

Copyright litigation in Vietnam: overview

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SOURCES OF LAW

1. What are the principal sources of law and regulation relating to copyright and copyright litigation?

Vietnam is presently a member of the following international conventions and bilateral agreements in relation to copyright protection:

- WIPO Berne Convention for the Protection of Literary and Artistic Works 1971 (Berne Convention).
- Brussels Convention relating to the Distribution of Program-Carrying Signals Transmitted by Satellite.
- WIPO Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961 (Rome Convention).
- WTO Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS).
- Vietnam-United States Copyright Agreement.
- Vietnam-Switzerland Bilateral Agreement.
- Vietnam-United States Trade Agreement.

However, where Vietnam has adhered to or signed the above international conventions and treaties, this does not mean that they would automatically become domestic law. The state then transfers the provisions of the conventions and treaties into domestic law or decides on the direct application of all or part of the treaties in Vietnam's territory.

In relation to domestic laws, the principal legal sources regarding copyright are the:

- **Civil Code of 2015 (Civil Code)**. This provides general provisions related to intellectual property (IP) rights.
- **Intellectual Property Law of 2005, as amended and supplemented in 2009 (IP Law)**. This provides detailed definitions and mechanisms for the protection of IP rights.
- **Civil Procedure Code of 2015 (CPC)**. This provides the basic principles and procedure for civil litigation.
- **Penal Code of 2015, as amended and supplemented in 2017**. This sets out criminal liability for several IP-related crimes. The Criminal Procedure Code of 2015 provides the basic principles and procedure for criminal cases. It came into effect on 1 January 2018.

While there are many additional regulations as follows:

- **Decree 22/2018/ND-CP of 23 February 2018**. This replaces Decree 100/2006/ND-CP of 21 September 2006 and provides details and guidance on the implementation of a number of Articles of the Civil Code and the IP Law in relation to copyright and copyright-related rights.

- **Decree 131/2013/ND-CP of 16 October 2013 on sanctioning of administrative violations in copyright and related rights**. A number of Articles of Decree 131 are amended in Decree 28/2017/ND-CP of 20 March 2017.

In December 2015, the Supreme People's Court of Vietnam released Resolution 03/2015/NQ-HDTP on the process of case law selection, publication and application. Since April 2016, the Chief Justice of the Supreme People's Court has published 16 judgments which were passed by judges of the court. Accordingly, judges and tribunals are required to study and apply these precedents in dealing with similar cases, to ensure that cases with the same legal events and details are handled consistently. Although none of the published judgments were related to copyright, this has been a major step in revolutionising the legal system in general, and copyright law in particular, as Vietnam has never previously adopted court judgments as a source of law.

In relation to order of priority in applying the above-mentioned legal sources, Vietnam has made a conscious effort to fulfil its international obligations in the copyright domain, by providing that where the provisions of the international treaties contrast with provisions of national law, the treaty provisions will prevail.

COURT SYSTEM

2. In which courts is copyright enforced?

Copyright cases are tried in the civil or criminal court of the People's Court system. So far, Vietnam has not established a specialised court for IP-related cases. Copyrights, together with other IP issues, are handled in the same courts as other civil or criminal matters. Only a few copyright cases have been tried. Therefore, the court lacks both expertise and experience in relation to copyright-related matters.

The Copyright Office of Vietnam (COV) is responsible for the administration of copyright. The COV does not have jurisdiction in copyright litigation.

3. Who can represent parties before the court?

Any person with full civil act capacity, and who is authorised by the parties, can represent the parties before the courts handling copyright litigation, except for the defendant in a criminal case. In this regard, the civil act capacity of a natural person is his/her capability to establish and exercise civil rights and perform civil obligations through his/her acts.

4. What is the language of the proceedings? Is there a choice of language?

The language used in proceedings is Vietnamese. All documents in other languages must be translated into Vietnamese for submission to the courts.

