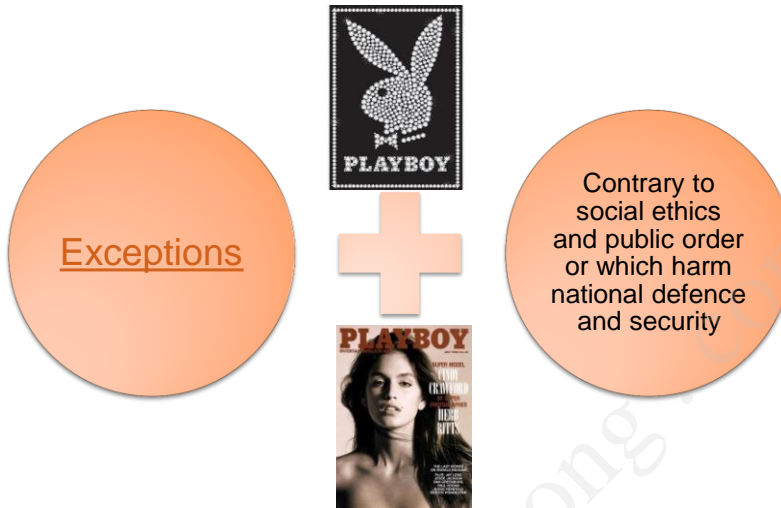
TERM OF PROTECTION



TERRITORIALITY



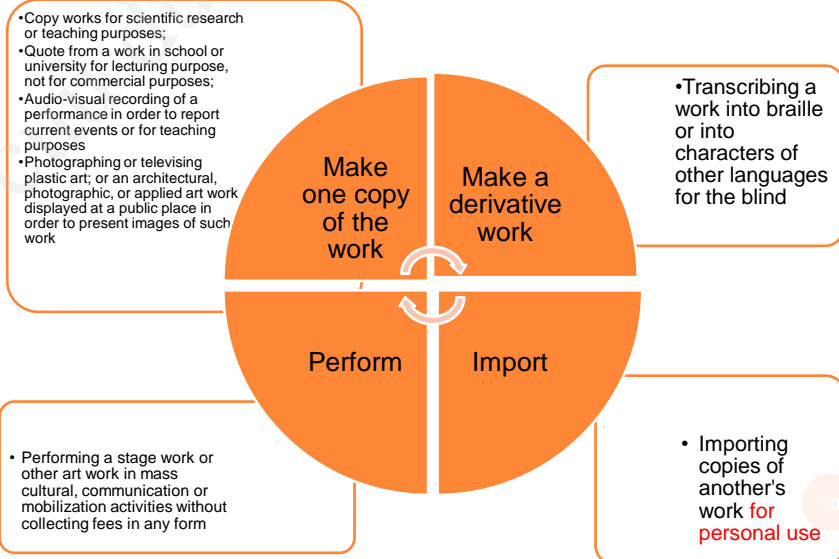
EXCLUSIONS



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69

PUBLISHED WORKS MAY BE USED WITHOUT HAVING TO SEEK PERMISSION OR PAY ROYALTIES OR REMUNERATION



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70

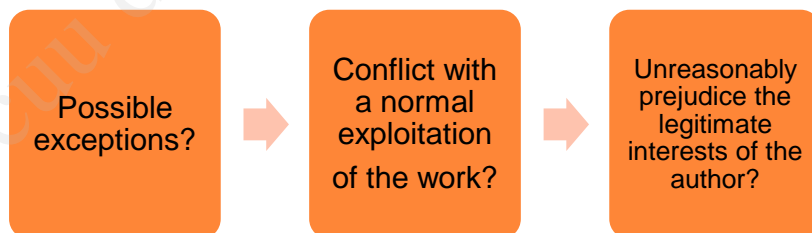
RELATED RIGHTS MAY BE EXERCISED WITHOUT HAVING TO SEEK PERMISSION OR PAY ROYALTIES OR REMUNERATION



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71

3- STEP TEST



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Art 9.2 Bern

TRIPS: Extend this principle (Đ.13)

Published works (25.1)

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(25.2)

72

Not apply to architectural works, plastic works and computer programs (25.3)

**PUBLISHED WORKS MAY BE USED WITHOUT HAVING TO SEEK PERMISSION
BUT ROYALTIES OR REMUNERATION MUST BE PAID**

A broadcasting organization which uses a published work to make a broadcast which is sponsored, contains an advertisement or which collects fees in any form shall not be required to seek permission but must pay royalties or remuneration to the copyright holder in accordance with regulations of the Government.

Broadcasting without permission, but royalties or remuneration.

