

**SEMINAR**

**LAW ON AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE  
LAW ON INTELLECTUAL PROPERTY**

**New points of the IP Law on protection of  
Trademark – GEOGRAPHICAL  
INDICATIONS**

Hanoi, 16/8/2022

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# I. Trademark

- 1) Sound marks
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- 11) Protection titles

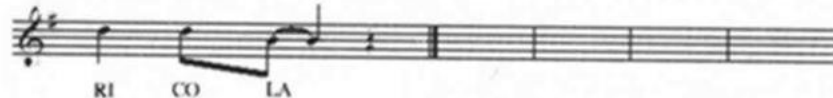
# I. TRADEMARK

## 1) Sound marks

- ❖ Supplementing provisions allowing the protection of sound signs as trademark if able to be represented under graphic form (72.1)

### Article 72. General conditions for marks eligible for protection

1. To be a visible sign in the form of letters, words, pictures, figures, ~~including~~ three dimensional figures or a combination thereof, represented in one or more colors; **or sound signs able to be represented under graphic form;**



# I. TRADEMARK

## 1) Sound marks (cont.)

- ❖ Supplementing sound signs that not protected as marks (73.1)

### Article 73. Signs not protected as marks

*The following signs shall not be protected as marks:*

1. Signs identical with or confusingly similar to ~~image of~~ national flags or national emblems; **National anthem of the Socialist Republic of Vietnam and of other countries; The international anthem;**

Tiến quân ca  
(QUỐC CA)

Nhịp đi - Hùng mạnh & Nhạc và lời: VĂN CAO

Đoàn quân Việt Nam đi chung lòng cứu quốc. Bước chân (Đoàn quân Việt) Nam đi sao vàng phấp phới. Dắt giống

Quốc Tế Ca  
Tác giả: Đỗ Minh

Vùng lên hỡi các nô lệ ở thế gian  
Vùng lên hỡi ai cực khổ bần hàn

L'INTERNATIONALE

Musique de Degeyter Paroles d'Eugène Pottier

De - bout, les damnés de la ter - re De -

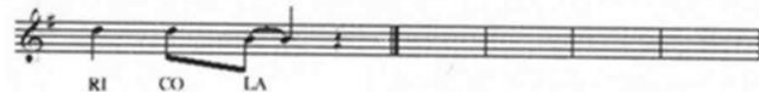
# I. TRADEMARK

## 1) Sound marks (cont.)

- ❖ Supplementing provisions on samples of the mark for sound sign as a sound file and a graphical representation of that sound (105.2)

### Article 105. Requirements on mark registration applications

2. *The sample of the mark must be described in order to clarify elements of the mark and the comprehensive meaning of the mark, if any; where the mark consists of words or phrases of hieroglyphic languages, such words or phrases must be transcribed; where the mark consists of words or phrases in ~~foreign languages~~ languages other than Vietnamese, such words or phrases must be translated into Vietnamese; if the mark is a sound, the mark sample must be a sound file and a graphical representation of that sound.*



# I. TRADEMARK

## 2) Three dimensional trademark

- ❖ Supplementing absolute grounds for three dimensional signs not protected as marks (73.6)

**Article 73. Signs not protected as marks**

***6. Signs are the inherent shape of the goods or because the technical characteristics of the goods are required;;***



# I. TRADEMARK

## 2) Three dimensional trademark (cont.)

- ❖ Supplementing provisions on distinctiveness of three dimensional marks (74.2.b)

### Article 74. Distinctiveness of marks

2. A mark shall be considered as indistinctive if it is a sign or signs falling into one of the following cases:

b/ Conventional signs or symbols, pictures, ~~or~~ common names in any language of goods or services, **the usual shape of the goods or part of the goods, the usual shape of the packaging or containers of the goods** that have been ~~widely and~~ regularly used, ~~known to many people~~ and widely acknowledged before the filing date;



# I. TRADEMARK

## 2) Three dimensional trademark (cont.)

- ❖ Supplementing provisions on distinctiveness of three dimensional marks (74.2.c)

### **Article 74. Distinctiveness of marks**

*2. A mark shall be considered as indistinctive if it is a sign or signs falling into one of the following cases:*

