

Chapter 39

Vietnam

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I. MEDIA LAW

A. SOURCES

§ 39:1 Basic principles

The Vietnamese Constitution¹ and the Law on Media² provide general principles for the administration of the media by the Government of the Socialist Republic of Vietnam (the State). The State is mandated to create favorable conditions for the media to develop and for citizens to exercise their rights in relation to freedom of the media and freedom of speech. The law provides that the media and journalists shall be protected by the State. No organization

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¹Vietnamese Constitution, dated November 28, 2013, which came into effect on January 1, 2014 (“Constitution”).

²Law on Media No. 29/LCT-HDNN8 passed by the National Assembly on 28 December 1989, as amended on 12 June 1999 (“Law on Media”). A new Law on Media which will replace the Law on Media 1989 is expected to be approved in 2016.

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or individual is permitted to limit or obstruct the operation of the media or journalists, and the media shall not be subject to censorship prior to printing or broadcasting.³

Statutory law emphasizes that the media must operate within the legal framework. Abuse of the right to freedom of the media or freedom of speech through the media is not permitted, and such acts may be construed as violations of the interests of the State, collectives, or citizens.⁴

§ 39:2 Constitutional sources

The Constitution declares that the State and society develop literature and the arts in order to meet the diverse and healthy spiritual needs of the People, and develop mass media in order to meet the People's demands for information and to serve the cause of building and protecting the Homeland.¹

§ 39:3 Codified sources

The Law on Media governs all activities in the field, including: print media (newspapers, magazines, news bulletins from news agencies); audio media (radio programs); visual media (television programs, audio-visual programs made by various technical means); electronic media; and the computer information network (Internet), in Vietnamese, the languages of minority ethnic groups of Vietnam, and foreign languages.¹

In addition to this consolidated law, the Law on Publishing² and legal normative documents related to the Internet govern media activities.

§ 39:4 Case law sources

Vietnam is a civil law country and, as such, customary law, precedent, court decisions, and opinion juris are not

³Law on Media, Article 2. See also Law on Publishing, Article 5.2.

⁴Law on Media, Article 2. See also Law on Publishing, Article 5.3.

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¹Constitution, Article 60.2.

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¹Law on Media, Article 3.

²Law on Publishing, No. 19/2012/QH13 passed by the National Assembly on November 20, 2012 ("Law on Publishing").

sources of law. Judicial decisions are not considered to have precedential effects for future decisions. In principle, similar but unrelated decisions of the Supreme Court will not be binding on lower court decisions; however, lower courts may refer to decisions of a Supreme Court judge. Judgments are not broadly published in Vietnam, and approaching case law is not easy. The Supreme Court grants publication of certain decisions of the Justice Council of the Supreme Court.

B. REGULATORY FRAMEWORK

§ 39:5 For publishing industry

The publishing industry is mainly governed by the Law on Publishing, which regulates the organization and operation of publishing activities as well as the rights and obligations of public and private organizations and individuals participating in publishing activities.¹ Publishing activities include publishing, printing and distribution of publications, including distribution via the Internet.² The Law on Publishing (and Intellectual Property Law)³ provides that the State shall ensure protection of copyright.⁴

The Ministry of Information and Communications (MIC) oversees the uniform administration of public and private publishing activities throughout the country⁵ through the offices of local People's Committees in provinces and cities. The People's Committees exercise the administration of publishing activities, including licensing for printed publications within their respective localities in accordance with the authority delegated by the State.⁶ A foreign publishing house may apply for a license to establish a representative office to introduce its products and to expedite transactions related to publications.⁷

Other matters related to publishing activities may be

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¹Law on Publishing, Article 1.

²Law on Publishing, Article 1.

³Law on Intellectual Property No. 50/2005/QH11 passed by the National Assembly on 29 November 2005, as amended on 19 June 2009 ("Intellectual Property Law").

⁴Law on Publishing, Articles 5.1 and 21. See also Intellectual Property Law.

⁵Law on Publishing, Article 6.2.

⁶Law on Publishing, Article 6.2.

⁷Law on Publishing, Article 8.

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governed by the Law on Media, Intellectual Property Law and its implementing documents, the Civil Code,⁸ the Penal Code,⁹ as well as the related international commitments of Vietnam, such as the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention)¹⁰ and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).¹¹

§ 39:6 For broadcasting industry

Activities in the broadcasting industry, which by statutory definition include audio and visual media, fall under the governance of the Law on Media, the Law on Cinematography,¹ Intellectual Property Law² and its implementing documents, and Article 271 of the Penal Code, relating to the publication and distributions of books, newspapers, audio discs and tapes.³

The granting of a license to broadcast is based on conditions stipulated in the Law on Media.⁴ The technical broadcasting units of public and private radio and television stations are responsible for ensuring that broadcasts reach permitted areas. Radio and television stations that produce audio and visual current-affairs programs are not permitted

⁸Civil Code, No. 33/2005/QH11, passed by the National Assembly on June 14, 2005 (“Civil Code”). A new Civil Code which will replace Civil Code 2005 is expected to take effect in 2016.

⁹Penal Code, No. 15/1999/QH11, passed by the National Assembly on 21 December 1999, as amended by Law No. 37/2009/QH12 of the National Assembly dated June 19, 2009 (“Penal Code”). A new Penal Code which will replace Penal Code 1999 & 2009 is expected to take effect in 2016.

¹⁰Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, as revised at Paris on July 24, 1971, and amended in 1979, S. Treaty Doc. No. 99-27 (1986).

¹¹Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299; 33 I.L.M. 1197 (1994).

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¹Law on Cinematography No. 62/2006/QH11 passed by the National Assembly on 29 June 2006 as amended on 18 June 2009 (“Law on Cinematography”).

²Intellectual Property Law.

³Penal Code, Article 271.

⁴Law on Media, Articles 18, 19.

to broadcast media items which have been prohibited or confiscated.⁵

Pay TV (including cable TV, satellite TV, TV on demand, etc.) is a specific area of the broadcasting industry which is governed by Decision No. 20/2011/QD-TTg of the Prime Minister dated 24 March 2011, as amended by Decision No. 18a/2013/QD-TTg dated 29 March 2013 (“Decision 20”). Decision 20 sets out conditions and obligations for stakeholders in the pay TV industry, including pay TV network infrastructure providers, content (foreign/domestic) providers, agents for foreign program channels, pay TV editing service providers and pay TV service providers.

