

14. PROTECTION OF COPYRIGHT IN THE DIGITAL ENVIRONMENT IN VIET NAM

Le Thi Bich Thuy*

ABSTRACT

Along with the continuous development of the Internet, cyberspace is increasingly expanding and spreading from one country to another. As a result, nations are connected more closely; people have become closer and economic transactions, cultural and social exchanges have become more convenient. All these factors bring great benefits in terms of economic and social development to many countries. However, the enormous growth of cyberspace and the digital environment also pose certain threats to a number of socio-economic fields, including the field of copyright protection. While revolutionizing the way through which individuals, communities, and countries can communicate and exchange information, the digital environment also provides a very convenient basis for copy and use activities without the consent of the author. The digital environment indeed creates significant legal challenges to copyright protection.

This article shows an interest in learning about the legal aspects of copyright protection in the digital environment and thereby finding effective solutions for protecting this right in the new context.

Keywords: *copyright, digital environment, literary and artistic works, Vietnamese law.*

* Le Thi Bich Thuy (Vietnam), LL.M., lecturer at Hanoi Law University of Viet Nam. She teaches in the International Private Law Department, specializing in international IP law. The focus of her research and teaching activities is on Civil and Commercial Law, IP, and Comparative Private Law. Additionally, she has authored and co-authored a number of scientific

1. INTRODUCTION

A. OVERVIEW OF COPYRIGHT AND COPYRIGHT PROTECTION

Copyright is also a type of intellectual property (IP) right, similar to the right to inventions, right to utility solutions or trademarks. Objects of copyright are literary and artistic works, including literary compositions such as articles, books, stories, artistic products such as songs, music scores, paintings, photographs, and movies. The copyright owner is the creator, or owner, of a literary or artistic works.

As a type of ownership, copyright gives creators and owners of literary and artistic works legal rights to prevent or allow others to use their creative works for a certain period of time. If someone infringes on the copyright, the author or owner can sue for compensation in court, thereby protecting their legitimate interests. More specifically, the author does not need to carry out any administrative procedures to enjoy copyright but only needs to satisfy three conditions. First, the author is the person who created the work. Second, the work is represented in a certain material form¹.

Thus, it can be defined that copyright is the protection granted by law to the author, the owner of the work, to exclusively exploit and enjoy the material and spiritual benefits from the literary or artistic works created or owned by him. Copyright is an abstract right; to be protected, copyright should be concretized into legal rights that international or national laws provide to authors or owners of literary and artistic works, for example, whether the author has the right to name the work or, the exclusive right to edit it or, allow the copying of the same. Current national and international laws often recognize and protect copyright content, including two groups of rights: moral rights (spiritual rights) and

papers and articles and has participated at several national and international IP- related conferences.

¹ Viet Nam's Intellectual Property Law (2005, amended and supplemented in 2009), Articles 6.1 and 14.3.

property rights (economic rights)². Infringement of copyright is considered a violation of law and may be subject to remedial sanctions according to the provisions of the law.

The recognition and protection of copyright, like the recognition and protection of other IP rights, serves two purposes³. Copyright protection is primarily intended to encourage creative activities of creators, in other words, to encourage creativity in the community. When the law can offer holders the right to exploit material benefits from the work and no one else can exploit it without the consent of the author⁴ then everyone in society will feel secure in creating. Consequently, people are motivated to create and thereby encourage the whole community. On the other hand, copyright protection aims to facilitate proper public access to works. The protection itself gives the author the ability to exclusively exploit material benefits from the work, which indirectly encourages the author to put the work in circulation to the public, through which the public can access the work. The provision of a certain term of protection for a work also has a two-sided effect. In addition to guaranteeing creators exclusive control of their work during the protected period, the public also has free access to the work after the protection period ends.

B. THE DIGITAL ENVIRONMENT AND CHALLENGES TO COPYRIGHT PROTECTION

a) History of Copyright Protection and the Emergence of the Digital Era

Literary and artistic works have appeared for a long time, right from the early days of civilization when numerous masterpieces of poetry, painting, and literature were

created. However, it was not until the middle of the 15th century – when printing technology was created and flourished in Europe – that reproduction of literary works became easier. At that time, the need for copyright protection for literary works was first expressed. From the end of the 19th century to the 20th century, the application of analogue technology brought tremendous changes to the printing and entertainment industries. Many new literary and artistic products were created such as photographs, cinematographs, sound recordings, media films and television, satellite images, architectural works, sculptures, etc. The copyright scope was no longer limited to works on paper. Analog technology also made copying literary and artistic works much easier than before. In response to this situation, many countries began to expand copyright protection regulations, mainly on increasing the number of material rights. Copyright protection was also extended to 50 years after the author's death. Furthermore, international copyright treaties, such as the Berne Convention for the Protection of Literary and Artistic Works (1886), were concluded among countries to ensure international copyright protection⁵.

From the end of the 20th century to the 21st century, a technology wave developed – **the digital technology wave** with the appearance and popularity of personal computers and the Internet. The digital environment has been bringing about fundamental alterations in the way of copying, using, exchanging, circulating and disseminating literary and artistic works. Despite only being created in the past few decades, the digital environment has quickly become essential for living and working. Every day we use smartphones, connect to the Internet to consult, search, and read a huge amount of information on-screen. Moreover, we can use desktop computers, laptops for working, emailing, watching

² Intellectual Property Law (2005, amended and supplemented in 2009) uses the terms 'moral rights' and 'property rights'. The Berne Convention (1886) uses the terms 'spiritual rights' and 'economic rights' respectively.

³ Kaplan LA, 'Copyright and the Internet' (2003) 22 Temp. Envtl. L. & Tech. J. 1; Meyer T, 'Graduated response in France: The clash of copyright and the Internet' (2012) 2 Journal of Information Policy 107-127, 109.

⁴ Jansen M, 'Protecting copyright on the Internet' (2004) 12 *Juta's Bus. L.* 100-103, 100.

⁵ Jie Hua J, *Toward a more balanced approach: rethinking and readjusting copyright systems in the digital network era* (Springer 2014) 3.

movies, listening to music and entertainment regardless of the location. Digital environments are constituted by two principal elements which are the personal computer and the Internet⁶.

Appeared and popularized through commercialization in the 1980s, the personal computer was the beginning of the formation of the digital environment⁷. With personal computers, people had a new interactive environment with a new interactive interface. Humans wrote documents, drew designs, composed music, and made movies with unprecedented efficiency and speed. Along with the personal computer was a vast system of software that helped people perform tasks, especially compositional works, more efficiently. Writers could compose their work in a shorter time and with less physical effort, and architects could create their own designs with little attempt to erase, eliminate or tear up faulty drawings. Personal computers are becoming more modern and more professional, with many forms and variants such as desktop computers, laptops, and tablets that people can use almost anywhere and, in any situation, to cater to their diverse needs. The software is also getting more complex, helping users to perform increasingly difficult operations with higher quality. An immense system of software that can meet almost all human needs, from work to entertainment, from communication and information exchange to disseminating information, ideas, and personal viewpoints.

