

THE INTERPRETATIONS OF EXCEPTIONS AND LIMITATIONS UNDER VIETNAMESE COPYRIGHT LAW IN CASE OF QUOTATION OF A WORK

NGUYEN THAI CUONG*

Ho Chi Minh City University of Law, Vietnam

Email: ntcuong@hcmulaw.edu.vn

NGUYEN DUC NGUYEN VY

JD, University of Iowa, USA

Email: vy-d-nguyen@uiowa.edu

Abstract

The exceptions and limitations in copyright law have been firmly established by the Berne Convention. Indeed, these foundations consolidate and facilitate the unification in protecting copyrights of member states' domestic laws. Nevertheless, the understanding and interpretations of each member are notably different and inadvertently maintain the inconsistency in international law. On that basis, the article analyzes the practice of Berne Convention's codification and application in Vietnamese laws and judicial practice. Thereafter, the article emphasizes that Vietnamese intellectual property law has attempted to internalize the Berne Convention's provisions on the limitations and exceptions of copyright law and proposes solutions to ameliorate such attempts. The article then shows the practice in Vietnamese judgment in order to show how Vietnamese intellectual property law receive the provision of limitations and exceptions in copyright law.

Keywords: *free use of works, exceptions and limitations, quotation of a work, Berne Convention*

The exceptions and limitations of a work's quotation¹ set by the Berne Convention have never been applied with ease in Vietnamese judicial practice. Notably, lengthy and even contradictory discussions between the Vietnamese courts of first instance and appellate courts exist, which were yielded by the Vietnamese judges' failure of being on the same page in adjudicating this issue. Indeed, the Court of Appeal decisions tended to broaden the scope of the exceptions set by the Berne Convention's Article 10 regulating the quotation issues, However, the trial courts tended to narrow this scope down. However, the Court of Appeal seemed to not limit the length of quotation in applying this exception.

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¹ Nordquist R. (2020), 'Quotation and Quote'. Retrieved from thoughtco.com/quotation-and-quote-1692775 [accessed 20 February 2021]. This authors noted that “The noun quotation refers to a group of words taken from a text or speech and repeated by someone other than the original author or speaker”.

Specifically, in the copyright litigation case adjudicated by the Ha Noi Court of Appeal in 2007,² the defendant fully quoted four articles containing 16,545 words from the claimant's works for the purpose of critique in his book. Still, it was unclear whether the quotation's purpose was really utilized as such in conformity with Vietnamese law and the Berne Convention's exceptions or not.³ In addition, the court also considered the criterion of "*lawfully made available to the public*".⁴ Accordingly, from this judicial practice, the significant question remains how Vietnamese law should be applied in line with the Berne convention's interpretations of the lawful quotation of work.

In the trial hearing for the Judgment No. 01/2006/DS-ST, the Court of First Instance in Ha Noi reasoned that Mr. Nguyen's copyright infringement happened from 2001-2003, according to Article 46(3) of Decree 100/2006/ND-CP issued on September 21, 2006 providing details and guidelines in the implementation of a number of articles of Civil Code, Intellectual Property Law on copyright and related rights. However, in assessing relevant evidence, the Court of First Instance erred in holding that the defendant's use of the work without permission or payment remuneration was an illegal quotation of the work, although not fully printing the author's articles. Accordingly, referring to the personal opinion of the Director of the Copyright Department of the Ministry of Culture and Information, the Court of First Instance concluded that the defendant's quotation of the plaintiff's four articles without permission was a violation of the plaintiff's copyright. Thus, applying Article 750 of the Civil Code regulating moral rights and economic rights of the author, Article 751, and Article 759 regulating the moral rights, the right to claim protection, the court held that defendant illegally put four articles of the plaintiff into his scientific works for

² To bear in mind that the litigation happened in the years from 2001 to 2003 when the Vietnamese Intellectual Property Law 2005 has not taken into effect yet. The Court used the Civil Code 1995 to resolve the case but in order to serve for the comparison purposes author will use seldom the newest legislation to resolve the case.

³ Article 10 of the Berne Convention stipulates certain free uses of works: "1. Quotations; 2. Illustrations for teaching; 3. Indication of source and author" without explaining what is the teaching purposes. In the Judgment of the Court of Ha Noi, Vietnam in 2007.