§ 39:7 For on-line services

Electronic media is a component of “the press” and is therefore governed by the Law on Media and related regulations.¹ Related documents that directly govern on-line content include: Decree No. 72/2013/ND-CP of the Government dated 15 July, 2013, on the management, provision, and use of Internet services and online information (“Decree 72”); Circular No. 09/2014/TT-BTTTT of the Ministry of Information and Communication dated August 19, 2014, on management, provision and use of information on websites and social networks; and Decision No. 28/2002/QD-BVHTT as amended by Circular No. 21/2011/TT-BTTTT² promulgating regulations on the publication of news bulletins, documents and leaflets, press releases, and distribution of news items on electronic screens³ by foreign agencies and organizations. Individuals and organizations providing on-

⁵Law on Media, Article 22.

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¹Law on Media.

²Decision No. 28/2002/QD-BVHTT and Circular No. 21/2011/TT-BTTTT were amended by Circular No. 04/2014/TT-BTTTT of the Ministry of Information and Communication dated March 19, 2014, effective on May 5, 2014, which guides Decree No. 88/2012/ND-CP of the Government dated October 23, 2012, on the press activities of foreign press agencies, foreign representative bodies and foreign organizations in Vietnam. According to Circular 04, the forms attached to Decision 28 and the forms attached to Circular 21 are annulled.

³This expression covers computer screens; however, the Decision does not specifically refer to computer networks and the Internet.

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line services or operating on-line activities must also obey the Law on Cinematography.⁴

§ 39:8 Regulators and their core competencies

The Ministry of Information and Communications (MIC) is the policy-making and regulatory body in the fields of press; publishing; posts; telecommunications and the Internet; radio frequency; information technology, electronics; broadcasting and national information infrastructure; and the management of related public services on behalf of the State. The ministry also regulates standards, technical standards, charges, and tariffs in related services. The MIC grants and revokes operating licenses in the fields of broadcast and television.

The MIC established the Directorate of Broadcasting and Electronic Information, which directly manages activities related to the broadcasting industry and the provision and use of electronic information. The MIC also established the Directorate of the Press and the Directorate of Publishing.

§ 39:9 Public sector in the media industry

In Vietnam, the State controls the field of audio and visual media, from radio channels, public television programs, and cable television to all other forms of audio-visual media. Vietnam Television, or VTV, is called the National Television and is directly under the management of the State. Vietnam Cable Television, known as VCTV, is a component of Vietnam Television.

Another nationwide broadcasting agency is Vietnam Multimedia Corporation, or VTC, which is a State-owned company under the control of the MIC. VTC provides audio and visual programs via the Internet, services relating to digital television, and satellite digital television. Provincial and municipal broadcasting agencies are directly under the control of local governments. On-line services provide the greatest freedom for individuals and organizations in both the private sector and civil society.

⁴Law on Cinematography.

§ 39:10 Split of legislative/regulatory authority between the federal government and individual states

The legal and political system in Vietnam is centralized with one state and does not follow a federal system.

C. DEFAMATION

§ 39:11 Main sources of law

The law of defamation is mainly based on the Civil Code sections related to personal rights. The Civil Code states that the honor, dignity, and reputation of an individual shall be respected and protected by law.¹ Other sources include Penal Code articles regarding slander and humiliating other persons,² as well as the Law on Complaints and the Law on Denunciations, promulgated to facilitate complaints and denunciations related to the activities of public agencies, thus contributing to democracy, the enhancement of the socialist legal system, the protection of State interests as well as the legitimate rights and interests of citizens, agencies, and organizations.³ In certain circumstances, provisions of the Law on Competition⁴ and Decree No. 119/2014/ND-CP⁵ in the labor context may apply.

Defamation in the Internet environment is also regulated by the Law on Information Technology⁶ and Decree 72, according to which the contents of stored digital information or

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¹Civil Code, Article 37, right to protection of honor, dignity, and reputation.

²Penal Code, Articles 42, 121, 122.

³Law on Complaints No. 02/2011/QH13 passed by the National Assembly on 11 November, 2011 (“Law on Complaints”); Chapter V—Reception of Citizens of the Law on Complaints was replaced by Law on Reception of Citizens No. 42/2013/QH13 passed by the National Assembly of Vietnam on November 25, 2013, effective on July 1, 2014; Law on Denunciations No. 03/2011/QH13 passed by the National Assembly on 11 November 2011 (“Law on Denunciations”).

⁴Law on Competition No. 27/2004/QH11 passed by the National Assembly on 3 December 2004 (“Law on Competition”).

⁵Decree No. 119/2014/ND-CP of the Government dated 17 December 2014 (effective from 1 February 2015), detailing articles on labor-related complaints and denunciations found in the Labor Code, the law on vocational training, and the law on Vietnamese employees working abroad.

⁶Law on Information Technology No. 67-2006-QH11 passed by the National Assembly on June 29, 2006 (“Law on Information Technology”).

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the provision and use of Internet services and online information must not distort, slander, or offend the prestige of organizations or the honor, dignity or prestige of citizens.⁷

§ 39:12 Definition and significant subdivisions

Under the Penal Code, persons who commit the crime of slander are those who trump up or spread stories knowing them to be fabricated in order to infringe upon or damage the honor, legitimate rights, or interests of another person or to accuse another person of committing a crime and denouncing them before competent agencies.¹ Persons who commit the crime of humiliating others, “seriously infringe upon the dignity or honor of other persons.”²

§ 39:13 Main factors or elements of claim

The Civil Code simply provides that damage is caused by harm to the honor, dignity, or reputation of an individual or harm to the honor or reputation of a legal entity. The court will interpret the codified definitions and determine if defamation has been proven based on the facts of each case.¹

§ 39:14 Types of relief available

Depending on the facts and circumstances of a defamation claim, relief is available pursuant to civil law,¹ criminal law,²

⁷Law on Information Technology, Articles 12.2 and 18.2; Decree 72, Article 5.