The other, more important, and more prominent part of the digital environment is the Internet. The Internet consists of a number of different networks that are interconnected and together link hundreds of millions of computers worldwide. Another name for the Internet is

the Information Superhighway. The Internet was started in 1969 by a United States (US) government project, ARPANET, designed to support communications during a nuclear disaster in the US⁸. Since 1980, the ARPANET network has connected to a number of other networks and extended the range of users by TCP/IP method⁹. In 1993-1994, the World Wide Web (WWW) was officially established together with the organizations operating the Internet.

In the 1970s, there were only three networks operating on the Internet, but that number increased to 50,000 in 1996. Today, that number has become uncountable. No private organization has complete control over the Internet, and the Internet does not have a single centralized database. Therefore, no one can control the data as well as the content of information on the Internet¹⁰.

Normally, the Internet is known as a cyberspace where people can search for and exchange information, send letters, watch movies, listen to music, express personal opinions, and so on. However, the function of the Internet is far greater than what can be listed. From the very first years when the Internet became ubiquitous, the European Union (EU) assessed the Internet as a source to provide revolutionary services, including all features of information technology, telecommunications, and television technology. The Internet can promote basic features such as¹¹ store huge amounts of data, including both traditional and non-traditional works (e.g., software). Data may also include multimedia products, that is, a combination of different literary and artistic forms such as paintings, pictures, music, etc. The range of services that can be provided from the Internet is extremely diverse, from remote work, online banking,

⁶ Van Coppenhagen V, 'Copyright and the WIPO Copyright Treaty, with specific reference to the rights applicable in a digital environment and the protection of technological measures' (2002) 119 S. African L.J. 429, 430-431.

⁷ Gall D, Hirst D, in An Overview of the Changing Role of the Systems Librarian, 2010.

⁸ <<https://www.livescience.com/20727-internet-history.html>>.

⁹ TCP/IP stands for Transmission Control Protocol/Internet Protocol. TCP/IP controls communication between all computers on the Internet. More specifically, TCP/IP specifies how information is encapsulated (also known as packets), sent and received by computers that are connected to each other. TCP/IP was developed in 1978 by Bob Kahn and Vint Cerf.

¹⁰ Commission, 'Green paper on Copyright and Related Rights in the Information Society' COM (95) 382 final, 19- 20.

¹¹ Ibid.

online shopping, electronic journalism, entertainment, libraries, distance education programs, online betting, distance travel, etc. The areas in which the Internet can be used are very diverse, including most areas in which people participate in daily life, for example work, information and training, online shopping, monitoring, healthcare, and entertainment.

Now, services from the Internet can be delivered interactively, meaning that each end-to-end service user can receive different service content. This is different from the traditional TV service delivery method, which means fixed service content from the centre and all end-to-end users receive the same service content.

b) Challenges to Copyright Protection in the Digital Age or Environment

With such characteristics, the digital environment has been having a profound impact on the field of copyright protection. On the positive side, it can be stated that the digital environment has contributed to the promotion of literary and artistic works more widely and directly to the public. With the significant features of the Internet and computer software, literary and artistic works can also be adapted in a convenient and creative way, thereby bringing more benefits to the creators. However, besides the positive points, the digital environment also poses many challenges from many dimensions and aspects to the specific copyright protection issue mentioned below.

National and international laws on copyright protection are built on a separate set of concepts, for example, work, author, term of protection, moral rights, property rights, etc. The presence of the digital environment is unlikely to change the perception of the nature of these concepts. The European Commission indicated in the early years of the new global network that the digital environment could have significant impacts on the interpretation of such concepts¹².

First, the concept of 'author' can be interpreted more broadly in the digital environment. In the traditional approach, creators are often understood as natural persons, for example, a painter making a painting, a writer writing a novel, a musician composing a song. If the 'author' is a group of people, it is also a collection of natural persons. In the digital environment, it is possible that works are created by many people and follow a chain, a complex process presided over by a legal person. In the production process of a software, it will be difficult to determine how far the efforts of individuals are, and the final product can hardly be created without the organizational efforts of the legal persons, or multimedia products, or works created by the efforts and organization of legal persons. Therefore, legal persons can also become authors of literary and artistic compositions.

Second, the concept of 'originality' is often defined quite easily for traditional literary and artistic works. A novel, a painting or a song is associated with the author's name, and it is easy to determine whether the author is really the person who created the work, or in other words, the entire work is due to the author's name whether the author created it or not. However, a multimedia work may be created on the basis of a composite of works or parts of other works. In that case, it would be a matter of clarifying to what extent the assemblage would be considered original. Thus, the characteristics of a digital work 'make it difficult' to determine its originality.

Third, the concept of *first-time publication* is also difficult to specify in a digital environment. Usually, a work that is made available to the public in a certain country, even a location in a certain country will be considered a work published in that country. However, the digital environment is borderless and not the usual physical environment. The boundary between private and public space in a digital environment is also tough to distinguish. Therefore, it is hard to use traditional methods to identify a digital work that is first-time published in the digital

¹² Id, pg. 25.

environment.

With the development of analogue technology, there were new types of literary and artistic works that needed copyright protection, for example, recorded songs, radio and television programs, works of photography, cinematographic products, etc. Similarly, in the digital era, a number of fresh and unprecedented works, such as multimedia products and computer software, have appeared. These products are clearly intellectual, inventive, and original; therefore, they must be subjected to IP protection. However, the classification of these objects into literary or artistic works to be protected by copyright, or creative technical products to be protected by inventions or utility solutions, is complicated.

In the digital environment, all IP rights are more susceptible to infringement than in the conventional environment. But copyright is the most vulnerable right. Therefore, one of the biggest challenges for copyright protection in the digital age lies in the issue of infringement.

The history of the establishment and development of copyright as presented above shows that every time science and technology develop, they pose new challenges to the issue of copyright protection, and copyright protection law must change to meet these difficulties. With the adoption of digital technology and the advent of the Internet, the challenges of copyright protection have been raised with an unprecedented degree of concern. Copyright infringement can now be done easily over a large scale making it difficult to detect. The Internet now has billions of users and with just one click, countless users can access copies on the net. Copy operation can be done quickly and secretly without anyone being able to detect and prevent it.