NOT cause prejudice to the rights of the author or copyright holder.

MUST provide information being the author's name and the source and origin of the work.

INAPPLICABLE to cinematographic works.

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**Exclusive right is replaced
by Right to receive royalties
or remuneration**

**Compulsory
Licence?**

73

**RELATED RIGHTS MAY BE EXERCISED WITHOUT HAVING TO SEEK
PERMISSION OR PAY ROYALTIES OR REMUNERATION**

Organizations and individuals who exercise related rights in the following cases shall not be required to seek permission but must pay agreed royalties or remuneration to performers, producers of audio and visual fixation, or to broadcasting organizations

In case of no agreement reached, the parties shall comply with the Government regulations or sue in court according to the law.

Broadcasting, but no funding, no levy is paid under the Government regulations.

NO affect the normal use of performances, audio and visual fixation or broadcasts.

NO cause prejudice to the rights of performers, producers of audio and visual fixation or broadcasting organizations.

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**Exclusive right is replaced
by Right to receive royalties
or remuneration**

**Compulsory
Licence?**

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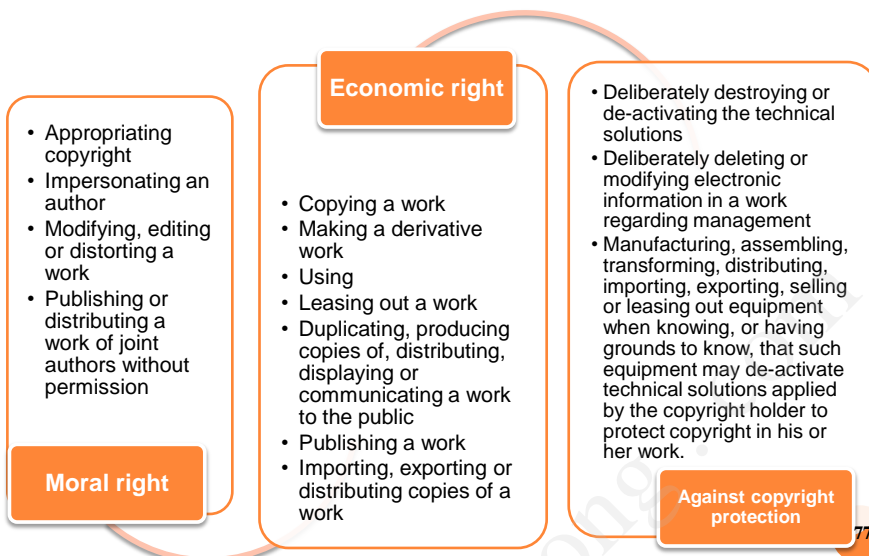
CONSTITUTING INFRINGEMENT OF COPYRIGHT

INFRINGEMENT OF COPYRIGHTS

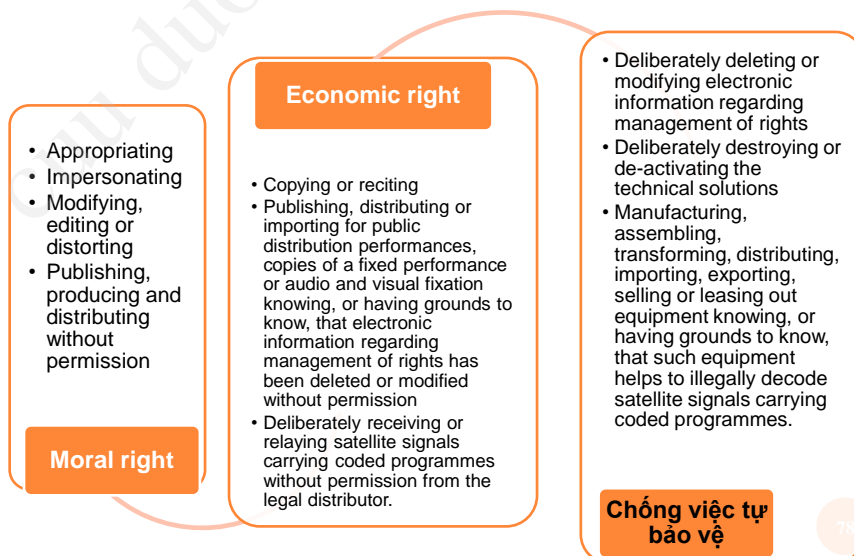
- **The rights of an owner of copyright are infringed** when one of the acts requiring authorization of the owner is done by someone else without his consent
- **Xâm phạm quyền:** khi một người thực hiện một trong số các hành vi cần phải xin phép chủ sở hữu quyền mà không có sự đồng ý của chủ sở hữu quyền.