*c/ Signs indicating time, place and method of production, category, quantity, quality, properties, ingredients, intended utility, value or other characteristics, which is descriptive of goods or services **or signs that significantly add value to the goods**, except where such signs have acquired distinctiveness through use before the **time** date of filing **of mark registration applications**;*

# I. TRADEMARK

## 2) Three dimensional trademark (cont.)

- ❖ Supplementing provisions on distinctiveness of three dimensional marks (74.2.n)

### **Article 74. Distinctiveness of marks**

*2. A mark shall be considered as indistinctive if it is a sign or signs falling into one of the following cases:*

*n) Signs identical with or insignificantly different from another person's industrial design **which was or has been** protected on the basis of an industrial design registration application with the filing date or priority date earlier than that of the mark registration application.*

# I. TRADEMARK

## 3) Well known marks

- ❖ Amending Clause 20 Article 4 in the direction of clarifying the scope of the object of opinion when evaluating well known marks

### Article 4. Interpretation of terms

20. A well-known mark means a mark widely known by ~~consumers~~ **the relevant sectors of the public** ~~throughout~~ in the Vietnamese territory.

- ❖ Technically amending the opening sentence of Article 75 in the direction of clarifying the flexible use of well known mark evaluation criteria

### Article 75. Criteria for evaluation of well known marks

~~The following criteria shall be taken into account when a mark is considered well known:~~ **The consideration and evaluation of a mark as well known is selected from some or all of the following criteria:**

# I. TRADEMARK

## 4) Integrated trademark

- ❖ Drop the concept of “Integrated trademark” in Article 4.19 and Article 74.2.e

### Article 4. Interpretation of terms

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

### Article 74. Distinctiveness of marks

2. A mark shall be considered as indistinctive if it is a sign or signs falling into one of the following cases:

e/ Signs ~~other than integrated marks~~ which are identical with or confusingly similar to ~~registered~~ **protected** marks **of other organizations or individuals** of identical or similar goods or services on the basis of registration applications with earlier filing dates or priority dates, as applicable...

# I. TRADEMARK

## 5) Publication of trademark registration application

- ❖ Amending the title of Article 110 and supplementing Clause 1a on obligation of publication of trademark registration application immediately upon receipt

**Article 110. *Publication of trademark registration application, ~~Publication~~ publication* of industrial property registration applications**

***1a. A trademark registration application that has not been duly accepted by the State management agency on industrial property shall be made public immediately upon receipt.***

# I. TRADEMARK

## 6) Opposition against trademark registration applications

- ❖ Supplementing provisions of Article 112a.1.c on a third party files an opposition against trademark registration application shall submit proofs; pay charges and fees; must file the opposition within a definite time frame

### **Article 112a. Opposition against industrial property registration applications**

*1. Prior to the date of issue of decision to grant protection titles, within the following time limits, any third party has the right to oppose the granting of protection titles:*

*c) **Within 05 months since the publication date of the trademark registration application;***

*2. Opposition specified in Clause 1 of this Article shall be in written form, enclosed with documents or cited as sources of information for proof, and must pay charges and fees.*

*3. The right to oppose the granting of industrial property rights shall*

# I. TRADEMARK

## 7) Suspending the examination to overcome cited marks

❖ The cited marks are valid (74.2.e):

- *Request to suspend the examination (117.3.b);*
- *Request for termination of the cited mark's validity due to failure to use (95.1.d) or invalidate the cited mark (96);*

### Article 74. Distinctiveness of marks

2. A mark shall be considered as indistinctive if it is a sign or signs falling into one of the following cases:

e) Signs ~~other than integrated marks~~ which are identical with or confusingly similar to **registered protected marks of other organizations or individuals** of identical or similar goods or services on the basis of registration applications with earlier filing dates or priority dates, as applicable, including mark registration applications filed under treaties to which **the Socialist Republic of Vietnam is a contracting party, except where the validity of the cited mark is terminated according to point d Clause 1 Article 95 or invalidated according to Article 96 according to procedures specified in point b Clause 3 Article 117 of this Law;**

# I. TRADEMARK

## 7) Suspending the examination to overcome cited marks

- ❖ The cited marks are valid (74.2.e):
  - *Request to suspend the examination (117.3.b);*
  - *Request for termination of the cited mark's validity due to failure to use (95.1.d) or invalidate the cited mark (96);*