In addition to allowing the exact reproduction of the original, digital technology also allows users to edit and adapt works, making it difficult to distinguish between

original works and edited ones as they circulate freely on the Internet. Therefore, it is very challenging for authors to ensure the integrity of their creations. Moreover, the widespread presence of the Internet and digital technology also makes it troublesome for authors and copyright holders to control the use and storage of other subjects' works.

In particular, in the digital environment, there are also acts of copyright infringement that have never existed before, thereby making it difficult to develop laws to regulate, detect and handle violations. If a network company creates a website that allows users to share music and movie files themselves, would that be a copyright violation? Or suppose that an Internet service company has an online newspaper as a client with its own server. That online newspaper, without permission, translates an article of another online newspaper abroad and saves it on its own server. However, every time a user reads an article in the online newspaper, the article must be uploaded to the Random Access Memory (RAM) cache provided by the Internet service company. So, is the act of temporarily storing that article on the RAM of the Internet service company considered a copyright infringement? These are just two of many examples of new forms of copyright infringement emerging in the digital environment¹³.

It is clear that the digital environment presents enormous and multidimensional challenges to copyright protection. These matters have been occurring with the popularity and rapid growth of the digital life. International laws, as well as national laws, have made certain efforts to compete with these challenges in recent times. The introduction of new international treaties on copyright protection, such as the WIPO Copyright Treaty (WCT) or the WIPO Performance and Phonogram Treaty (WPPT), along with new laws in the countries, is a sign of such efforts.

¹³ Kaplan (n 3).

2. CURRENT VIETNAMESE LAW ON COPYRIGHT PROTECTION IN THE DIGITAL ENVIRONMENT

Faced with the great challenges that the digital environment poses in the field of copyright, it is necessary to have new perspectives and methods in copyright protection, so that it is suitable for the continuous development of science and technology and still ensures the traditional legal values. Recognizing this issue, Viet Nam's copyright law in recent years has always had additional amendments to effectively protect copyright in general, and copyright in the digital environment in particular. However, unlike some countries in the world, Viet Nam does not have its legal documents to protect copyright in the digital environment¹⁴. This means that copyright protection documents are generally applied to protect copyright in the digital environment, typically the following documents:

- The Intellectual Property Law No. 50/2005/QH11 dated 29 November 2005, as amended by the Law Amending and Supplementing a Number of Articles of the Intellectual Property No. 36/2009/QH12 dated 19 June 2009;
- Decree 22/2018/ND-CP of the government issued on 23 February 2018 detailing a number of articles and measures to implement the 2005 Intellectual Property Law and the 2009 Law Amending and Supplementing a Number of Articles of the Intellectual Property in terms of copyright and related rights;
- Decree 100/2006/ND-CP of the government issued on 21 September 2006 detailing and guiding the implementation of a number of articles of the Civil Code, the Intellectual Property Law regarding copyright and related rights;
- Decree 85/2011/ND-CP of the government issued on 20 September 2011 amending and supplementing a number of articles of

Decree 100/2006/ND-CP of the government issued on 21 September 2006 detailing and guiding the implementation of a number of articles of the Civil Code and the Intellectual Property Law regarding copyright and related rights;

- Decree 131/2013/ND-CP of the government issued on 16 October 2013 on sanctioning of administrative violations of copyright and related rights;
- Decree 28/2017/ND-CP of the government issued on 20 March 2017 amending and supplementing a number of articles of the government's Decree 131/2013/ND-CP dated 16 October 2013 on handling penalties for administrative violations of copyright and related rights and the government's Decree 158/2013/ND-CP dated 12 November 2013 on sanctioning of administrative violations in the field of culture and sports, tourism and advertising;
- Joint Circular No. 07/2012/TTLT-BTTTT-BVHTTDL dated 19 June 2012 of the Ministry of Information and Communications and the Ministry of Culture, Sports and Tourism stipulating the responsibilities of intermediary enterprises in the protection of copyright and related rights in the Internet network environment and telecommunications network;
- Some other relevant documents: 2015 Civil Code; 2015 Civil Procedure Code; 2015 Penal Code (amended and supplemented 2017); 2015 Customs Law and others.

A. OBJECTS OF COPYRIGHT PROTECTION IN THE DIGITAL ENVIRONMENT

According to Article 14 of the 2005 Intellectual Property Law, objects entitled to copyright protection in the digital environment are: literary works, science, textbooks, curriculums, and other works shown in writing or other

¹⁴ In France, it is "Creation and Internet Law" of 2010; in Europe, it is "Directive on the coordination of certain aspects of copyright and related

rights in 2001"; In the US, it is "Act on the digital millennium copyright in 1998".

characters; lectures, speeches, and other talks; press works; musical works; theatre works; cinematographic works and works created by a similar method; visual and applied art works; photographic works; architectural works; plans, diagrams, maps, drawings related to topography, scientific works; literary and folk art works; computer programs, data collections; a derivative work is protected provided it does not prejudice the copyright in the work used to make the derivative work.

B. COPYRIGHT HOLDER IN THE DIGITAL ENVIRONMENT

In principle, all copyright holders in the traditional environment are also in the digital environment, including authors and copyright holders. An author is a person who directly creates literary works, art and science with intellectual labour and creativity through the use of supporting tools to express works such as drawings, images, sounds, language, shape movement, colour. The work bears the author's personal imprint, most clearly expressing the thoughts, ideas, and purposes that the author wants to convey to people through his works. Article 8 of Decree 100/2006/ND-CP, Article 6 of Decree 22/2018/ND-CP states:

An author is a person who directly creates part or the whole of a literary work, art, science.

According to Article 36 of the 2005 Intellectual Property Law, a copyright owner is:

An organization or individual holding one, several or all of the property rights specified in Article 20 of this Law.

On that basis, the people who is the owner of the copyright for works in the digital environment will be in the cases specified in Articles 36 to 42 of the

2005 Intellectual Property Law, specifically: The one is individuals and organizations that use their time, finance, material and technical facilities to create works¹⁵; Copyright holders is an individual or organization that concludes a contract or assigns tasks to the author of the work¹⁶; Copyright holders are individuals or organizations that inherit property according to the law on inheritance¹⁷; Copyright holders are individuals or organizations that are consigned copyright¹⁸; Copyright holder is the State¹⁹.

C. CONTENTS OF COPYRIGHT IN THE DIGITAL ENVIRONMENT

Copyright in the digital environment includes two groups: moral rights and property rights. These are the exclusive rights on the procedures and conditions of exploitation and use of the work in different forms and methods prescribed by law. In Viet Nam, the moral rights and property rights of authors are recognized in Articles 19 and 20 of the 2005 Intellectual Property Law. This contains many specific provisions of copyright in the digital environment. Accordingly, many rights of authors have been expanded by Vietnamese law in both scope and content to suit the development of science and technology such as the right to publish works, the right to copy, the right to communicate works to the public, and the right to lease both copies and originals of the works and others.