⁴ According to the Vietnamese 2012 Publishing Law, "*Publishing means organizing and exploiting manuscripts, editing into templates for printing and distribution or for direct distribution via electronic means*". This law also requires the conditions for a lawful publication by stating that "*No agency, organization or individual may abuse the right to disseminate works to damage the interests of the State, the legitimate rights and interests of agencies, organizations or individuals*". The provision has been translated by the authors.

the debating and commenting purposes.⁵

Nonetheless, the Ha Noi Court of Appeal in the Judgment No. 127/2007/DSPT reversed the trial court's decision. Specifically, the higher court stated that the Court of First Instance legally erred in applying the sanctions specified in Articles 27, 609, 610, 615 of the 1995 Civil Code, and forcing the defendant to compensate the plaintiff for damages. Instead, the higher court applied Articles 760, 761 of 1995 Civil Code and rejected the plaintiff's claims.⁶

Remarkably, this is the very first time that the Vietnamese Courts adjudicated a case claim based on the exceptions in quoting a work. Despite the initial confusion caused by the Court of First Instance, the Court of Appeal has acted timely to properly apply the Vietnamese law related to this issue seemingly in accordance with the Berne Convention. Foremost, the article analyzes the international legal framework on the work's quotation. Thereafter, the article proposes solutions on how to broaden the scope of the exceptions in Vietnamese copyright law.

1. International legal framework on work's quotation

1.1. The Berne Convention on quotation

The exceptions and limitations of copyright law concerning the quotation of a work have been recognized by the Berne Convention, TRIPS Agreement, and the WIPO Copyright Treaty.⁷ Still, the quantitative restrictions are difficult to formulate and apply.⁸ The Berne Convention's Article 10(1)⁹ focuses on the criteria of purpose

⁵ In the case 127/2007/DSPT of the Court of Appeal, the Court judged that "*the use of work by Mr. Nguyen was for reconstruct the debate for scientific research, not for commercial purposes and be allowed by law*".

⁶ See the Judgment of the case 127/2007/DSPT of the Court of Appeal.

⁷ The TRIPS Convention and WIPO Treaty confirmed the provision in the Berne Convention for the exceptions and limitations to copyright law. Retrieved from https://www.wipo.int/treaties/en/ip/berne/summary_berne.html; Article 13 of the TRIPS Convention. Retrieved from https://www.wto.org/english/docs_e/legal_e/27-trips_04_e.html; Article 10 of the WIPO Treaty. World Intellectual Property Organization (1996), *World Intellectual Property Organization Copyright Treaty with the agreed statements of the Diplomatic Conference that adopted the Treaty and the provisions of the Berne Convention (1971) referred to in the Treaty*, WIPO Publication No. 226E. Retrieved from https://www.wipo.int/edocs/pubdocs/en/wipo_pub_226.pdf [accessed 20 February 2021].

⁸ Ricketson S. (2003), 'WIPO study on limitations and exceptions of copyright and related rights in the digital environment, standing committee on copyright and related rights', *Ninth Session Geneva*, p. 12.

⁹ See the guidance of the Berne Convention. World Intellectual Property Organization (1978), *Guide to the Berne convention for the Protection of Literary and Artistic Works (Paris Act, 1971)*, Geneva, WIPO Publication No. 615(E). Retrieved from https://www.wipo.int/edocs/pubdocs/en/copyright/615/wipo_pub_615.pdf [accessed 20 February 2021].

and fair practice. Nonetheless, two questions remain: (1) in which circumstances the whole work's quotation may be justified? and (2) how to identify an appropriate quantity/ length of the quoted works to be considered a lawful quotation.¹⁰

1.2. Vietnamese law on quotation

Vietnam has adopted the aforementioned legal provisions of international law in the 1995 Civil Code and the 2005 Intellectual Property Law (as amended in 2009 and 2019). The 2015 Civil Code stipulates: *"Individuals and organizations are allowed to use the works of others which have been announced and disseminated, if the works are not prohibited from being copied and the use is not for commercial purposes and not prejudice the normal exploitation of the work, not prejudice other rights of the author or the owner of the work; individuals and organizations using the work do not have to ask for permission and pay remuneration to the author or owner of the work, but must write or mention the name of the author and origin of the work"*.¹¹

