

TYPICAL CONTENTS OF THE DECREE GUIDING COPYRIGHT AND RELATED RIGHTS

TUE DANG

On April 26, 2023, the Government promulgated Decree 17/2023/ND-CP detailing several provisions and measures for the implementation of the Law on Intellectual Property on copyright and related rights (**Decree 17**), replacing Decree 22/2018/ND-CP, regulations on the protection of copyright and related rights in Decree 105/2006/ND-CP amended and supplemented by Decree 119/2010/ND-CP. Decree 17 potentially creates a significant impact on several parties such as organizations and individuals doing scientific research/academic studies, enterprises doing business in the fields of entertainment, and providing intermediary services. Below are some contents of Decree 17 that should be addressed:

Firstly, Decree 17 specifies several business activities using works, audio, and video recordings for commercial purposes that must pay royalties. Article 34, Decree 17 regulates the **(i)** use of works that have been fixed in audio and video recordings by permission of the copyright holders, or **(ii)** use of published audio and video recordings for commercial purposes in business activities, which means the use of published works, audio and video recordings by organizations or individuals for commercial purposes at restaurants, supermarkets; amusement parks and commercial centers; sport clubs; karaoke establishments; bars, dancing bars; aviation, public transport activities, and other similar business and commercial activities. Many business entities for long have been using music and movies as part of their services offered to customers, yet they have not paid any royalties to the copyright holders, performers, and related right holders owning such works, audio, and video recordings. This adversely affects the legitimate rights and interests of these parties. To ensure the harmonization of the legitimate interests of these entities, Decree 17 stipulates that organizations and individuals using published works, audio and video recordings for commercial purposes *must pay royalties* to the copyright holders, performers, and related right holders owning such audio and video recordings under agreement from the time of their use. The amount of royalties to be paid



is mutually agreed upon by both parties. If no agreement is reached, they must pay the royalties according to the rate schedule specified in Appendix II, Decree 17, or may initiate a lawsuit at the competent Court in accordance with provisions of the law. In addition, organizations and individuals must cease their use of published works, audio, and video recordings if relevant royalties are not paid within 90 days from the date of their use.

Secondly, Decree 17 clarifies the "reasonable" condition of some exceptions that do not infringe copyright, particularly for copying and reciting activities:

- For copying, "reasonable" copying of a part of a published work by a copying device for scientific research, personal study, and non-commercial purposes is reasonably creating no more than one copy of a portion of such work. For works expressed in written form, reproduction by photocopying, photographing, or other similar reproducing forms must not exceed 10% of the total number of pages or total storage units (bytes), the total number of words or content length for the work in electronic format without a split-page layout. If an organization or individual copies more than 10% of the work as mentioned above, such organization or individual must (i) obtain permission from the copyright owner and (ii) pay royalties and other material benefits (if any) to the copyright owner.
- For recitation, the Decree does not quantify any certain rate but provides 03 conditions to evaluate the "reasonability" of recitation (it has one more condition compared to Decree 22/2018/ND-CP), including (i) the recitation is only used to *introduce, comment, or clarify* the issue mentioned in the work, (ii) it must *not unreasonably damage the legitimate* interests of the author or the copyright owner of the recited work; be compatible to the nature and characteristics of the recited work and (iii) it must *include a reference to the source of the*

work and the author's name if the author's name is mentioned in the recited work.

Thirdly, Decree 17 stipulates numerous legal responsibilities for enterprises providing intermediary services. Decree 17 stipulates that enterprises providing intermediary services are those providing one, several, or all of the following three services: (i) mere conduit service, (ii) caching service, (iii) hosting service. This service classification is similar to the regulation on intermediary services in the Digital Services Act of the European Union. Some typical responsibilities of enterprises providing intermediary services to protect copyright and related rights in the telecommunications network and Internet are as follows:

- Build *a tool to receive requests for removing or preventing access to digital information* that infringes copyright and related rights, including computer programs, websites, electronic mailboxes, request-receiving e-portals, and other tools having similar functions;
- Notify *contact points for communications relative to copyright and related rights issues* (at least an email address and contact phone number must be provided) to specialized state authorities of the Ministry of Culture, Sports, and Tourism in charge of copyright and related rights and publicize this information on the website;
- Warn service users about their legal responsibilities if they infringe copyright; *provide user information* when receiving a written request from a competent state authority to serve the verification and handling of copyright and related right infringement;
- *Remove or prevent* access to digital information that infringes copyright or related rights at the request of competent state authorities as prescribed in Article 113, Decree 17, or the right holder as prescribed in Article 114, Decree 17.

COMMENTS AND RECOMMENDATIONS

Decree 17 has ensured more comprehensive protection for the legitimate rights and interests of copyright and related right holders compared to Decree 22/2018/ND-CP, Decree 105/2006/ND-CP, and Decree 119/2010/ND-CP. In addition, it has imposed various legal responsibilities on organizations and individuals using copyrighted objects such as works, audio, and video recordings. Therefore, corporates should pay attention to thoroughly study the provisions of this Decree to ensure full compliance with their obligations and responsibilities, thereby preventing legal risks related to copyright and related rights.