- a) **Moral rights:** Moral rights are very personal, so they become associated permanently with the author (indefinitely protected) and cannot be transferred (except for some exceptions)²⁰, including the right to name the author, right to put his name on the work, right to publish or permit others to publish, right to protect the entire work, right to not allow other users to modify, mutilate, or deform it in any way undesirable to the author's honour and

¹⁵ Intellectual Property Law, Articles 21(2) and 38.

¹⁶ Id, Article 39.

¹⁷ Id, Article 40.

¹⁸ Intellectual Property Law, Article 41.

¹⁹ Id, Article 42.

²⁰ Id, Article 19.

reputation.

Among the above rights, the right to publish a work is a right that is permitted by law to be transferred. Publication of a work is understood as the release of copies of a work to the public, in a quantity sufficient to meet the reasonable needs of the public, depending on the nature of the work, with the consent of the copyright owner²¹. When the work is created, it will be brought to the public, through which the public knows the author and the work. As a result, publishing the work on the Internet without the agreement of the author is an infringement of the moral rights of the author. On the other hand, the author's permission to publish his work does not mean that the author allows publication on the Internet. In the digital environment, the right of publication, which is one of the rights of an author, is most susceptible to infringement. Because once it is allowed to publish works on the Internet, the spread and dissemination of works via the Internet will be beyond the author's control.

b) Property rights: Property rights offer authors and copyright holders the exclusive right to exploit, permit or forbid others to exploit, and obtain material benefits from the exploitation of their works. Property rights are transferable and protected in a certain period depending on the type of work²². According to Article 20 of the 2005 Intellectual Property Law, the group of property rights includes the following specific ones:

i. **The right to make derivative works:** The right to create works from other people's works, including works translated from one language into another, works adapted, compiled, annotated, and selected. The creator of a derivative work

is the author of that work and is protected only in accordance with the law if it does not prejudice the copyright of the work used to make the derivative work²³.

ii. **The right to perform works in public:** The right granted by the copyright owner to exclusively exercise or permit others to perform the performance of the work directly or indirectly through phonogram, recording programs, image, or any other technical means accessible to the public including the performance of the work anywhere except at home²⁴. With this provision, the right to perform includes live performance in front of the public (such as musical performances at the theatre, storytelling, poem-reciting on radio, television, etc.) or indirect performances through audio and video recordings that are played through compatible devices at public locations (such as airplanes, discos, supermarkets, hotels, restaurants, karaoke services, etc.). In the digital environment, performance rights are mainly exercised indirectly, so the recognition of this content in Vietnamese law also shows the specificity of copyright in the digital environment.

iii. **The right to copy works:** The right to copy is the most important right in the group of property rights (economic rights) of the author. Compared to other copyright, the right to copy is among the most vulnerable to infringement in the digital environment. According to Clause 10, Article 4 of the 2005 Intellectual Property Law, the 'copying' of a work means making one or more copies of the work or

²¹ Decree 22/2018/ND-CP, Article 20.2.

²² For literary works is the lifetime of the author, plus 50 years after the author's death, cinematic works are 50 years from publication, photography is 25 years since publication.

²³ Intellectual Property Law (n 13), Article 14(2).

²⁴ Decree 100/2006 Detailing and guiding the implementation of a number of articles of the Civil Code and the Intellectual Property Law regarding copyright and related rights, Article 23.

the phonogram, the recording of the work by any means and in any form, including electronic form. Thus, the act of copying a work in the digital environment no longer stops at tangible copying (by photocopying technique) but extends to electronic forms by any means, regardless of whether it is permanent or temporary storage. Thus, a 'copy of a work' is a direct or indirect reproduction of a part or all of the work. Therefore, the creation of an important part or the entire work in the computer cache or in the process of transmission over the Internet constitutes an act of copying the work and is subject to the exclusive permission of the copyright holder. Clause 2, Article 23 of Decree 100/2006/ND-CP concretizes this content as follows:

Copying is the right of the copyright holder to have the exclusive right to perform or permit others to make copies of the work by any means or form, including permanent or temporary storage of the work in electronic form.

This regulation shows the specificity of the right to copy in the digital environment. However, this provision has been amended by Article 5 of Decree 85/2011/ND-CP. The amended provision is as follows:

The right to copy is one of the property rights belonging to the author's exclusive right, which the owner performs or allows others to make copies of the work by any means or form, including making copies in electronic form.

The amendment in Decree 85/2011/ND-CP, omits the

temporary copy, which means that the **temporary copy** is not under the exclusive control of the copyright holder.

Decree 22/2018/ND-CP continued the provisions of Clause 2, Article 21 as follows:

The right to copy a work specified at Point c, Clause 1, Article 20 of the 2005 Intellectual Property Law is the right of the copyright owner to exclusively perform or permit others to make copies of the work by any means by any forms, including making copies in electronic form.

This is an issue that currently has many different viewpoints, with split opinions among scholars in the world as well as in Viet Nam.

- iv. **The right to distribute and import copies and original works:** It is the exclusive right of the copyright holder²⁵ to distribute works or to allow third parties to perform the distribution of authors' works by any forms or technical means accessible to the public for sale, rental or other transfer of the original or a copy of the work, including the transmission of copies of the work on the Internet.
- v. **The right to communicate works to the public by wireline, radio, electronic information networks or any other technical means:** It is the exclusive right of the copyright holder²⁶ to perform or to allow others to make the work or copies of the work accessible to the public at a place and time of their own selection. The act of communicating work may or may not accompany copying of the work, so a right of transmission is a right that may include a right to copy and a right to distribute or publish work in the digital

²⁵ Point d, Clause 1, Article 20 of the 2005 Intellectual Property Law; Clause 3, Article 23 of Decree 100/2006; Clause 3, Article 21 of Decree 22/2018/ND-CP.

²⁶ Point d, Clause 1, Article 20 of the 2005 Intellectual Property Law; Clause 4, Article 23 of Decree 100/2006/ND-CP; Clause 3, Article 21 of Decree 22/2018/ND-CP.

environment. This regulation is important for copyright protection in the digital environment, whereby a work that is communicated to the public without the consent of the copyright owner will be considered a copyright infringement, even if the work is communicated via the internet or similar networks.

vi. **The right to lease the original, or copies of works, computer programs:**

Accordingly, the right to lease the original or copies of the work will be made exclusively by the copyright holder or authorized by others for limited use. Before the advent of the Internet, copying became extremely easy. The provisions of Vietnamese law²⁷ aim expanding the rights of copyright holders. Accordingly, the copyright owner has the right to lease not only the original, but also its copies. However, the right to lease does not apply to a computer program when the program itself is not the principal object of the lease, such as a computer program associated with the normal operation of vehicles as well as other machinery and technical equipment. The lessee is responsible for applying for permission and making payments to the copyright owner in accordance with Clause 3, Article 20 of the 2005 Intellectual Property Law.