INFRINGEMENT OF COPYRIGHTS



INFRINGEMENT OF RELATED RIGHTS



PROOF OF INFRINGEMENT

- **Ownership of a work:** The date of formation and expressions
 - Registration
 - Deposit
 - Copyright notice (Eg: ©2009)
 - Standard identification numbering system (Eg: ISBN for books)
- **Infringement :** All/ most of the basic elements are similar

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REGISTRATION OF COPYRIGHT AND RELATED RIGHTS PROTECTION

COPYRIGHT PROTECTION

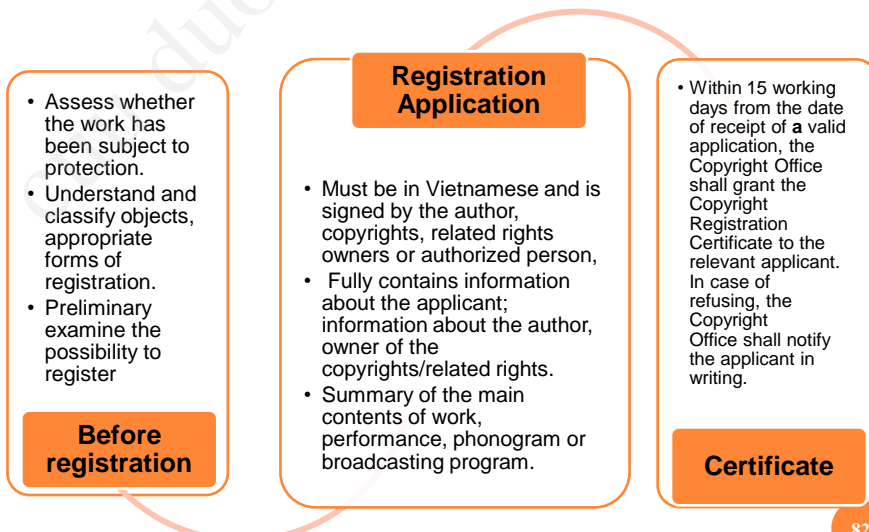


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- **Registration**
- **Deposit**
- **Copyright notice** (Eg: ©2009)
- **Standard identification numbering system** (Eg: ISBN for books)

81

COPYRIGHT REGISTRATION



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82

Copyright Office
No.151, Hoang Hoa Tham Street

COPYRIGHT PROTECTION ABROAD

International Law

The protection shall apply to:

- *Authors who are nationals of one of the countries of the Union, for their works, whether published or not;*
- *Authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.*

(Berne/Trips Convention)

Vietnam

- Foreign organizations and individuals shall have their works protected in Vietnam pursuant to an international treaty on copyright of which the Socialist Republic of Vietnam is a member.

(Art. 13.2 – IPL)

Works shall be protected by separate national system of copyright (National Treatment and Territories)

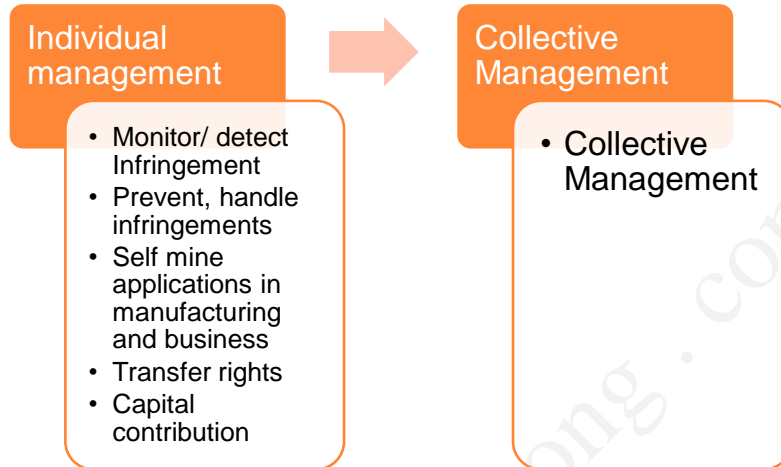
83

Module 3

Exploitation Copyright And Related Rights



COPYRIGHT AND RELATED RIGHTS MANAGEMENT



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85

TRANSFER OF COPYRIGHT AND RELATED RIGHTS

- *Licensing of copyright and related rights* means the grant of permission by the copyright holder or related right holder for another organization or individual to use for a definite term one, several or all of the rights stipulated in articles 19,3, 20, 29.3, 30 and 31 of this Law.