Article 25 of the Intellectual Property Law states that: *"Cases of use of published works where permission and payment of royalties and/or remunerations are not required 1. Cases of use of published works where permission or payment of royalties and/or remunerations is not required include: a/ Duplication of works by authors for scientific research or teaching purpose; b/ Reasonable recitation of works without misrepresenting the authors' views for commentary or illustrative purpose; c/ Recitation of works without misrepresenting the authors' views in articles published in newspapers or periodicals, in radio or television broadcasts, or documentaries; d/ Recitation of works in schools for lecturing purpose without misrepresenting the authors' views and not for commercial purpose; Organizations and individuals that use works defined in Clause 1 of this Article must neither affect the normal utilization of such works nor cause prejudice to rights of the authors and/or copyright holders; and must*

¹⁰ Article 10(2) of the Berne Convention. "It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice".

¹¹ The provision has been translated by the authors. Article 760 of 1995 Civil Code states that : "Điều 760. Giới hạn quyền tác giả. Cá nhân, tổ chức được sử dụng tác phẩm của người khác đã được công bố, phổ biến, nếu tác phẩm không bị cấm sao chép và việc sử dụng đó không nhằm mục đích kinh doanh và không làm ảnh hưởng đến việc khai thác bình thường tác phẩm, không xâm hại đến các quyền lợi khác của tác giả hoặc chủ sở hữu tác phẩm; cá nhân, tổ chức sử dụng tác phẩm không phải xin phép và không phải trả thù lao cho tác giả hoặc chủ sở hữu tác phẩm, nhưng phải ghi hoặc nhắc tên tác giả và nguồn gốc tác phẩm".

indicate the authors' names, and sources and origins of the works".¹² Accordingly, with Article 25, the Vietnamese law does list out the exceptions of copyrights in quoting a work for educational, review or criticism purposes. Specifically, the exceptions require the normal utilization of such works not to cause any prejudice to the rights of the authors and/or copyright holders; and indicate the authors' names, as well as the sources and origins of the works. Notably, this is in accordance with the notion that the Vietnamese intellectual property law contains sufficient limitations and exceptions for intellectual property rights in general.¹³

Intellectual property rights are considered as property rights under Vietnamese civil law. At the very early stage, prior to Vietnam's accession to the Berne Convention, the IP matters were regulated by Vietnam's Civil Code. By then, the development of intellectual property rights needed an independent statute to regulate the matters that the Civil Code's scope cannot cover comprehensively. Thanks to the pressure of joining the WTO in 2007, Vietnam has amended many statutes including Vietnam's Intellectual Property Law in 2005. This law superseded Vietnam's 1995 Civil Code, which included some limitations of copyright law.

Furthermore, Article 761 Vietnam's 1995 Civil Code provides exceptions of copyrights for the review or criticism purposes but does not require such exceptions not to cause any prejudice to the normal exploitation of the work or cite the original works' sources. Thus, Vietnam's 1995 Civil Code clearly stipulated the exceptions of copyright for the quoting work and followed the three-step test laid out by the Berne Convention in considering the nature of the quote, the effect to the normal exploitation, and the legitimate interests of the rights holder.

¹² Version translated by WIPO. Retrieved from <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn063en.pdf> [accessed 20 February 2021].

¹³ Article 7 of the 2005 Intellectual Property Law provides limitations on intellectual property rights:

"1. Intellectual property right holders shall only exercise their rights within the scope and term of protection provided for in this Law.

2. The exercise of intellectual property rights must neither be prejudicial to the State's interests, public interests, legitimate rights and interests of other organizations and individuals, nor violate other relevant provisions of law.

3. In the circumstances where the achievement of defense, security, people's life-related objectives and other interests of the State and society specified in this Law should be guaranteed, the State may prohibit or restrict the exercise of intellectual property rights by the holders or compel the licensing by the holders of one or several of their rights to other organizations or individuals with appropriate terms."

Notably, the Berne Convention provides apparent exceptions in copyright law. Vietnam became a member of this convention in 2004. However, the Berne Convention offers little guidance to national courts. In this light, this article shall analyze the legal backgrounds in the Vietnamese Court of Appeals case law in 2007 on how to interpret the exceptions and limitations in Vietnamese law and provide some proposals to resolve these practical issues.