The abovementioned property rights and moral rights automatically arise as soon as the work is formed in a certain material form. Organizations and individuals that exploit and use works must fulfil their legal obligations towards authors and copyright holders. Copyright holders are entitled to royalties, remuneration and other material benefits arising from allowing other

organizations and individuals to exploit and use their works. However, in order to balance the interests between the author/copyright holder and the community's interests, Article 25 of the 2005 Intellectual Property Law stipulates the cases in which the subjects are allowed to use the work but do not have to apply for it and without paying remuneration to the author or copyright holder, particularly:

- Self-reproducing a copy for the purpose of personal research and teaching;
- Reasonably citing the work without misrepresenting the author's intention to comment or illustrate in his work;
- Quoting works without falsifying the author's intention to write newspapers, use in periodical publications, in radio and television programs, documentaries;
- Quoting works for teaching in schools without distorting the author's intention, not for commercial purposes;
- Importing copies of other people's work for private use.

D. COPYRIGHT INFRINGEMENT IN THE DIGITAL ENVIRONMENT

In the digital environment, copyright infringement acts are performed simply and smoothly in many different ways. According to Article 28 of the 2005 Intellectual Property Law and Article 7 of Decree 105/2006/ND-CP, the acts of copyright infringement are regulated rather specifically and include many different acts. As a result, there are acts of copyright infringement in general and acts that are considered characteristic of copyright infringement in the digital environment.

- **Acts of copyright infringement in general:** Appropriating copyright; Impersonating the author; Publishing and distributing works without

²⁷ Point e, Clause 1, Article 20 of the 2005 Intellectual Property Law; Clause 5, Article 23 of Decree 100/2006/ND-CP; Clause 5, Article 21 of Decree 22/2018/ND-CP.

the author's permission; Publishing and distributing works with co-authors without permission of such co-authors; Modifying, mutilating or misrepresenting the work in any way that is prejudicial to the honour and reputation of the author; Releasing the work without the permission of the author, the copyright owner; Copying more than one copy of a work without the purpose of teaching or scientific research; Using the work without the permission of the copyright owner, without paying royalties, remuneration or other material benefits as prescribed by law; Leasing the work without paying royalties, remuneration and other material benefits to the author or copyright holder; and Exporting, importing, distributing copies of works without the permission of the copyright owner.

- **Typical acts of copyright infringement in the digital environment:** Duplicating, reproducing, distributing, displaying or communicating works to the public through communication networks and digital media without the permission of the copyright owner; Attempting to cancel or disable technical measures taken by the author to protect the copyright of his work; Attempting to delete, change the right to manage information in electronic form; and Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment despite knowing or having grounds to know that such equipment invalidates technical measures taken by the author to protect the copyright.

In addition, Clause 5, Article 5 of the Joint Circular No. 07/2012/TTLT-BTTTT-BVHTTDL clearly stipulates that intermediary service providers²⁸ must also be responsible when performing the following acts:

An intermediary service provider is directly

responsible for compensation for damage caused by copyright infringement in accordance with the law in the following cases:

- a) Being the starting source for posting and transmitting or providing digital information content via telecommunications networks and the Internet without the permission of the right holder;
- b) Modifying, mutilating, copying digital information content in any form without permission of the right holder;
- c) Deliberately cancelling or nullifying technical measures taken by the right holder to protect copyright and related rights;
- d) Acting as a secondary distribution source of digital information content obtained by infringing upon copyright and related rights.

Thus, compared with the traditional environment, copyright infringement acts in the digital environment are often associated with the use of high-tech measures. These acts not only originate from individuals or groups intentionally or unintentionally infringing, but intermediary service providers are also directly responsible for copyright infringement in the digital environment.

E. MEASURES TO PROTECT COPYRIGHT IN THE DIGITAL ENVIRONMENT

Vietnamese law provides various measures to protect the legitimate rights and interests of authors in the traditional environment as well as in the digital environment. These measures can be divided into two groups:

- a) **Application of technological measures on the**

services, digital information storage space rental services, including storage space to rent website hosting.

²⁸ Intermediary services include telecommunications services, Internet services, online social networking services, digital information search

part of the author and the right holder

This is a typical way to protect copyright in the digital environment. Clause 1, Article 198 of 2005 Intellectual Property Law stipulates that authors and copyright holders have the right to apply technological measures to prevent acts of infringement of their IP rights. The application of technological measures as specified in Article 43 of Decree 100/2006/ND-CP and Clause 2, Article 21 of Decree 105/2006/ND-CP means that authors who hold the copyright in work have the right to include the rights management information associated with the original or the copy of the work to identify the author's own imprint. Such as, the author's full name, the copyright owner of the work; personal address, email address of the author; the author's distinctive symbols such as drawings, codes, symbols, logos, completion time of work, full names of other individuals and organizations participating in the creation of the work etc.

Rights management information appears with the publication and communication of a work to the public in order to identify the work, the author of the work, the holder of the rights, information on the terms and conditions of use of the work, and any figures or codes or symbols representing such information for copyright protection. At the same time, right holders can apply high-tech measures (such as COP-Illegal content obstruction program) to prevent unlawful acts of accessing works or illegally exploitation of copyright under the law.

Thus, according to Vietnamese law, through advanced technical methods, authors and copyright holders can update and disseminate information related to themselves on the work to affirm that it is their work and is protected by copyright. Technological measures and rights management information shall be freely chosen by the author and the copyright holder as appropriate for each type of work.

b) Legal measures taken by competent state agencies

- **Civil remedies:** Civil remedies are applied both in the traditional environment and the digital one. Article 202 of the 2005 Intellectual Property Law stipulates that the court shall apply civil measures to handle organizations and individuals that commit acts of copyright infringement, including:

i) Forced termination of infringing acts:

Authors and copyright holders can either themselves or through the Court request the infringer to stop their infringing acts as soon as they discover the infringing acts. The request to stop infringing acts in the digital environment is manifested with a request to remove the work from the *web* or not to make the work public. Nevertheless, specific procedures for removing infringing work from the website have not been specified, such as how long does the request take? Or if there is a delay in removing infringing work, who will be responsible for it?

ii) Forced public apology and rectification:

Similar to the right to request an end to infringement, authors and copyright holders can themselves request an apology and rectification from the infringer publicly or through the court to issue a legally binding judgment against the infringer. The person who commits the infringing act must apologize and rectify it through public means of media such as newspapers, online newspapers, television and radio channels, or on personal websites, websites where the infringing acts are performed.

iii) Compulsory performance of a civil obligation:

When an infringer uses a protected work without asking the

copyright owner's permission, the owner has the right to request this person to perform the obligation to pay a sum for the use of the work from the time of use. In the traditional environment, a copyright owner can require the infringer to pay royalties for distributing his or her work. Additionally, if the work is not removed from the infringing website, the copyright owner will negotiate through the copyright collective management organizations (CMOs) and ask them to fulfil the obligation to pay royalties.

iv) Forced compensation for damages:

Claims for damages caused by copyright infringement in general and in the digital environment are only applied in practice when the author or copyright owner proves the infringement and that there is a cause-effect relationship between the infringement and the damage occurred. Accordingly, when infringers commit such acts, intentionally or unintentionally, as specified in Article 28 of the 2005 Intellectual Property Law and cause damage to the copyright holders, they are obliged to pay compensation. However, proving physical and mental damage caused in the digital environment is challenging for authors and copyright holders. In addition, Vietnamese law does not have specific provisions for determining the level of physical and mental damage to authors in the digital environment, so it will be hard to give appropriate compensation to deter subjects from committing acts of copyright infringement in the digital environment.

v) Administrative measures: Copyright infringement (in the traditional or digital

environment) is essentially a violation of the law on State management in the field of IP and affects the interests of copyright holders, the interests of consumers and creates negative effects on the social community, so this action can be sanctioned for administrative violations according to the provisions of Vietnamese law.

Decree 131/2013/ND-CP and Decree 174/2013/ND-CP, dated 13 November 2013, regulating 'Sanctions for administrative violations in the field of post and telecommunications, information technology and radio frequencies', are two legal documents specifying administrative measures applied to copyright infringement acts, including ones in the digital environment. Faced with the fact that copyright infringement acts in the digital environment are being carried out quite easily, the above legal documents have increased the level of penalties for copyright infringement acts. Accordingly, for individuals who commit acts of copyright infringement, two main forms of sanction can be applied: warning and fine²⁹. As for the fine, the maximum amount is VND 500,000,000 depending on the nature and seriousness of the violation. This shows the seriousness and deterrence of Vietnamese law against acts of copyright infringement. In addition, violators may also be subjected to additional sanctions and other remedial measures in the digital environment (such as requests to remove the unauthorized works in electronic form). However, like civil remedies, currently Vietnamese law does not have specific provisions in sanctioning acts of copyright infringement in the digital environment.

- **Criminal remedies:** Acts of copyright infringement on the Internet are common and diverse and, in many cases, cause great physical and mental damage to the authors and copyright holders, which administrative measures and civil

²⁹ Intellectual Property Law (n 13), Article 214.

remedies are not strong enough to deter and punish. The 2015 Penal Code has new regulations with severe penalties to deter and punish those who commit acts of copyright infringement in the digital environment. In addition to increasing the fine level for copyright infringement acts, another new point of the 2015 Penal Code is clearly stipulating the measures taken by commercial legal entities when handling infringement of copyright and other related rights. In fact, commercial legal entities are one of the subjects that disseminate direct or indirect acts of copyright infringement in the digital environment and have full conditions to enforce property sanctions. Therefore, it is completely reasonable to apply strict sanctions on commercial legal entities³⁰.

- **Measures to control goods at the border:** Despite not being directly related to dealing with copyright infringement acts in the digital environment, border control measures have practical implications for preventing copyright-infringing products circulated on the market (such as illegally reproduced tapes and discs, published piracy publications, etc.). In fact, among the products infringing copyright circulating on the market, a few products are caused by copyright infringement acts in the digital environment (such as publishing books **downloaded** from the internet without the author's permission; the release of tapes and discs of music programs downloaded from the internet, etc.).

The main tenor of border control measures is associated with the temporary suspension of customs procedures for goods suspected of infringing upon copyright by customs authorities. Procedures for applying the measure of temporary suspension of customs procedures are specified in Article 218 of the 2005 Intellectual Property Law and the 2015 Customs Law. When the

requester suspends customs procedures, the customs authority shall issue a decision to suspend customs procedures for the shipment. When it is proved that imported and exported goods infringe copyright, the customs authorities have the right to destroy, without compensation, the whole of such goods. This is an effective measure to prevent goods infringing on IP rights from circulating on the Vietnamese market.

3. THE ACTUALITY OF COPYRIGHT PROTECTION IN THE DIGITAL ENVIRONMENT IN VIET NAM

The main feature of copyright infringement is that it is very easy to do but has great benefits, especially in today's digital environment. From that fact, the measures for handling copyright infringement acts in the digital environment according to the provisions of current Vietnamese law are tougher and stronger than before. For example, the fine level is higher, and the sanctions are also more severe. However, this is not enough to effectively prevent copyright infringement acts in the digital environment in Viet Nam today. This actuality can be summarized in two main characteristics:

Firstly, copyright infringement acts in the digital environment are very common in most fields and difficult to control.

In the digital environment, acts of copyright infringement are very typical in all types of works that are subject to copyright. For example, some specific areas are as follows:

A. IN TERMS OF THE FILM INDUSTRY

It is shown that with just a few simple steps, subjects with basic information technology knowledge can build their own website and provide direct links that lead to other online movie sites or upload it to the website to watch movies for free. Users who do not need to register as a member of the website can still watch movies online

³⁰ Penal Code, Article 225.

without having to pay and choose the quality of SD, HD, Full HD, or 3D movies. To go to cinemas today, it will cost about VND 50,000 to VND 150,000 for a movie ticket/person with international standard sound quality, screen and blockbuster movies released in Viet Nam for the first time. However, just sitting at home with an Internet-connected computer or a 'smartphone' with an Internet connection, just a few days after the movie was shown in theatres, users are able to enjoy those movies. Thus, consumers benefit from watching movies online for free on websites, and the creators of websites also reap huge profits thanks to the increasing views. At the seminar, protecting film and television copyright, held in June 2015 in Ho Chi Minh City, within the framework of the international exhibition, Vietnamese film and television technology, 2015 statistics show that: '30%-40% of movies are now distributed online right after their release'³¹. According to the inspection report of the Ministry of Culture, Sports and Tourism³², from 2007 to now, the situation of copyright infringement for cinematic works on the Internet has taken place on an increasingly large scale, focusing on the type of movies shown in theatres and foreign movies.