5. To what extent are courts willing to consider, or are bound by, the decisions or opinions of other national or foreign courts, or other national or international bodies, that have handed down decisions in similar cases?

Under the Vietnamese judicial system, the courts are not bound by prior national court rulings, except for some precedents passed by council of justices of the Supreme People's Court. In most cases, the court will consider the case based only on the applicable laws. In many cases, the opinions of other national courts or foreign courts may be considered as reference materials or pieces of evidence.

SUBSTANTIVE LAW

6. What types of works can be protected by copyright?

Under the IP Law, the following types of work are copyrightable:

- Literary and scientific works, textbooks, teaching materials, and other works expressed in forms of letters or other writing characters.
- Lectures, presentations and other speeches.
- Journalistic works.
- Musical works.
- Dramatic works.
- Cinematographic works and works created by similar methods.
- Plastic artwork, and applied fine art works.
- Photographic works.
- Architectural works.
- Graphics, sketches, maps, drawing pertaining to topography, architecture, or scientific works.
- Folk literary and artistic works.
- Computer programs and compilations of data.

Software, under computer programs, is copyrightable.

Vietnam provides copyright protection for both nationals and foreign citizens/organisations who meet at least one of the following conditions:

- Foreign organisations or individuals whose works were first published in Vietnam and have not been published in any foreign country or simultaneously published in Vietnam within 30 days of its first publication in other nations.
- Foreign organisations or individuals whose works are eligible for protection in Vietnam in accordance with international treaties to which the Socialist Republic of Vietnam is party.

7. What are the main acts that constitute primary and secondary infringement of copyright?

According to the IP Law, an act of copyright infringement includes:

- Appropriating copyright to literary, artistic or scientific works.
- Impersonating the author.
- Publishing or distributing works without the permission of the author.
- Publishing or distributing works under joint-authorship without the permission of the other co-author.
- Modifying, mutilating or distorting works in such a way that is prejudicial to the honour and reputation of the author.
- Reproducing works without the permission of the author or copyright holder (except for the cases specified the first and fifth points of Clause 1 of Article 25 of the IP Law) (see *Question 9*).
- Making derivative works without the permission of the author or copyright holder to works used for the making of derivative works (except for the cases specified in the eighth point of Clause 1 of Article 25 of the IP Law) (see *Question 9*).

8. Does your jurisdiction provide authors with moral rights?

Authors are provided with moral rights in Vietnam.

Moral rights provide the author with the right to:

- Title their works.
- Attach their real names or pseudonyms to their works.
- Have their real names or pseudonyms acknowledged when their works are published or used.
- Publish their works or authorise other persons to publish their works.
- Protect the integrity of their works, and to prevent other persons from modifying, mutilating or distorting their works in any form prejudicial to their honour and reputation.

Moral rights are inherent to authors and are protected indefinitely (except for the right to publish their work or authorise another person to do so). Moral rights are for the authors to protect the integrity of the work, to object to any alteration, mutilation, distortion or other modification in any form that is prejudicial to their honour and prestige. Even when the authors have died or when the works belong to the public domain, their heirs can bring a lawsuit against the infringer to protect the work's integrity and the authors' fame.

9. What defences are available to an alleged infringer?

There is no direct law that provides for "fair use" or "fair dealing" as a doctrine to be used as a defence. However, the IP Law provides specific exceptions to exclusive rights, permitting the use of published works without obtaining permission and/or paying royalties and/or remunerations if such use does not affect the normal utilisation of such works or cause prejudice to rights of the authors and/or copyright holders, and must indicate the authors' names, and sources and origins of the works.

Cases of use of published works where permission or payment of royalties and/or remuneration is not required include:

- Self-reproducing a single copy for private scientific research or educational purposes.
- Properly quoting the work without altering the author's words for commentary or for illustration in one's own work.
- Quoting the work without altering the author's words for use in articles, periodical publications, in radio and television programmes and documentaries.