2. The approach of Vietnamese Court of First Instance and the Court of Appeal

Factually, Judgment No. 01/2006 handed down by the People's Court of First Instance in Ha Noi, Mr. Dao, the defendant, collected ten articles in the discussion, including four articles by Mr. Nguyen, the plaintiff. These articles reflected very clearly that these were all debates about the method of textual research on the Text of Tale of Kieu which was proposed by Professor Hoang Xuan Han before his death. Such debate took place hotly for many years from 1997 to 1999. When researching four articles by Mr. Nguyen, Mr. Dao extracted the full text and pointed out 82 cognitive errors in these articles totaling 16,545 words. In his comment, Mr. Dao criticized Mr. Nguyen stating that Mr. Nguyen was dishonest and inexperienced. Mr. Nguyen did not respond to a judicial dispute that was initiated. Hence, it was obvious that Mr. Dao honestly reconstructed the entire debate for the purpose of researching and disseminating information. Mr. Dao then printed four of Mr. Nguyen's articles fully for readers to fully understand the debated content. Mr. Nguyen's articles were not cut, merged or misrepresented, and the author's name was still included in the book clearly showing the origins of the works and the author's name. Although it was "*printed in full text*", Mr. Dao interjected relevant paragraphs of his comments in Mr. Nguyen's writings for readers to easily compare and recognize errors in Mr. Nguyen's articles. Therefore, it was necessary to affirm that this was a scientific research work, a creative body of Mr. Dao, which did not simply collect articles of many authors to print into books for commercial purpose. In order to consider whether the quotation is lawful or not, several criteria should be examined: the work must be published, the purpose of the work, the character of the work, influence to the normal exploitation of the work and legitimate interest of the author of the quoted work.

On June 14, 2007, the Court of Appeal of Ha Noi issued a judgment ruling on the infringement of copyright law and especially, the interpretation of exceptions in case of use for criticism or review purposes. Indeed, in interpreting the exception and limitation of copyright principles, the Court answered the question on whether the quotation of a whole intellectual work could constitute an exception under Articles 760 and 761 of the 1995 Civil Code. This judicial opinion is a relatively essential instruction for the lower courts to determine the balance of private and public interests in applying the copyright law. Indeed, a proper understanding of the exception notion could lead to vague or precise judicial interpretations in developing countries, which would ultimately affect rights of authors.

2.1. How to evaluate the “originality” of a work in case of commenting on the quoted work itself

One of the important features of copyright is the originality of a work. Given that, the work must be a result of the author’s creativity, the quoted work cannot be construed as a “heart of the work”.¹⁴ Indeed, Article 4 of the 2005 Intellectual Property Law provides the definition of a work: “*Work means a creative creation in the literary, artistic and scientific field, expressed by any means or form*”. The Vietnamese copyright law uses the word “creative creation” which means the work must be a result of creativity and originality and cannot copy or imitate others’ work. Nevertheless, in its judgment, the trial court, however, did not consider this criterion.

The presiding judge of the Court of Appeal in judgment 127/2007/DSPT simply focused on the purpose of the work without considering its “originality”. However, there is no legal obligation to respond to the condition of a work’s “originality” since the Berne Convention only focuses on the work’s purpose.¹⁵ Additionally, the Decree 76 of Vietnamese government is especially useful to show

¹⁴ Article 12 of Decree No. 76/1996/ND-CP states that: “*The quotation of another person’s published work does not become a major part of a new work; This excerpt is limited to the introduction, commentary or clarification of the matter in his work and must clearly state the name of the author and the source of the cited work*”. This Decree is especially useful while providing that “*The citation of another person’s published work does not become a major part of a new work*”. This condition is especially important to define the “originality” of a work, to prove this is a creation of the authors themselves.

¹⁵ Article 10 of the Berne Convention: “(1) *It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries*”.

that the “quotation of another person’s published work does not become a major part of a new work”. Once again, the judge in the judgment 127/2007/DSPT did not focus on the character of the work, especially which part would constitute a major part of a new work in considering a lawful quotation.