B. IN THE FIELD OF PUBLICATIONS

If making pirated books needs to go through many time-consuming stages such as copying, printing, or publishing, then for works that spread on the internet, copying out many versions is extremely simple and hardly takes much effort and time. E-book sharing websites with famous names such as, *thuvienbook.com*, *vnthuquan.com*, *songhuong.com.vn*, *ebook4u.vn*, *sahara.vn*, and others regularly upload useful books on the Internet, thereby attracting numerous domestic customers. These illegal electronic publications are often available on the internet only a few days after their print release. The number of literary works fully published on these websites is fairly

large.

C. IN RESPECT OF COMPUTER SOFTWARE

According to the statistics of Microsoft and Vietnamese software companies, pirated computer software in Vietnam accounts for more than 98% – an overwhelming number compared to the world average rate of approximately 50% of computer software is pirated³³. The current state of copyright infringement on computer software in Viet Nam mainly focuses on the following forms:

a) Softlifting

'Softlifting' is the term used when a person purchases a licensed copy for one person's use only of a program but that person uploads it to multiple machines for multiple users³⁴. In today's digital environment, softlifting is the most common type of intrusion and probably the easiest way to implement.

b) No Restrictions on Client Access

The infringement by not restricting client access occurs when a copy of a software program is copied to an organization's server and that organization's client system is allowed to freely access that software. This violates the owner's IP rights in the software. Additionally, violations occur when an organization has a single license that allows the installation of software to a single machine, but the organization allows the clients to access the software freely, free of charge, without the permission of the owner.

c) Preload in Hard Drive

Preload in hard drive occurs when an individual or company selling the computers installs on the computers to copy the software and sells it without the owner's

³¹ Film and television copyright protection, <<http://telefilm.vn/tin-tuc-n/telefilm-2016-bao-ve-ban-quyen-dien-anh-va-truyen-hinh-ct311>> accessed 15 March 2021.

³² <<https://bvhttdl.gov.vn/bo-vhttdl-ban-hanh-van-ban-thong-nhat-hoat-dong-thanh-tra-617830.htm>> accessed 1 March 2022.

³³ Copyright infringement with computer programs in Viet Nam and

handling of copyright infringement with computer programs in Viet Nam today, <<http://luatsu.vn.com/xam-pham-quyen-tac-Gia-voi-chuong-trinh-may-tinh-ctmt-tai-viet-nam-va-cong-tac-xu-ly-xam-pham-quyen-tac-gia-voi-ctmt-o-vn-hien-today/>> accessed 12 March 2021.

³⁴ Prof. Dr. Vu Thi Hai Yen, Textbook of Hanoi Law University 2021, p. 53.

permission³⁵. This violation is very commonly done by the selling-computer company to encourage buyers.

Secondly, the authorities face many difficulties in detecting and handling copyright infringement acts in the digital environment.

In the digital environment, copyright infringement cases are accomplished by several new methods and tricks such as applying high technology, using modern equipment to edit, distort and change the content of the original script, creating many different works that make it challenging for the public to distinguish which is the original one. This phenomenon causes physical and mental damage to the author or owners of the work – people who have to spend a large amount of money to create works to send to the public. In fact, it is not that the authorities are unaware of the rampant status as well as the harmful effects of piracy in the digital environment. However, this is a new form of violation, the area of violation is virtual and wide. In addition, the sanctions are not kept up with reality and are not deterrent enough, making violations become increasingly public and blatant.

There are a number of reasons why authorities have difficulty in detecting and handling copyright infringement acts in the digital environment, which are:

- (i) It is difficult to prove copyright infringement in the digital environment; It is hard to determine the damage because usually the information and content of works put on the digital environment is not intended to collect fees for readers and viewers, but mainly to attract advertising and collect money from advertising.
- (ii) Upon detecting copyright infringement, website administrators can easily and quickly remove and destroy infringing information.
- (iii) The authorities do not have high expertise and depth in the field of copyright protection, especially copyright protection in the digital

environment.

- (iv) The person who has been infringed or infringed upon copyright has not requested the proper competent authority to settle to protect his/her interests.
- (v) There are no specific sanctions in handling copyright infringement acts in the digital environment.

4. PROPOSING SOLUTIONS TO IMPROVE VIETNAMESE LAW ON COPYRIGHT PROTECTION IN THE DIGITAL ENVIRONMENT

From the overview of the law and the current situation of copyright infringement in the digital environment in Viet Nam, the author finds that it is necessary to improve the Vietnamese law on the following points:

A. ENACTING NEW LEGISLATION OR AMENDING EXISTING LEGISLATION ON COPYRIGHT PROTECTION IN THE DIGITAL ENVIRONMENT.

Currently, regulations on copyright protection in general and regulations on copyright protection in the digital environment, in particular, are generally stipulated in the 2005 Intellectual Property Law together with the adjustment of other relations on IP rights (industrial property rights and rights to plant varieties). This leads to the fact that it is very difficult to consult the provisions of the law, especially those specific to copyright protection in the digital environment. The regulations intertwined with the provisions on copyright protection, in general, make the regulations on copyright protection in the digital environment in Viet Nam currently quite faint. The need to issue separate and independent regulations on copyright protection in the digital environment not only is a problem of form and technique but also shows the specificity and difference in copyright protection between traditional and digital environments. This is corresponding to the general trend of the world in this field. However, this is a long-term solution because when

³⁵ Prof.Dr. Vu Thi Hai Yen, Textbook of Hanoi Law University 2021, p. 53.

the copyright protection in the traditional environment in Viet Nam is still quite inadequate, the implementation of this solution is rather early, and not feasible.

The advent and rapid development of technology, or the birth and development of the Internet in detail, leads to the lack of a number of specific provisions in copyright protection in the digital environment in Viet Nam that are currently causing certain difficulties in copyright protection in the digital environment. These are the provisions that Vietnamese law needs to amend and supplement in the near future. Specifically, some of the provisions are as follows:

B. REGARDING TEMPORARY COPYRIGHT

Provisions on temporary copying are recorded in Clause 10, Article 4 of the 2015 Intellectual Property Law; Clause 2, Article 23 of Decree 100/2006/ND-CP, whereby the right to temporary reproduction belongs exclusively to the author and copyright holder. However, according to Decree 85/2011/ND-CP, the creation of temporary copies was not under the exclusive control of the author/copyright holder. In Decree 22/2018/ND-CP, **temporary copies** were not mentioned, more specifically, Clause 2, Article 21 of this Decree stipulates:

The right to copy works provided at Point c, Clause 1, Article 20 of the 2015 Intellectual Property Law is the right of the copyright holder to exclusively perform or permit others to make copies of the work by any means or form, including making copies in electronic form.

This shows the ambiguity in the provisions of Vietnamese law on **temporary copyright**. This is a huge obstacle to identify copyright infringements in the digital environment.