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¹Penal Code, Article 122.

²Penal Code, Article 121.

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¹*See also* the Law on Media, Article 10(4) which states that the media is not permitted to disseminate information which is untruthful, distorted, or slanderous and harmful to the reputation of organizations or the reputation and dignity of citizens.

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¹Civil Code, Article 611.

²Penal Code, Article 42.

the Law on Publishing,³ the Law on Media,⁴ the Law on Information Technology, Decree 174,⁵ and Decree 159.⁶

The Vietnamese Civil Code provides that any person who intentionally or unintentionally harms the life, health, honor, dignity, reputation, property, or other legal rights or interests of an individual, or harms the honor, reputation, or property of a legal entity, thereby causing damage, must compensate a plaintiff for such damage.⁷ Article 611(1) of the Civil Code provides for (a) reasonable costs for mitigating and remedying the damage and (b) loss of or reduction in actual income.

A person causing harm to the honor, dignity, or reputation of another person must also pay compensation for the mental suffering of the aggrieved person.⁸ The amount of compensation for mental suffering will be agreed upon by the parties, and if the parties are not able to agree, the maximum sum will not exceed 10 months wages at the minimum monthly wage rate provided by the State.⁹

Furthermore, if damage is caused by harm to the life, health, honor, dignity, or reputation of a person, or a decrease or loss of authors' credit (prestige) or confidence, the perpetrator must cease the harmful acts, make a public apology and retraction, and pay a sum of money to compensate for the spiritual damage caused.¹⁰

Articles 42 and 122(1) of the Penal Code set forth that those who are found guilty of slander are subject to a warning, noncustodial reform for up to two years, or a prison term of between three months and two years. The sentence shall be between one and seven years imprisonment if the person commits the crime (i) in an organized manner; (ii) abusing their position and power; (iii) against more than one

³Law on Publishing, Article 9.

⁴Law on Media, Articles 9, 10.

⁵Decree No. 174/2013/ND-CP of the Government dated November 13, 2013 on penalties for administrative violations in post, telecommunications, information technology and radio frequency ("Decree 174").

⁶Decree No. 159/2013/ND-CP of the Government dated November 12, 2013 on penalties for administrative violations press and publication ("Decree 159").

⁷Civil Code, Articles 608–612.

⁸Civil Code, Article 611.2.

⁹Civil Code, Article 611.2.

¹⁰Civil Code, Articles 307 and 604.

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person; (iv) against their own grandfathers, grandmothers, fathers, mothers or persons who teach, nurture, look after, educate and/or medically treat them; (v) against persons who are performing their official duties; or (vi) by slandering other persons regarding serious crimes.¹¹ Furthermore, offenders may be subject to a fine of between 1 million and 10 million Vietnamese dong, as well as a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.¹²

The Law on Publishing regulates complaints and denunciations regarding publishing activities. Individuals have the right to lodge a complaint about any conduct contrary to law in publishing activities in accordance with the provisions of law on complaints and denunciations.¹³ When appropriate, a publishing house, body, or organization may be required to compensate for loss and damage. Also, a complainant may request civil proceedings or request the competent State body to institute a prosecution when a publication contains errors, slanders, or offends honor and dignity, causing loss and/or damage to legal rights and interests.¹⁴

The Law on Information and Technology enables individuals to claim compensation for damage caused by violations in the supply of personal information, and allows individuals to request organizations or individuals that store their personal information in the network environment to inspect, correct or cancel such information.¹⁵

Decree 174 provides different levels of administrative fines related to different activities in the Internet environment which distort, slander, or offend the prestige of organizations or the honor, dignity or prestige of citizens.¹⁶ Decree 159 provides administrative fines for defamatory acts in the fields of press and publication.¹⁷

§ 39:15 Defenses available

Defenses are not specifically mentioned in Vietnam's law

¹¹Penal Code, Articles 42 and 122.2.

¹²Penal Code, Articles 42 and 122.3.

¹³Law on Publishing, Article 9.

¹⁴Law on Publishing, Articles 11.1 and 11.2.

¹⁵Law on Information Technology, Article 22.

¹⁶Decree 174, Articles 64.3.a, 65.4.a, 66.3.g and 68.3.

¹⁷Decree 159, Articles 8.4.b, 20.2.c.

of defamation. Defendants facing a defamation complaint may explain any extenuating or mitigating circumstances.

§ 39:16 Time period for asserting claim

The time period for initiating a legal action claiming compensation for damage is two years. Time is calculated from the date on which the legal rights or interests of an individual, legal entity, or other subject were infringed.¹

The time period for handling administrative violations is generally one year, except in cases of violations in press and publication where the time would be two years, calculated from the time of discovery of violations with regard to administrative violations in progress, or from the time of termination of violations with regard to terminated administrative violations.²

D. INVASION OF PRIVACY

§ 39:17 Main sources of law

There is no single comprehensive law on data privacy in Vietnam, but there are a number of laws and regulations having provisions to protect data privacy. The key principle across these legal documents is that the collection, processing and use of personal information must be done with the consent of the information owner and the use of such information must be appropriate in accordance with the stated purposes. Sanctions, ranging from administrative sanctions to fines to criminal penalties for serious violations are set out in relevant laws and regulations.

The right to privacy is set forth in Article 38 of the Vietnamese Civil Code.¹ The article clearly states that the right to privacy of an individual and the safety and confidentiality of the mail, telephone, electronic mail, and other forms of electronic information shall be respected and protected by law. Control of personal mail, telephone, electronic mail, and other forms of electronic information may only be conducted

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¹Civil Code, Article 607.

²Law on Handling Administrative Violations No. 15/2012/QH13 passed by the National Assembly of Vietnam on June 20, 2012 (“Law on Handling Administrative Violations”), Article 6.

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¹Civil Code, Article 38.1.