2.2. Legitimate interest of the author of the quoted work

Vietnamese law does not specifically define what is the legitimate interest of the author. In the judgment, Mr. Dao, defendant, criticized Mr. Nguyen, plaintiff, for saying that “*Mr. Nguyen was dishonest and immaturity about expertise, but Mr. Nguyen did not argue until a dispute happened*”. This comment would practically harm the legitimate of the author of the quoted work. In this case, Mr. Nguyen asked Mr. Dao, who quoted the work, to compensate for the honor, a kind of moral damages. Mr. Nguyen accused Mr. Dao, among other things, of completely distorting and slandering by his act of commenting for the purpose of analyzing a work. However, the commentary did not violate a legitimate interest of the right holder of the original work, since the exception pursues the public policy of researching purposes.¹⁶

Nonetheless, the comment should be interpreted that it cannot infringe the author’s moral right, despite the blurred boundary between a good or bad comment. The copyright law does not govern the content of the work or the comment. Additionally, the act of slandering is governed by the criminal law. In this judgment, the author felt that he was severely harmed by comments contained in the books. This must be considered a crucial fact influencing legitimate interests of the right holder, therefore it could not fall into any exceptions of the copyright law. In its ruling, the Court of First Instance based on the Articles 751 of the 1995 Civil Code regulating the right holder’s moral rights,¹⁷ which protects the

¹⁶ Authors use the term “original work” mean the works are being quoted by another author.

¹⁷ “Article 751 of the Civil Law 1995 states the rights of the author who is also the owner of the work:

1- The author who is also the owner of the work has moral rights to his work, including:

a) Naming the work;

b) Having real name or pseudonym on the work; to have his / her real name or pseudonym mentioned when the work is published, disseminated or used;

c) Publicizing, disseminating or letting others publish or disseminate their works;

d) Give or not allow others to use your work;

dd) Protect the integrity of the work, allow or disallow others to modify the content of the work.

2. The author who is also the owner of the work has property rights to his work, including:

a) To enjoy royalties;

b) To enjoy remuneration when works are used; [...]”

work's "integrity". Given that, the Court of First Instance framed the case under the perspective of the moral right of integrity, rather than relying on the quotation exception. The Court of Appeal rejected such a ruling by judging that this was an act of quotation for the purpose of commenting. Therefore, it fell into the exception of copyright law under Articles 760 and 761 of the 1995 Civil Code.

2.3. "Public availability" and "public domain"

One of the exceptions in copyright is that the work must be published. The Berne Convention stipulates in Article 10 that "(1) *It shall be permissible to make quotations from a work which has already been lawfully made available to the public*". The 2005 Vietnamese Intellectual Property Law also details this exception in Article 25 stating that "*Cases of use of published works where permission and payment of royalties and/or remunerations are not required*". Thus, a work is available to the public when it is accessible to the public and the information contained therein is no longer confidential. However, the defendant seemingly confused the concepts of "public availability" and "public domain". The first instance Court however did not mention this criteria in its judgment.

2.4. Purpose of the work

The purpose of the defendant was commenting. He extracted the full text and pointed out 82 errors in these articles totaling 16,545 words from the plaintiff's work. In his comment, the defendant criticized the plaintiff by stating that the plaintiff was dishonest and inexperienced. Plaintiff did not respond until a judicial dispute was initiated. The Court confirmed that this was an article for commenting purposes, therefore, it will fall into the exception of copyright law.

2.5. Character of the work

Vietnamese law has enumerated a list of 12 kinds of work in Article 14 of the 2005 Intellectual Property Law.¹⁸ In this case, this commentary book was much more concerning the method of comment of others' work totaling 16,545 words. In the judgment 127/2007/DSPT, this was a literary work for commenting purposes.

¹⁸ Article 14 of the 2005 Vietnamese Intellectual Property Law figure out 14 kinds of work which include literary, artistic, and scientific works covered by copyright, derivative works.

The Court's opinions play an important role to define the quantitative measures when the law just used a very abstract word "reasonable" without any precise instruction.

2.6. Influence on the normal exploitation of the work

Plaintiff alleged that if the reader reads this comment, they will be discouraged to find the original book because this is a negative comment about the errors and about the weakness of the original work.

Generally, a lawful quotation of a work must comply with certain criteria: the length of the work, the influence on the normal exploitation of the market and the legitimate interest of the author of the quoted work.¹⁹ However, both the Court of First instance and the Court of Appeal did not follow these indications in considering what a lawful quotation was in this case.