In terms of technology, it is shown that in the digital environment, any object of copyright can be shaped by a

'file', so based on that, the protected object can be identified, copied and communicated to the public. The transmission of data in the current digital environment is carried out by technology called 'packet chaining', using the TCP/IP Internet protocol suite. The consequence of using the above technology is that a 'temporary copy' of data must always be created in the computer's RAM at an intermediate node on the network or in the RAM of the device performing a similar function in the data transfer process³⁶.

In the traditional environment, the right to copy is always associated with tangible copies, and there is a clear line between the use of reproduction-related and non-reproduction-related protected objects. However, in the digital environment, the line between using a protected work attached to a copy and not attached to a copy is blurred because almost every use of a work is always accompanied by copying a protected subject, at least temporarily copy.

The question arises, whether a temporary copy in the digital environment is considered an object of copyright protection? The scope of copyright protection for authors and right holders in the digital environment will be much wider than in the traditional environment if it is protected. Similarly, the restrictions on author rights (allowing to use the work whether the rights holder agree or disagree) will be narrower than in the traditional environment.

In order to determine which **temporary copies** are subject to copyright protection and which "temporary copies" are not, Vietnamese law should provide the basis for the lifetime of the data in 'RAM'. If the lifetime in 'RAM' is too short, the copy is considered 'transitional' only, and then when the computer is powered off and the 'temporary copy' is completely lost, it is not an object protected by copyright. Therefore, the subjects making temporary copies in this situation do not infringe

³⁶ Do Khac Chien, 'On copyright protection in the Internet environment' (Conference on Copyright Protection in the Digital Environment, Viet

Nam, 2014).

copyright.

C. ADD PARTICULAR SANCTIONS TO APPLY TO COPYRIGHT INFRINGEMENT ACTS IN THE DIGITAL ENVIRONMENT

Specifically, the application of compensation for damage and sanction measures for copyright infringement acts in the digital environment needs to show particularity compared to the traditional environment. Compared to the traditional environment, the same violation (for example, illegal copying) in the digital environment brings much greater damage to the right holder. Therefore, the way to determine the damage as well as the calculation of the level of compensation must also clearly show the differences so that it corresponds to the physical and spiritual damage that the right holder may lose due to the act of copyright infringement in the digital environment. Correspondingly, sanctions should be specific to each copyright infringement in the digital environment and be strong enough not only to punish but also to deter subjects performing these acts³⁷. **Clearly define the responsibilities of individuals and organizations providing Internet services in case the subject of copyright is infringed in the digital environment.**

The law needs to clearly define the role of Internet service providers being most important in the distribution of copyright infringing objects in the digital environment. This subject must have responsibilities (civil liability, administrative responsibility, and possibly even criminal liability) before State agencies and right holders, and must have an obligation to coordinate in the handling requests of the right holders to prevent the storage and transmission of copyrighted objects in the digital environment without their permission³⁸.

³⁷ US law provides for very high penalties for illegal copying. Specifically, first-time copyright infringement through the Internet can result in fines of up to USD 500,000 or up to five years in prison. For repeated violations, there may be a fine of USD one million or 10 years in prison. (Mike Masnick (2013), How unlocking your phone may now be a crime: \$500,000 fines and 5 years in prison for first Offense <<https://www.techdirt.com/blog/wireless/articles/20130128/02192521803/how-unlocking-your-phone-may-now-be-crime-500000-fines-5-years-prison-first-offense.shtml>>).

Joint Circular No. 07/2012/TTLT-BTTTT-BVHTTDL stipulates the responsibilities of enterprises providing intermediary services on the Internet. For instance, the right holder must indirectly go through another agency (the Inspector of the Ministry of Information and Communications or the Inspector of the Ministry of Culture, Sports and Tourism or other competent state agencies)³⁹. Therefore, up to now, copyright holders have not been able to directly contact Internet service providers to request the removal of works that infringe copyright on images on the Internet. This is a huge limitation that makes detecting and handling copyright infringements in the digital environment less effective. Additionally, the regulations on removing copies of infringing works in electronic forms in the Internet environment need to be detailed on the technique of the performance, the authority of the performer, and the responsibilities of individuals and organizations involved in removing infringing works from the Internet.

Furthermore, the law needs to clearly specify the joint responsibility for individuals and organizations that facilitate acts of copyright infringement, such as providing broadcasting equipment or encouraging users to record television programs or cinematographic works broadcast on television for later viewing (yet no liability will be imposed if the provider can prove that he did not abet the infringement, or that such violation has no commercial significance)⁴⁰.

5. CONCLUSIONS

Although there is no separate legal document on copyright protection in the digital environment,

³⁸ British law requires ISPs to keep records of the websites their customers visit and the content they download to detect unauthorized copying. ISPs that refuse to cooperate with the Government can be fined up to USD 400,000. (Intellectual Property Office (2009), *Education, enforcement and new business models essential to tackling unlawful filesharing*. <<http://webcache.googleusercontent.com/search?q=cache:Q9vpTJ-Q1-gJ:https://old.ipo.gov.uk/about/press/press-release/press-release-2009/press-release-20091028.htm+&cd=1&hl=vi&ct=clnk&gl=vn>>).

³⁹ Joint Circular No. 07/2012/TTLT-BTTTT-BVHTTDL, Article 5(4).

⁴⁰ Do Khac Chien (n 27).

Vietnamese law has a legal framework for copyright protection in the digital environment. These regulations are the legal basis for right holders and authorities to enforce copyright and protect the rights and legitimate interests of right holders in the digital environment. However, copyright protection in the digital environment is a very new legal area for Viet Nam, so it is inevitable for certain inadequacies to be present in the legal provisions (most obvious is the lack of specific regulations on handling copyright infringements in the digital environment) as well as limitations from protection really need to be further researched and perfected.

BIBLIOGRAPHY

Do Khac Chien (2014), 'On copyright protection in the Internet environment', presentation at the Conference on Copyright protection in the digital environment in Vietnam, Ho Chi Minh City.

European Commission, Green paper on copyright and related rights in the information society, Brussels, 19 July 1995.

Jie Hua J, Toward a more balanced approach: rethinking and readjusting copyright systems in the digital network era, Springer, 2014
Lewis a. Kaplan, Copyright and the Internet, 22 Temp. Envtl. L. & Tech. J. (2003), page 1;
Trisha Meyer, Graduated response in France: The clash of copyright and the Internet, Journal of Information Policy 2 (2012).

Jansen M, Protecting copyright on the internet, 12 Juta's Bus.

Van Copenhagen V, Copyright and the WIPO Copyright Treaty, with specific reference to the rights applicable in a digital environment and the protection of technological measures, 119 S. African L.J. 429, 452 (2002).