### **Article 117. Refusal to grant Protection Titles**

3. Where an industrial property registration application falls into the cases specified in Clauses 1, 1a and ~~Clause~~ 2 of this Article, the concerned state management agency in charge of industrial property rights shall carry out the following procedures:

***b) Suspending the examination of the registration application where the applicant files a request to suspend the examination of the registration application and request for termination or invalidation of certificate of registered mark according to exceptions specified in point e and point h Clause 2 Article 74 of this Law. Based on the results of the settlement of the request for termination or invalidation of the certificate of registered mark, the State management agency on industrial property shall continue the application examination process;***



# I. TRADEMARK

## 7) Suspending the examination to overcome cited marks (cont.)

- ❖ The cited mark's validity is terminated (74.2.h):
  - *Shorten the expired time from 5 years → 3 years;*
  - *Request to suspend the examination (117.3.b);*
  - *Request for termination of the cited mark's validity due to failure to use (95.1.d) or invalidate the cited mark (96);*

### Article 74. Distinctiveness of marks

2. A mark shall be considered as indistinctive if it is a sign or signs falling into one of the following cases:

h) Signs identical with or confusingly similar to another ~~person-organization or individual's~~ mark which has been ~~registered~~ ~~protected~~ for identical or similar goods or services, the registration certificate of which has been invalidated for no more than ~~5-3~~ years, except where ~~the ground for such~~ the validity **of the cited mark is terminated** ~~is non-use of the mark~~ according to point d Clause 1 Article 95 **according to procedures specified in point b Clause 3 Article 117** of this Law;

# I. TRADEMARK

## 7) Suspending the examination to overcome cited marks (cont.)

- ❖ The cited mark's validity is terminated (74.2.h):
  - *Shorten the expired time from 5 years → 3 years;*
  - *Request to suspend the examination (117.3.b);*
  - *Request for termination of the cited mark's validity due to failure to use (95.1.d) or invalidate the cited mark (96);*

### Article 117. Refusal to grant Protection titles

3. Where an industrial property registration application falls into the cases specified in Clauses 1, 1a and ~~Clause~~ 2 of this Article, the concerned state management agency in charge of industrial property rights shall carry out the following procedures:

***b) Suspending the examination of the registration application where the applicant files a request to suspend the examination of the registration application and request for termination or invalidation of certificate of registered mark according to exceptions specified in point e and point h Clause 2 Article 74 of this Law. Based on the results of the settlement of the request for termination or invalidation of the certificate of registered mark, the State management agency on industrial property shall continue the application examination process;***

# I. TRADEMARK

## 7) Suspending the examination to overcome cited marks (cont.)

- ❖ Transitional provision according to Law 07/2022/QH15:
  - *From 01 January 2023 (the effective date of the amended IP Law), trademark registration applications without a decision to grant or refuse to grant a protection title may apply the suspending the examination to overcome cited marks mechanism according to provisions specified in the amended IP Law*

### **Article 4. Transitional Provision**

3.....

*b) Provisions specified in point e and point h Clause 2 Article 74, point e Clause 1 Article 106, point b Clause 3 Article 117 of Intellectual property Law amended and supplemented according to point b and point c Clause 22, Clause 35 and point b Clause 42 Article 1 of this Law are applicable to industrial property registration applications without a decision to grant or refuse to grant a protection title before the effective date of this Law;*

# I. TRADEMARK

## 8) Timeframe for taking cited marks

- ❖ Clarifying the timeframe for taking cited marks is registration application filing date (points a, b, c, d, i of Article 74.2)

### Article 74. - Distinctiveness of marks

2. A mark shall be considered as indistinctive if it is a sign or signs falling into one of the following cases:

a/ Simple shapes and geometric figures, numerals, letters or scripts of uncommon languages, except where such signs have been widely used and recognized as a mark **before the filing date**;

b/ Conventional signs or symbols, pictures,... that have been ~~widely and~~ regularly used, ~~known to many people and~~ widely acknowledged **before the filing date**;

c/ Signs indicating time, place... except where such signs have acquired distinctiveness through use before the ~~time of filing date of mark registration applications~~;

d/ Signs indicating the geographical origin of goods or services, except where such signs have been widely used and recognized as a mark or registered as collective marks or certification marks **before the filing date**...;

i/ Signs identical with or confusingly similar to another person's mark recognized as a well known **mark before the filing date** which has been registered for goods or services ...