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by law and pursuant to a decision issued by an authorized State body.² Consent is required for the collection and publication of information and data about the private life of an individual.³

Article 125 of the Penal Code stipulates that those who appropriate letters, telegrams, telex, facsimile, or other documents transmitted by telecommunication or computer or commit illegal acts infringing upon the secrecy or safety of letters, telephone conversations, or telegraphs and who have been disciplined or administratively sanctioned for such acts but continue to commit violations shall be subject to sanctions.⁴

The Law on Information Technology states that an authorized State body is responsible to monitor and supervise digital information and to investigate breaches of the law arising from the process of transmitting or storing digital information.

Organizations and individuals collecting, processing, and using the personal information of another person in a network environment must obtain consent from such person, unless otherwise stipulated by law. Organizations and individuals collecting, processing, and using personal information of another person shall have the responsibility to notify persons as to the form, scope, place and purpose of the collection, processing, and use of his or her personal information; to use the collected personal information for proper purposes and to store such information only for a certain period as stipulated by law or as agreed upon by the parties; to take necessary managerial or technical measures to ensure that the personal information shall not be lost, stolen, disclosed, modified, or destroyed; to immediately take necessary measures upon receipt of a request for re-examination, correction, or cancellation; and not to supply or use relevant personal information until such information is corrected.⁵ A monetary fine of up to VND 70 million (approximately USD 3,300), may be imposed on the illegal act of storage, access,

²Civil Code, Article 38.4. *See also* Law on Information Technology, Article 21; Decree No. 90/2008/ND-CP of the Government dated 13 August 2008 on anti-spamming as amended by Decree No. 77/2012/ND-CP on 5 October 2012.

³Civil Code, Article 38.3.

⁴Penal Code, Article 125.1.

⁵Law on Information Technology, Article 21.2.

disclosure or use of “related” information of the services users.⁶

Organizations and individuals are entitled to collect, process, and use the personal information of another person without the consent of the latter in a case where such personal information is used for the following purposes: signing, modifying, or performing contracts for use of information, products, or services in a network environment; pricing or calculating charges for use of information, products, or services in a network environment; and performing other obligations in accordance with the law.⁷

An individual is entitled to request any organization or individual storing his or her personal information in a network environment to check, correct, or cancel such information.

Organizations or individuals are not permitted to supply the personal information of another person to any third party unless otherwise stipulated by law or agreed by such person. Individuals are entitled to claim compensation for loss caused by a breach during the supply of personal information.⁸

Under Decree 52,⁹ the notification of collection and use of personal information of customers is required, and must be clearly displayed to the consumers before or at the time of collecting information¹⁰ as well as included in the website’s privacy policy (which needs to be publicly displayed at an easy-to-spot position on the website).¹¹ The general rule is that organizations that collect and use personal information of consumers on their e-commerce websites must obtain the prior consent of consumers. However, there are exceptions for cases where personal information has already been published on e-commerce websites, or where collection of personal information is for concluding or performing goods/service purchase or sale contracts, or where the collection of personal information is done for calculating prices or charges

⁶Decree 174, Article 66.

⁷Law on Information Technology, Article 21.3.

⁸Law on Information Technology, Article 22.

⁹Decree No. 52/2013/ND-CP of the Government dated 16 May 2013 on e-commerce (“Decree 52”).

¹⁰Decree 52, Article 69.2.

¹¹Decree 52, Article 69.3.

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for use of information, products and services online.¹² In addition, if personal information of a customer is collected and used for the purposes of transferring customers' personal information to a third party, or sending advertisements, product introductions or other commercial information, the organizations which collect customers' information must develop a mechanism for the customer to choose to permit or not to permit the use of their personal information.¹³

Decree 90¹⁴ provides for principles for collection and use of personal email addresses or mobile phone numbers of customers for advertisement purposes, and prohibited acts relating to the transfer and trading of email addresses for spamming purposes.¹⁵

The Law on Consumer Protection¹⁶ provides that the safety and confidentiality of information about consumers shall be assured when consumers participate in transactions or use goods and services, except when a competent state authority requests such information. Traders who collect, use or transfer consumers' information must clearly and publicly notify consumers of the purposes of collection and use of consumers' information; obtain consumers' consent and use information appropriately for notified purposes; ensure safety, accuracy and completeness of consumers' information; and obtain consumers' consent if transferring consum-

¹²Decree 52, Article 70.1.

¹³Decree 52, Article 70.3.

¹⁴Decree No. 90/2008/ND-CP of the Government dated 13 August 2008 on anti-spam, amended by Decree No. 77/2012/ND-CP of the Government dated 5 October 2012 ("Decree 90"). Penalty provisions for different violations stipulated in Decision 90 were replaced by penalty provisions in Decree No. 174/2013/ND-CP of the Government dated 13 November 2013 on penalties for administrative violations in post, telecommunications, information technology and radio frequency.

¹⁵Some key principles of Decree 90 include: requirements of recipients' prior consent before an advertising email or text message could be sent, or before an electronic address (e.g., email address or mobile phone number of the customer) could be collected for advertisement purposes (Articles 7, 8); requirements of senders to develop a mechanism for recipients to unsubscribe from advertising emails (Articles 7, 12) and to stop sending advertisement emails or text messages right after recipients notify senders of their refusal to receive such emails or messages (Article 7); and time during the day for sending advertising emails or text messages (Article 7).

¹⁶Law on Protection of Consumers Rights No. 59/2010/QH12 adopted by the National Assembly of Vietnam on 17 November 2010 ("Law on Consumer Protection").

ers' information to a third party unless provided otherwise by law.¹⁷

§ 39:18 Definition

Privacy law is defined in the Civil Code, Penal Code, the Law on Information Technology, the Law on E-transactions, Decree 52, Decree 90, and the Law on Consumer Protection. The court interprets and applies the law according to specific cases and circumstances.

§ 39:19 Main factors or elements of claim

In a claim for invasion of privacy, the elements of tort law or criminal law are applied where appropriate.