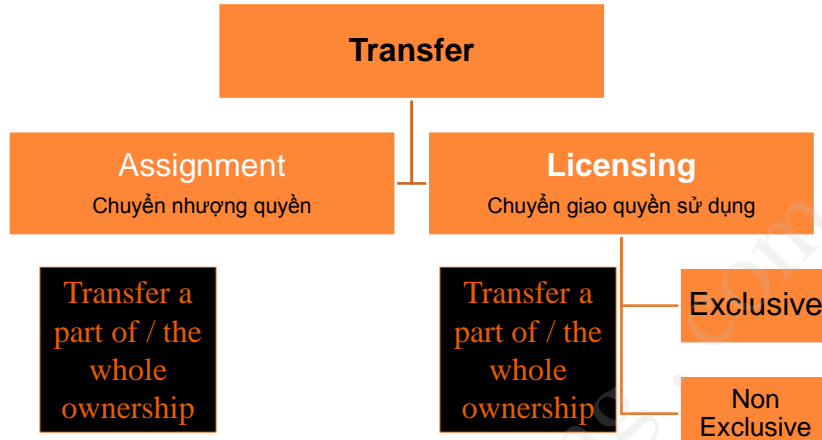
(Art.47.1 IPL)



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TRANSFER OF COPYRIGHT AND RELATED RIGHTS



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CONTRACTS FOR TRANSFER OF COPYRIGHT AND RELATED RIGHTS



- Full names and addresses of the licensor and the licensee.
- Grounds for the licence.
- Scope of the licence.
- Price and method of payment
- Rights and obligations of the parties.
- Liability for contractual breach.

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88

- Form: http://www.cov.gov.vn/cbqen/index.php?option=com_content&view=article&id=70&Itemid=1&lang=vi
of-contract-for-assignment-or-use-of-copyright-related-rights&catid=61:th-tc-ng-ky

COLLECTIVE MANAGEMENT

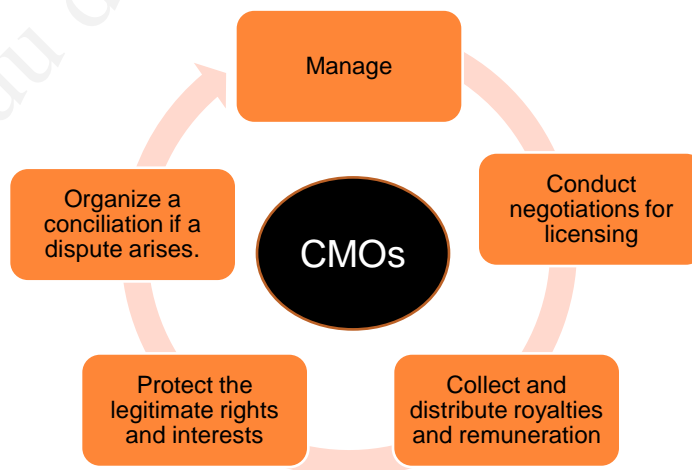


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- **Collective Management Organizations** (CMOs- Tổ chức quản lý tập thể) means a non-profit making organization established pursuant to an agreement between authors, copyright holders or related right holders and operating pursuant to the law on protection of copyright and related rights.

89

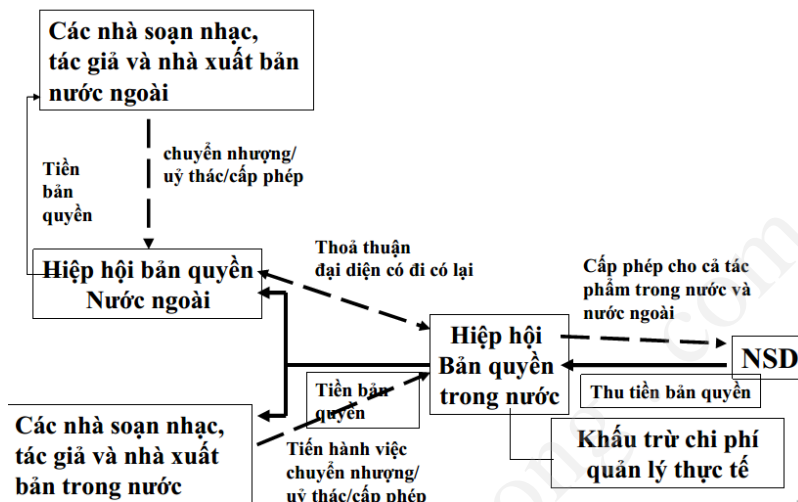
COLLECTIVE MANAGEMENT ORGANISATIONS



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90

ACTIVITY PROCESS



Thanks for listening!



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Tel: 0912211178