# I. TRADEMARK

## 9) Conflicts between trademark and other objects

- ❖ Supplementing provisions in Article 74.2.o (*clarify the existed provisions*), 74.2.p (*provisions from Circular No. 01*) to resolve conflicts between trademark and plant varieties' name and other objects under the scope of copyright protection

### **Article 74. Distinctiveness of marks**

2. A mark shall be considered as indistinctive if it is a sign or signs falling into one of the following cases:

***o) Signs identical with or confusingly similar to plant variety's names which were or have been registered in Viet Nam if such signs are registered for the goods being a plant variety of the same or similar species or harvested product from plant varieties;***

***p) Signs identical with or confusingly similar to names or images of typical human characters or figures under the scope of copyright protection in widely known works before the filing date, except the case of having permission of the owner of the work.***

# I. TRADEMARK

## 10) Refusal to grant protection titles

- ❖ Supplementing grounds for refusal to grant in Article 117.1.b and suspending the examination if the case is taken to Court (117.3.c) (*part of existed provisions*) until there are Court's decisions

### Article 117. Refusal to grant protection titles

1. The grant of a protection title for an invention, industrial design, mark or geographical indication registration application shall be refused in the following cases:

***b/ There are grounds to affirm that the applicant does not have the industrial property registration right or files a trademark registration application with malicious intent;***

3. Where an industrial property registration application falls into the cases specified in Clauses 1, 1a and ~~Clause~~ 2 of this Article, the concerned state management agency in charge of industrial property rights shall carry out the following procedures:

*c/ Suspending the registration application examination process in case of receiving a copy of the notice of acceptance of the case by a competent court on a third party that initiates a lawsuit related to the industrial property registration right or a trademark registered with malicious intent. Based on the settlement results of the Court, the State management agency in charge of industrial property rights shall continue the application examination process;*

# I. TRADEMARK

## 11) Protection titles

- ❖ Supplementing provisions on the effective time of international registration of marks under the Madrid system (93.8)

### **Article 93. Validity of protection titles**

*8. International registration of marks under the Madrid Protocol and Agreement on international registration of marks designating Vietnam is effective from the date on which the authorities in charge of industrial property rights issues a decision to accept protection for the mark in that international registration or from the day following the expiration of the twelve-month period counting from the date that the international office issue a notice of international registration of such mark designating Vietnam, whichever is earlier. The validity period of an international registration of a mark is calculated according to the provisions of the Madrid Protocol and Agreement.*

# I. TRADEMARK

## 11) Protection titles (cont.)

- ❖ Supplementing 2 grounds for termination of validity in Article 95 (according to EVFTA):

### **Article 95. Termination of validity of protection titles**

1. *The validity of a protection title shall be partly or entirely terminated in the following cases:*

*h) The use of a protected mark for goods or services by the owner or by the person authorized by the owner to mislead consumers as to the nature, quality or geographical origin of such goods or services;*

*i) The protected mark becomes the common name of the goods or services registered for the mark itself;*



# I. TRADEMARK

## 11) Protection titles (cont.)

### ❖ Clarifying the time of termination in each case

- Fail to pay the fees and charges (95.1.a): **from the starting date of the next year/period;**
- Declare to relinquish the industrial property rights (95.1.b): **from the date of receipt of the declare** (*current*);
- Other cases (95.1.c, d, đ, e, h, i): **from the date of decision.**
  - *No longer exist;*
  - *Has not been used;*
  - *Violates the regulation on use of collective marks or fails to supervise or ineffectively supervises the implementation of such regulation;*
  - *Violates the regulation on use of certification marks or fails to supervise or ineffectively supervises the implementation of such regulation;*
  - *The use of trademark misleads consumers;*
  - *The mark becomes common name.*

# I. TRADEMARK

## 11) Protection titles (cont.)

- ❖ Supplementing grounds for invalidation of protection title where the trademark registration application is filed with malicious intent (96.1.a; 96.4)

### Article 96. Invalidation of protection titles

1. A protection title shall be entirely invalidated in the following cases:

**a) The trademark registration application is filed with malicious intent;**

4.....