§ 39:20 Types of relief available

Depending on the facts and circumstances of a privacy claim, relief is available pursuant to the Penal Code, and various decrees on handling administrative violations, including Decree 174, Decree 159, Decree 158,¹ Decree 185.² The general principle for relief is that depending on the nature and seriousness of the violations, individuals could be subject to administrative penalty, disciplinary action, or prosecution for criminal liability; if causing damage, they must pay compensation; organizations could be subject to administrative penalty or suspension from operation; if causing damages, they must pay compensation.³ For example, under the Penal Code, sanctions for an invasion of personal privacy or safety of letters, telephone, and/or telegraph clearly include a warning, a fine of between VND 1 million

¹⁷Law on Consumer Protection, Article 6.

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¹Decree No. 158/2013/ND-CP of the Government dated November 12, 2013 on penalties for administrative violations in culture, sports, tourism and advertising ("Decree 158").

²Decree No. 185/2013/ND-CP of the Government dated November 15, 2013 on penalties for administrative violations in commercial activities, production, and trading of counterfeit or banned goods and protection of consumer rights ("Decree 185").

³For example, please see the Law on Information Technology (Article 77), the Law on E-Transactions (Article 50), and the Law on Consumer Protection (Article 11).

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and 5 million, or noncustodial reform for up to one year.⁴ Offenders are subject to noncustodial reform for one to two years or a prison term of between three months and two years if they commit the crime in one of the following circumstances:

- (a) in an organized manner;
- (b) abusing their positions and/or powers;
- (c) committing the crime more than once;
- (d) causing serious consequences; or
- (e) recidivism.

Offenders may also be subject to a fine of between 2 million and 20 million Vietnamese dong and/or to a ban from holding certain posts for one to five years.⁵

§ 39:21 Defenses available

Defenses for invasion of privacy are not clearly indicated in Vietnam law.

§ 39:22 Time period for asserting claim

If there is any damage caused by an invasion of privacy, the limitation period for asserting a claim related to such violation is two years from the date on which the right to privacy of an individual, legal entity, or other subject was infringed.¹

The time period for handling administrative violations is generally one year, except in cases of violations in press and publication where the time limit is two years, calculated from the time of discovery of violations with regard to administrative violations in progress, or from the time of

⁴Penal Code, Article 125.1. Please also see different levels of fines for different piracy violations in Decree 174 (for example, Articles 65, 66), Decree 158 (for example, Articles 4.1.b, 56), Decree 159 (for example, Articles 8.2.d, 8.3.e, 20.1.a), and Decree 185 (for example, Articles 65, 82.4.b, 84.3).

⁵Penal Code, Article 125.2.

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¹Civil Procedure Code No. 24-2004-QH11 passed by the National Assembly on 15 June 2004, as amended on 29 March 2011 (“Civil Procedure Code”), Article 159.

termination of violations with regard to terminated administrative violations.²

E. RIGHT OF PUBLICITY

§ 39:23 Main sources of law

Article 38 of the Civil Code protects persons against illegal publication of their private information. “The collection and publication of information and data about the private life of an individual must have the consent of that person.”¹

§ 39:24 Protection of right of publicity after death

Regarding the protection of right of publicity of a person after death, the Civil Code states that if a person has died, lost the capacity for civil acts, or is not yet 15 years of age, the consent of a parent, spouse, adult child, or representative of that person must be obtained, except where the collection and publication of information and data is required pursuant to a decision of an authorized State body.¹

§ 39:25 Main factors or elements of claim

The elements of a violation of the right to publicity are not specifically mentioned in Vietnam’s laws. It can be understood that the court will interpret specific cases and circumstances.

§ 39:26 Types of relief available

There is no concrete provision regarding the relief available for a plaintiff claiming violation of the right to publicity.

§ 39:27 Defenses available

Defenses for violating the right to publicity are not clearly mentioned in Vietnam’s laws.

§ 39:28 Time period for asserting claim

If there is any damage caused by the violation of the right

²Law on Handling Administrative Violations, Article 6.

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¹Civil Code, Article 38.

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¹Civil Code, Article 38.2.

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to publicity, the time period for asserting a claim of such violation is two years from the date on which the right to publicity of an individual, legal entity, or other subject was infringed.¹

II. ADVERTISING LAW

A. SOURCES OF ADVERTISING LAW

§ 39:29 Basic principles

Advertising activities are governed mainly by the Law on Advertising.¹ Pursuant to Article 3 of the Law on Advertising, the State must protect the legal rights and interest of advertisers and create favorable conditions for persons conducting advertising services. Information included in advertisements for goods, services, and business activities must be true, accurate, and clear; must not be misleading or confusing; or cause loss or damages to producers, business persons or consumers.²

§ 39:30 Constitutional sources

There are no provisions in the Constitution specifically governing advertising activities.

§ 39:31 Codified sources

The Law on Advertising came into effect on January 1, 2013, and is the main legislation governing activities of advertising in Vietnam. Advertisement is also regulated by various pieces of legislation, such as the Commercial Law and the Law on Competition.¹ Only Vietnamese business entities, branches of foreign business entities, and foreign invested enterprises in Vietnam may directly, or through

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¹Civil Code, Article 607.

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¹Law on Advertising No. 16-2012-QH13 passed by the National Assembly on 21 June 2012 (“Law on Advertising”), Article 1.1.

²Law on Advertising, Article 19.

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¹Commercial Law, No. 36/2005/QH11 passed by the National Assembly on June 14, 2005 (“Commercial Law”), Articles 102-106; Law on Competition No. 27/2004/QH11 passed by the National Assembly on Dec. 3, 2004 (“Law on Competition”), Articles 39, 45.

advertising business enterprises, advertise their products, goods, or services. Foreign business entities that do not have commercial representatives in Vietnam who wish to advertise their products or services must hire Vietnamese business entities to conduct advertising services.²

The Law on Advertising regulates the advertisement of “conditional products,” such as medical drugs, cosmetics, domestic and medical chemicals, pesticides and antiseptics, milk and dietary products for toddlers, food and food additives, medical examination and treatment services, etc., which must have specific certificates issued by the competent authorities.³

Advertisements on spoken, visual or electronic media, printed media and advertisements in publications, films, photos, videos, picture discs, sound video, and sound discs are also governed by the Law on Advertising.⁴

With respect to advertising cosmetics and drugs, Decree 181⁵ and Circular 09⁶ provide further guidance on the Law on Advertising related to the subject matter. Under these regulations, abusing the name, symbol, or image of pharmaceutical organizations, doctors, pharmacists or health officers in order to advertise medicine or cosmetics is prohibited.