3. Broadening the scope of the exceptions

Following the judgment of the Court of Appeal, judges in lower courts seem to not base their judgments on the length of the quoted works but on the purpose of the quoted work in considering a lawful quotation. Accordingly, it seems the Court of Appeal of Vietnam did not base on the "test" stipulated by Vietnamese law. Thus, one question remains: is this resulting from the lack of guidance or the case by case judgments and subjective feeling of the presiding judges? Generally, the scope of the exceptions has now been broadened both in international²⁰ and domestic laws. However, although offering a good interpretation of such exceptions, the aforementioned Vietnamese Court of Appeal's judgment does not provide a legally binding interpretation for the lower courts in applying the exceptions. Still, the proper understanding of the exceptions is particularly important in defining the exception scope of the copyright law. The problems that would still appear in case of a new work is a paraphrasing of text from the original ones. The Berne Convention, however, doesn't give the criteria to define the originality of the new work.

¹⁹ Article 760 of the 1995 Civil Code 1995.

²⁰ "The Convention simply defining the (broad) conditions". Sirinelli P. (1999), "Exceptions and limits to copyright and neighboring rights, workshop on implementation issues of the wipo copyright treaty (WCT) and the WIPOo performances and phonograms treaty (WPPT)", Geneva, December 6 and 7, 1999. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/wct_wppt_imp/wct_wppt_imp_1.doc+&cd=1&hl=vi&ct=clnk&gl=vn [accessed 14 April 2021].

Remarkably, exceptions and limitations in the Berne Convention were adopted in Vietnamese law. However, Vietnamese judges are not on the same page in their rulings on this issue. From the aforementioned case, the Court of Appeal seems to lean on the opinion that the quotation of a whole work is not an infringement. This is a fair attempt to establish a broad interpretation of exceptions principle and encourage the quotation of a whole work for the review or criticism purposes, regardless to the quantity of the quoted works. Furthermore, the Vietnamese Court of Appeal seems to be extending the exception from the quotation of a short work to the quotation of a longer work or even the whole work. This articulation supports the freedom of information, to circulate the information, especially for developing countries.

3.1. The interpretation of the Vietnamese Court of Appeal in line with the letter of the law

The Berne Convention allows the flexibility for members to define what an exception is. Member states are free to define the purpose of the quotation, quantity of the work.

In this case, although the Court of First Instance narrowed down the scope of the “exceptions” interpretation, the Court of Appeal broadened this scope, which was a very positive judicial activism encouraging the academic activities, instead of using the three steps test developed by the Berne Convention. Indeed, Vietnamese judges seem to judge cases upon the circumstances that there were not many creative works in Vietnam at the time from 2001 to 2003.

3.2. Quoting an entire work did not exceed the purpose of the quotation

The problem in determining how long a work’s quotation should be has always been held in discussions. However, national laws could hardly implement this provision because the definition of a lawful quotation must be based on many criteria: the nature of the work, the purpose of the use, the influence of the potential market, and the effect on the legitimacy of the right holders. Therefore, within the Berne Convention, there is no criteria for the length of a quoted work. Accordingly, in the judgment 127/2007/DSPT on June 14, 2007, the defendant fully quoted four articles containing 16,545 words from the claimant’s works for the criticism purpose.

The courts in both levels did not evaluate whether this length of words could be justified as a lawful quotation or not.

Practically, the Court seems to first examine the purpose of the commentary work, then the quantity of the quoted work. However, the quantity of the quoted work is not a major element to consider the lawfulness of a quotation.

Conclusion

The understandings and interpretations of exceptions and limitations under Vietnamese Copyright law in case of quotation of a work practically reflect the international framework on work's quotation. Nevertheless, there are different approaches in Vietnamese Court of First instance and the Court of Appeal in defining the purpose of the works and the quantitative measurement. Still, there are many indicators of free use justification: the originality of works, the legitimate interest of the author, the purposes of the works, and the influence to the works' normal exploitation. Thus, it is necessary to broaden the scope of the exception so that the quoting of an entire work should not be considered as not exceeding the quotation's purpose. Therefore, the interpretation of the Vietnam court of Appeal is in line with the letter of the law and should be considered as a case law for other courts to embrace. ●

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