

Intellectual Property in the 1995 Civil Law

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According to WIPO, the intellectual property rights refer to ownership of creative ideas including patents, literary and artistic works, names, logos, motifs, pictures and designs used for commercial purposes. These rights include copyrights and industrial property.

Intellectual property law is the system of legal rules dealing with rights to possess and use creative works.

The Vietnamese law also ensures protection for intellectual property rights, from basic principles included in the 1980 Constitutions to more specific rules in the 1992 Constitution. Article 60 of the 1992 Constitution recognizes the right to research and create both material and mental works and affirms the protection by law for possession and use of these works. Particularly, the 1995 Civil Law introduces relatively perfect rules on the intellectual property, after which the State protects: copyrights, industrial property and technology transfer.

1. Copyrights

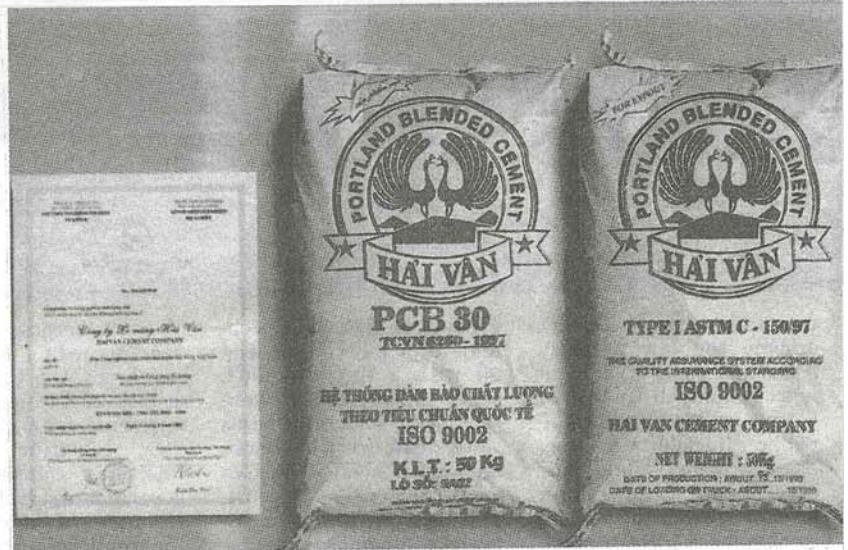
The Civil Law includes in "authors" not only "creators of the whole, or part of, a literary, musical, or artistic products" but also "persons who translate, edit, and adapt works by others; or compile them into anthologies." Their rights have no effects on rights of creators of the original works. The work is the fruit of creative labor by authors which is fixed in a tangible medium, such as on paper, tape, film, canvas, or other materials.

The State recognizes and protects authors' rights to works they created.

The work could be created by one or more individuals who are called collectively as co-authors. Co-authors may be, or may not be, the owner of the work. This has relations to rights recognized and protected by law.

2. Industrial property

While the rights to literary or artistic works relate to mental products that beautify the human life, the industrial property relate to products that are useful to the human life.



The industrial property is considered as civil rights held by individuals or organizations to fruits of their creative labor, such as inventions, industrial designs, trade-marks, brand names, and names of origin of commodity; and rights to prevent violations and unfair competition against persons who created and have legal rights to use these products. The law gives no protection to industrial property objects that are contrary to public order, humanitarian principle and the good for community.

The industrial property objects, or products, are defined rather clearly in the Civil Law:

- Inventions are technical solutions with high creative degrees and applicable to the socioeconomic life (Article 782).

- Useful solutions are new technical solutions applicable to the socioeconomic life (Article 783).

- Industrial designs are outward shapes of a product which are materialized in patterns, shapes, colors, or combinations of these factors, new to the world, and can be used as models for industrial or manual production (Article 784).

- Brand names are signs used for distinguishing products and services of the same classes supplied by different organizations. Brand names can contain words, images, colors, or

any combination of these items (Article 785).

- Names of origin of commodity are geographical names of countries, or places, used for identifying the origin of commodities from that country or place, on condition that these products have specific features and qualities originating from geographical conditions including natural or artificial factors, or any combination of these factors.

The State protects the industrial property right for a limited length of time in which the patent is valid.

Objects of the industrial property can be non-material but they can produce tangible benefit when applied to commerce and production.

3. Technology transfer

Technology transfer includes the buying and selling of technologies based on agreements in compliance with law.

Selling party must supply technical expertise, or machines, equipment, training service, etc. along with the technical expertise to the buying party. The buying must make payment(s) to the selling party to acquire and use machinery and expertise according to terms and conditions included in the agreement (Paragraph 1, Article 2, Decree 45/1998/NĐCP dated July 1, 1998). ■