Vietnamese law strictly prohibits tobacco advertisement in all forms, including using the label, symbols, and appellation of tobacco products with products and services not related to tobacco.⁷

Advertisements in outdoor places are regulated by the Law on Advertising. Organizations or individuals placing an advertisement outdoors must protect urban beauty, landscape, and environment in compliance with the laws on

²Commercial Law, Article 103. Law on Advertising, Article 39.

³Law on Advertising, Article 20.

⁴Law on Advertising, Articles 21–26.

⁵Decree No. 181/2013/ND-CP of the Government dated 14 November 2013 implementing certain articles of the Law on Advertising (“Decree 181”), Articles 3–4.

⁶Circular No. 09/2015/TT-BYT of the Ministry of Health dated 25 May 2015 stipulating the approval for contents of advertisements of special products, commodities and services under the management of the Ministry of Health (“Circular 09”), Articles 5–6.

⁷Law on Advertising, Article 7.

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advertising, rural and urban planning, traffic order and safety, and the safety of society.⁸

Advertising through email and text messages is regulated by Decree 90,⁹ and as further amended by Decree 174. Decree 90 and Decree 77 also impose the following general restrictions on email and text message advertising: (i) the advertising email and advertising text message may only be sent after obtaining a clear prior consent of the recipient; (ii) the advertiser must immediately stop sending email and text message advertisements when receiving the refusal from the recipient; (iii) it is prohibited to send more than one advertising email with the same content to an email address within 24 hours, unless otherwise agreed by the receiver; and (iv) it is prohibited to send more than one advertising message with the same contents to a telephone number within a 24-hour period, and such message may only be sent between the hours of 7:00 a.m. to 10:00 p.m., unless otherwise agreed by the recipient.¹⁰

§ 39:32 Case law sources

Advertising cases are handled by State bodies rather than courts.

B. FALSE ADVERTISING

§ 39:33 Main sources of law

False advertising is regulated by a number of Vietnamese laws, namely, the Penal Code, the Commercial Law, the Law on Advertising, the Law on Competition, the Law on Consumer Protection and the Law on Quality of Goods and Products.¹ Any individual or organization providing false advertising, depending on the nature and seriousness of the offense, shall be charged with an administrative liability or criminal penalty.² Additionally, under the Law on Consumer Protection, consumers have the right to request a refund or compensation for loss and damage when goods and services

⁸Law on Advertising, Article 37.

⁹Decree 90, Articles 7–16.

¹⁰Decree 90, Articles 7, 12 and 16.

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¹Law on Quality of Goods and Products No. 05/2007/QH12, passed by the National Assembly on 21 November, 2007 (“Law on Quality of Goods and Products”).

²Law on Advertising, Article 11.

do not satisfy the standards, quality, quantity, and price as offered by the suppliers, and may complain, denounce, and institute proceedings in respect of any false information or advertising.³

§ 39:34 Definition and significant subdivisions

The Law on Advertising prohibits advertising with contents which are untrue or misleading about the business capacity or ability to provide products, goods, or services of an organization or individual conducting business in products, goods or services; or about the quantity, quality, price, usage, design, package, trademark, origin, type, method of serving or warranty period of products, goods or services which have been registered or declared.¹ The Commercial Law prohibits false advertisement of goods and services with respect to any of the following: quantity, quality, price, usage, design, origin of goods, type, packaging, method of service, and warranty period.² The Law on Competition defines false advertising as providing false or misleading information to consumers relating to one of the following:

- (i) price, quantity, quality, usage, design, type, packaging, date of manufacture, use expiry, origin of goods, manufacturer, place of manufacture, processor, or place of processing;
- (ii) manner of use, method of services, warranty period; or
- (iii) other false or misleading information.³

§ 39:35 Main factors or elements of claim

Regarding compensation for damages in cases of false advertising, the Commercial Law, the Law on Advertising, the Law on Quality of Goods and Products, and the Law on Consumer Protection have provisions on claims, but, in general, they refer to principles of the Vietnam Civil Code.¹ Under the Civil Code, an injured person may claim compensation based on the following elements:

³Law on Consumer Protection, Article 8.

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¹Law on Advertising, Article 8.9.

²Commercial Law, Article 109.

³Law on Competition, Article 45.

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¹Civil Code, Articles 604–605.

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- (i) there has been an illegal act committed (such as providing false advertisements);
- (ii) there has been damage caused and the damage caused must be the result of the illegal acts and vice versa (an injured person must prove the damage was caused by false advertising, which may include material damage and mental suffering); and
- (iii) the party causing damage was at fault.

§ 39:36 Examples of claims found false or misleading and claims found not false or misleading

There have been few cases related to false advertising in Vietnam's administrative authorities. Furthermore, Vietnam applies a civil law system where judgments are not binding on future courts and are rarely published. Thus, the facts of a case and full text of a court's decision are not easily obtained. Certain cases decided by competent authorities have been published on the web-site of such authorities.

Several cases handled by the Vietnam Competition Administration Department (VCAD) may serve as examples.

In August 2011, a television shopping company advertised its cosmetic products as having magical effects that would have tremendous beautifying effects on consumers within a short time. These cosmetic products had completed the necessary quality standards process with the Ministry of Health of Vietnam, but when they were advertised on television, the product functions and uses were magnified as compared with the approved product standards. When questioned by the VCAD about these claims, the company could not prove the claimed results. The company was fined VND 45 million (approximately USD 2,130) for violation of Article 45 of the Law on Competition. Additionally, the company revised the advertisement content to comply with Vietnamese laws.¹

In another case, a leading electronics company advertised a product with the functions that it acted "against wrinkles in clothes" or "water safe to 50%" but later failed to prove these functions. In September 2011, the company was fined

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¹<http://www.vca.gov.vn/NewsDetail.aspx?ID=211&CateID=1>.