*The statute of limitations for exercising the right to request invalidation of a protection title shall be its whole term of protection; except for request for protection titles invalidation of a mark ~~such statute~~ for grounds specified in Clause 2 of this Article the statute of limitations shall be 5 years from the grant date or from the effective date in Viet Nam of international registration mark, ~~except where the protection title has been granted due to the applicant's dishonesty.~~*

# I. TRADEMARK

## 11) Protection titles (cont.)

- ❖ Supplementing provisions on protection title granting for a whole or the part which satisfies conditions to protection to unify the handling of national registration marks and international registration (118.1.a)

### Article 118. Grant of protection titles, entry into the register

*1. Where an industrial property registration application does not fall into the cases of refusal to grant protection titles specified in Clauses 1, 1a and ~~Clause 2 and~~ at point ~~b-d~~ Clause 3 Article 117 of this Law or the applicant has a sound objection to the intended refusal specified in point a Clause 3 Article 117 of this Law ~~and the applicant has paid fee~~, the state management agency in charge of industrial property rights shall perform these following tasks: ~~decide to grant a protection title and enter it in the national register of industrial property~~*

*a) Notice of the results of substantive examination, **stating clearly the intention to grant a protection title for a whole or the part which satisfies conditions to protection** and setting the time limit for the applicant to pay the fees and charges or to have objection on the results of*

# I. TRADEMARK

## 11) Protection titles (cont.)

- ❖ Transitional provisions for Article 118.1.a according to Law 07/2022/QH15

### **Article 4. Transitional provisions**

3.....

*d) Provisions in Article 118 of Intellectual property Law amended and supplemented according to Clause 43 Article 1 of this Law shall apply to industrial property registration application without results of substantive examination before the effective date of this Law.*

## **II. Geographical indications**

- 1) Homonymous geographical indications**
- 2) Right to registration of foreign geographical indications**
- 3) Opposition against registration applications**
- 4) Protection titles**
- 5) Owner and owner's rights**

# II. GEOGRAPHICAL INDICATIONS

## 1) Homonymous geographical indications

- ❖ Technically amending the definition of geographical in Clause 22 and supplementing Clause 22a on definition of homonymous geographical indication in Article 4

### Article 4. Interpretation of terms

22. *Geographical indications* means a sign which identifies ~~a product as~~ **originating** *geographical* origin *of a product* from a specific region, locality, territory ~~or~~ **or** country.

***22a. Homonymous geographical indications means geographical indications having the same pronounce or spelling.***

# II. GEOGRAPHICAL INDICATIONS

## 1) Homonymous geographical indications (cont.)

- ❖ Supplementing Clause 2 Article 79 on conditions for protection of homonymous geographical indications

**Article 79. - General conditions for geographical indications eligible for protection**

***2. Homonymous geographical indications satisfy conditions specified in Clause 1 of this Article shall be protected if such geographical indications are used in practice in a manner that does not cause confusion to consumers about the geographical origin of products bearing geographical indications and ensures the principle of fair treatment between organizations or individuals producing products bearing that geographical indications.***

# II. GEOGRAPHICAL INDICATIONS

## 1) Homonymous geographical indications (cont.)

- ❖ Supplementing provisions on requirements on registration application of Homonymous geographical indications (106.1.e)

### **Article 106. Requirements on geographical indication registration applications**

*1. Documents, samples and information identifying a geographical indication registered for protection in a geographical indication registration application include:*

***e) For homonymous geographical indications, documents explaining conditions for use and mode of presentation of such geographical indications to guarantee the distinctiveness of the geographical indications.***



# II. GEOGRAPHICAL INDICATIONS

## 2) Right to register foreign geographical indications

- ❖ Supplementing provisions on right to register geographical indications of foreign organizations or individuals (88.2) (adopted from *Article 8 of Decree No. 103/2006/NĐ-CP*)

### **Article 88. Right to register geographical indications**

***2. Foreign organizations or individuals that are right holders to the geographical indications according to the laws of the country of origin are entitled the right to register such geographical indications in Viet Nam.***

# II. GEOGRAPHICAL INDICATIONS

## 3) Opposition against registration applications of geographical indication

- ❖ Supplementing provisions in Article 112a.1.d on the third party's opinion of opposition against registration applications of geographical indication shall submit proofs; pay charges and fees; must file the opposition within a definite time frame