VND 30 million (approximately USD 1,420) for violation of Article 45 of the Law on Competition.²

§ 39:37 Types of relief available

If it is proved that an individual or organization committed an act of false advertisement, administrative sanctions or criminal penalties may be applied. In cases where a false advertisement causes damage to an individual or organization, the latter may claim compensation for extra-contractual damage.¹

Administrative sanctions include monetary fines and a variety of remedial measures such as warnings, compulsory removal or dismantlement of advertisements, compulsory formal apologies and compulsory rectification of the false advertising information.² Providing false advertisements can result in a fine up to VND 140 million (approximately USD 6,600). Supplemental sanctions include compulsory removal or dismantlement of the advertisement, compulsory formal apologies and compulsory rectification of the false advertising information.³ With respect to an act of providing false advertisement that is aimed at unfair competition, an organization may be subject to a fine of up to VND 140 million (approximately USD 6,600).⁴ An organization could be fined at a level equal to two times the fines for individuals.⁵ Additional sanctions and measures for remedying consequences may also be applied, including confiscation of material evidence and facilities used to commit the breach, all profits earned from such breach, and public retraction.⁶

Criminal penalties may be applied to an offender only when the false advertisement causes serious consequences

²<http://www.baomoi.com/Electrolux-VN-bi-phat-vi-quang-cao-lo/c/7181452.epi>.

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¹Law on Advertising, Article 11.2.

²Decree 158, Article 2.

³Decree 158, Article 51.7.

⁴Decree No. 71/2014/ND-CP of the Government dated Sept. 15, 2014, effective on Sept. 15, 2014, on dealing with breaches in the competition sector (“Decree 71”), Articles 5.2 and 33.

⁵For the same act of administrative violations, a principle in the Law on Handling Administrative Violations (*See* Article 3.1.e) is that the levels of fines for organizations are twice the amount for individuals.

⁶Decree 71, Articles 33.3, 28.4.

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or the offender has continued to commit an offense after being administratively sanctioned or sentenced for such offense and not yet entitled to criminal record remission. The offender may be subject to a fine of between VND 10 million (approximately USD 470) and VND 100 million (approximately USD 4,740), noncustodial reform for up to three years, or a prison term of between six months and three years. There may also be supplemental sanctions of a fine up to VND 50 million (approximately USD 2,370) or a ban from practicing certain occupations or doing certain jobs for one to five years.⁷

§ 39:38 Defenses available

Pursuant to Decree No. 99/2011/ND-CP,¹ a consumer has the right to make a claim of false advertising against an advertising party.² The consumer should submit a written request to the State administrative body for consumer protection, including the information of the violating trader, details of the case, the consumer's specific request and enclosed documents and evidence. When faced with such a claim, an advertising party must prove that all contents of its advertisement are true and not misleading to consumers. In a civil proceeding, the responsibility to prove the damage caused by the defendant belongs to the plaintiff.³ For proving the fault of an advertising party, the burden of proof shifts to the advertising party.⁴

§ 39:39 Evidence required to support advertising claims based on tests

There is no specific regulation regarding scientific tests or surveys used to substantiate claims made in advertisements. Tests and examinations may vary from case to case. In cases of advertising claims relating to the quality of goods, the Vietnam official standards (*i.e.*, TCVN) issued by the Vietnam Standard and Quality Center can be used to verify

⁷Penal Code, Article 168.

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¹Decree No. 99/2011/ND-CP of the Government dated 27 November 2011 detailing and guiding a number of articles of the Law on Consumer Protection ("Decree 99").

²Decree 99, Articles 20-23.

³Civil Procedure Code, Article 79.

⁴Law on Consumer Protection, Article 42.2.

whether the advertised products reach the quality standard or not.¹

§ 39:40 Time period for asserting claim

The time limit for the authority to impose a penalty for an offense pursuant to administrative procedures is one year from the date on which the offense was committed. If within such time limit, an offender commits a similar offense or intentionally evades or obstructs justice, the time limit will commence from the date on which the new offense was committed or the act of evasion or obstruction ceased.¹

The time limit for criminal liability prosecution is five years for less serious crimes, 10 years for serious crimes, 15 years for very serious crimes and 20 years for particularly serious crimes, calculated from the date on which false advertising was carried out.² If the offender deliberately flees, and a warrant is issued, the limitation is tolled, and the time limit must be recalculated from the time when the offender is arrested.³

The time limit for initiating legal action claiming compensation for damage is two years from the date on which the legal rights or interests of an individual or organization were infringed.⁴

C. THIRD PARTY TRADEMARKS AND COPYRIGHTS IN ADVERTISING

§ 39:41 Permissibility of using another party's trademark in advertising without that party's authorization

Vietnamese regulations strictly prohibit “advertisements violating laws and regulations on intellectual property.”¹

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¹<http://tcvn.gov.vn/sites/head/en/tim-kiem-tieu-chuan.aspx?sk=&cat=tcvn>.

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¹Law on Handling Administrative Violations, Article 6.

²Penal Code, Articles 23.2, 23.3.

³Penal Code, Article 23.3.

⁴Civil Code, Article 607.

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¹Law on Advertising, Article 8.13. See also Intellectual Property

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§ 39:42 Permissibility of using another party's copyrighted work in advertising without that party's authorization

Under Vietnam's Law on Intellectual Property, a copyright holder shall have the right to communicate, or publish, its works to the public by any means.¹ When a party attempts to use another party's copyrighted work in an advertisement, it must ask for permission from the copyright holder and must pay royalties, remuneration, or other material benefits to the copyright holder.²

§ 39:43 Time period for asserting claim of trademark infringement or copyright infringement

Under Vietnamese civil law, if any damage is caused by trademark or copyright infringement, the time period for asserting a claim of such infringement is two years from the date on which the infringement was conducted.

The time limit for criminal liability prosecution is five years for less serious crimes, 10 years for serious crimes, 15 years for very serious crimes and 20 years for particularly serious crimes, calculated from the date on which infringement was carried out.¹ If the offender deliberately flees, and a warrant is issued, the limitation is tolled, and the time limit must be re-calculated from the time when the offender is arrested.²

Criminal penalties may be applied to an offender who, without permission of holders of copyright or related rights, commits the act of infringing upon copyrights or intellectual property rights on a commercial scale. Such offender shall be imposed a fine of between VND 50 million (approximately USD 2,370) and VND 500 million (approximately USD 23,700), or non-custodial reform for up to two years.³

Law.