### **Article 112a. Opposition against industrial property registration applications**

*1. Prior to the date of issue of decision to grant protection titles, within the following time limits, any third party has the right to oppose the granting of protection titles:*

***d) Within 03 months since the publication date of the geographical indications;***

*2. Opposition specified in Clause 1 of this Article shall be in written form, enclosed with documents or cited as sources of information for proof, and must pay charges and fees.*

*3. The state management agency in charge of industrial property rights shall handle the opposition specified in Clause 2 of this Article according to the order*

# II. GEOGRAPHICAL INDICATIONS

## 4) Protection titles

- ❖ Recinding provisions on recording organizations or individuals having the right to use the geographical indications in protection title (92.2) *(in accordance with EVFTA and practise)*

### **Article 92. Protection titles**

2. Protection titles of geographical indications shall record organizations managing such geographical indications, ~~organizations or individuals having the right to use such geographical indications,~~ protected geographical indications, particular characteristics of products bearing such geographical indications, particular characteristics of geographical conditions and geographical areas bearing such geographical indications.

# II. GEOGRAPHICAL INDICATIONS

## 4) Protection titles (cont.)

- ❖ Supplementing grounds for termination of validity of foreign geographical indications are no longer protected in the country of origin (95.1.k) and determine the time of termination of protection title (95.6) *(to clarify provisions in accordance with EVFTA and practise).*

### **Article 95. Termination of validity of protection titles**

1. *The validity of a protection title shall be partly or entirely terminated in the following cases:*

***k) Foreign geographical indications are no longer protected in the country of origin.***

6. ....

***For the case specified in point k Clause 1 of this Article, the validity of the protection titles is terminated from the date when such geographical indications are no longer protected in the country of origin.***

# II. GEOGRAPHICAL INDICATIONS

## 4) Protection titles (cont.)

- ❖ Supplementing the one may request the amendment (97.1; 97.2) and data allowed to modify or correct (97.1.a).

### Article 97. Amendments to protection titles

1. The owner of a protection title, **organizations or individuals exercising the right to register of geographical as specified in Article 88 of this Law** may request the state management agency in charge of industrial property rights to make amendments to the following information in such protection title, provided that the prescribed fees and charge are paid:

a/ Modifications, error corrections in relation to the name and **nationality of the author**, name and address of ~~the author or~~ the protection title owner, **geographical indication management organization**;

2. At the request of the owner of a protection title, **organizations or individuals exercising the right of register of geographical indications**, the state management agency in charge of industrial property rights shall have to correct errors caused at its fault in such protection title. In this case, the protection title owner **organizations or individuals exercising the right of register of**

# II. GEOGRAPHICAL INDICATIONS

## 5) Owner and owner's rights

- ❖ Supplementing provisions that the Government shall guide the exercise of the right to manage geographical indications to have a basis for guidance in the Decree on clearly delineating the role of State management and the role of property owners (121.4)

### **Article 121. Owners of industrial property objects**

*4. The owner of Vietnam's geographical indications is the State.*

*The State shall grant the right to use geographical indications to organizations or individuals that ~~the~~ turn out products bearing such geographical indications in relevant localities and put such products on the market. The State shall directly exercise the right to manage geographical indications or grant that right to organizations representing the interests of all organizations or individuals granted with the right to use geographical indications.*

***The Government shall detail regulations on geographical indications***

## II. GEOGRAPHICAL INDICATIONS

### 5) Owner and owner's rights (cont.)

- ❖ Recinding provisions on geographical indication management organization having the right to permit other person to use such geographical indications (123.2.a)

#### Article 123. Rights of owners of industrial property objects

2. Organizations and individuals that are granted ~~by the State~~ the right to use or **the organizations that are granted** the right to manage geographical indications according to the provisions of Clause 4 Article 121 of this Law or **according to the laws of the country where the geographical indications originated** ~~shall have the following rights:~~

~~a/ Organizations which are granted the right to manage geographical indications may permit other persons to use such geographical indications according to the provisions of Point a, Clause 1 of this Article.~~

~~b/ Organizations and individuals that are granted the right to use or~~

**THANK YOU VERY MUCH**

**Legislation and Policy Division  
Intellectual Property Office of Vietnam**  
E-mail: [phapche.chinhsach@ipvietnam.gov.vn](mailto:phapche.chinhsach@ipvietnam.gov.vn)