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¹Intellectual Property Law, Articles 19.3, 20.

²Intellectual Property Law, Article 20.

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¹Penal Code, Articles 23.2, 23.3.

²Penal Code, Article 23.3.

³Penal Code, Articles 170 and 171.

III. ENTERTAINMENT LAW

A. SOURCES

§ 39:44 Basic principles

The Vietnamese government tends to encourage the entertainment activities of its citizens. However, these activities must not violate the nation's legal framework or the Constitution.

§ 39:45 Constitutional sources

The Vietnamese Constitution provides general principles on cultural and artistic activities. The Constitution provides its citizens with the right to undertake scientific and technical research, and also the right to engage in literary and artistic creation, and to enjoy the benefits from such activities.¹ The State and society preserve and develop a progressive Vietnamese culture imbued with national identity and assimilating the quintessence of human culture.² The State and society develop culture and arts in order to satisfy the People's diverse and healthy spiritual needs; and develop mass media in order to satisfy the People's demands for information and to serve the cause of building and protecting the Homeland.³

§ 39:46 Codified sources

Vietnam does not have a single comprehensive law governing entertainment activities. Any case relating to a specific aspect of entertainment will be regulated by the applicable law (*e.g.*, Law on Cinematography, etc.).

§ 39:47 Case law sources

Vietnam is a civil law country; case law has no precedential authority.

B. TYPES

§ 39:48 Legal matters characterized as entertainment law

In Vietnam, cultural and informative activities can be

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¹Constitution, Article 40.

²Constitution, Article 60.1.

³Constitution, Article 60.2.

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characterized as entertainment activities, including press, publishing, cinematography, performing arts, public cultural activities and cultural services, fine arts, cultural and art exhibitions, fashion shows, model contests, beauty contests and photography.

IV. ART LAW

A. SOURCES

§ 39:49 Main sources of law relating to sale of artworks

Generally, the Commercial Law governs the sale of artwork, as it is treated as any other kind of goods. The Commercial Law provides for trade fairs and exhibitions.¹ The moral rights attached to artistic goods are regulated by the Intellectual Property Law.

§ 39:50 Sources of law for artists' rights

Vietnam's Intellectual Property Law clearly states artists' rights related to their artworks. Artists' rights are comprised of moral rights and economic rights.

The moral rights of authors are listed in Article 19, as follows:

1. Right to give titles to their works.
2. Right to attach their real names or pseudonyms to their works, and to have their real names or pseudonyms acknowledged when their works are published or used.
3. Right to publish their works or to authorize other persons to publish their works.
4. Right to protect the integrity of their works, and to forbid other persons to modify, edit, or distort their works in whatever form, causing harm to the honor and reputation of the author.

The economic rights of authors are stipulated in Article 20, as follows:

1. To make derivative works.
2. To display their works to the public.
3. To reproduce their works.
4. To distribute or import the original or copies of their works.

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¹Commercial Law, Articles 129–140.

5. To communicate their works to the public by wireless or landline means, electronic information networks, or other technical means.
6. To lease the original or copies of cinematographic works and computer programs.

Economic rights can be transferred to another party, while the artists' moral rights cannot.¹

B. RELATIONSHIPS

§ 39:51 Relationship between dealer and artist

The economic rights of artists and the relationship between dealers and artists is simply the relationship between buyers and sellers under the Commercial Law.¹ However, the moral rights of the artists will be governed by the Intellectual Property Law.²

§ 39:52 Relationship between purchaser and dealer

The relationship between an art purchaser and a dealer is governed by the Commercial Law, and transactions can be considered as a shift of property rights.¹ This will not affect the moral rights of the artist related to such artwork.²

C. ART AUCTIONS

§ 39:53 Laws relating to auctions and auction houses

The Commercial Law defines auctions as follows: "Auction of goods means a commercial activity whereby the seller conducts, or hires an auctioneer to conduct, the public sale of goods in order to select the purchaser offering the highest price."¹ In addition, Decree 17/2010/ND-CP also provides property auction as a means of public sale of property in

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¹Intellectual Property Law, Article 20.

[Section 39:51]

¹Commercial Law, Articles 129–140.

²Intellectual Property Law, Articles 19, 27, 29, 43, and 45.

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¹Commercial Law, Articles 129–140.

²Intellectual Property Law, Articles 19, 27, 29, 43, and 45.

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¹Commercial Law, Article 185.

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which increasing bids are offered by two or more bidders.² The law requires auctioneers and sellers of goods to be business entities with a business registration for auctioneering services or a seller who conducts an auction of their own goods. A “seller of goods” means the owner of goods or the person authorized by the owner of goods to sell the goods.³

D. “STOLEN” ART WORKS

§ 39:54 Legal issues regarding “stolen” artworks

Under Vietnamese civil law, the purchase or sale of stolen property is an invalid transaction.¹ However, according to Article 138 of the Civil Code, if the property is “movable,” not subject to ownership registration, and has already been transferred to a bona fide third party through another transaction, the transaction with that bona fide third party will still be valid, except for the following situation: Owners may reclaim movable property not subject to ownership right registration from bona fide possessors in cases where such bona fide possessors have acquired such property through unindemnifiable contracts with persons who have no right to dispose of the property. In similar cases with indemnifiable contracts, the owners may reclaim the movable property if such movable property has been stolen, lost, or possessed against the owner’s will.²

Whether a bona fide purchaser of a stolen artwork must return the artwork to the person from whom the artwork was stolen or to that person’s heirs will be determined based on the facts of the case.

²Decree 17/2010/ND-CP of the Government on Property Auction dated March 4, 2010 (“Decree 17”), Article 2.1.

³Commercial Law, Article 186.2. *See* Commercial Law, Section 2, Auction of Goods, Articles 185–213. Decree 17, Article 2.

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¹Civil Code, Article 128.

²Civil Code, Article 257.

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