- Quoting the work for teaching in schools without altering the author's words, and not for commercial purposes.
- Reproducing the work for archives in libraries for research purposes.
- Performing dramatic works and other forms of performing arts in cultural gatherings or in promotional campaigns without any form of charges.
- Directly recording the performances for news programmes or educational purposes.
- Taking photos of or televising plastic art, architectural, photographic and applied fine art works already displayed publicly for introduction purposes.
- Translating the works into braille or similar for visually impaired people.
- Importing copies of others' works for personal use only.

However, the first and fifth exceptions provided above do not apply to architectural works, plastic art works and computer programs.

In addition, broadcasting organisations using published works, except cinematographic works, for the purpose of launching broadcasts with sponsorship, advertisements or collection of money in any form will not be required to ask for permission from, but will be liable to pay royalties or remunerations to the copyright owner. The level of royalties, remuneration, and other material benefits, as well as the means of payment, must be mutually agreed by concerned parties. Where a mutual agreement cannot be reached, the concerned parties must follow the government's regulations or file a lawsuit in accordance with law. If the use is made without sponsorship, advertisements, or collection of money in any form, permission is not required, and the royalties or remunerations to the copyright owner will be in accordance with the government's regulations.

10. Is there a requirement for copyright registration?

Under the IP Law, there is no requirement of copyright registration: a work will have automatic protection if it is copyrightable. In principle, to enforce a copyright, copyright registration is not required. However, a certificate of copyright registration can be used as prima facie evidence of copyright ownership. Therefore, it is highly recommended to obtain a certificate of copyright registration. There is also no requirement for deposit or notice of copyright work.

11. How long does copyright protection last for the principal types of copyright work?

Personal rights (moral rights), except for publication rights, are protected indefinitely.

In general, publication rights and property rights last throughout the life of the author and the 50 years following the year of the author's death. For works created by co-authors, the term of protection ends on the 50th year after the year the last surviving co-author dies.

Cinematographic works, photographic works, applied fine art works, and anonymous works have a term of protection of 75 years from first publication. Works which still remain unpublished 25 years after their fixation will be protected for 100 years from their fixation date. In relation to an anonymous work, when information on the author becomes available, the protection term lasts throughout the life of the author and the 50 years following the year of the author's death.

Terms of protection end at midnight on 31 December of the expiry year of the copyright's protection term.

12. How is copyright infringement assessed?

The IP Law provides a closed list of infringing acts. An act will only be considered as an act of copyright infringement if it falls within this list. However, the list does not fit comfortably with other provisions on rights conferred to the right holders and the exceptions. Therefore, one may sometimes find an act that violates a right of the copyright holder, despite not being listed as an infringing act.

The law and regulations do not specify whether actual copying must be proved or whether only substantial similarity is sufficient to establish infringement. In practice, the rights holder must establish proof of copying either by direct or circumstantial evidence, which often includes that the infringer had access to the protected work and that there is substantial similarity.

As mentioned above in *Question 9*, the exceptions of self-reproducing a single copy for private scientific research or educational purposes and reproducing the work for archives in libraries for research purposes do not apply to architectural works, plastic works and computer programs. Other than this provision, there are no particularities for assessing copyright infringement for specific types of works (such as software).

13. On what grounds can copyright in a work be declared invalid or unenforceable?

Copyright registration can be invalidated in the following cases:

- Where the grantee is not the author, copyright holder or related rights holder.
- Where the registered work, phonogram, video recording or broadcast is ineligible for protection.
- Where the grant of registered copyright certificates and/or registered related rights certificates is contrary to the provisions of the IP Law.

The IP Law does not have any provisions regarding unenforceable valid copyright works. However, the IP Law does have a general statement that the exercise of IP rights must not:

- Be prejudicial to the state's interests, public interests, legitimate rights and interests of other organisations and individuals.
- Violate other relevant provisions of law.

Where the achievement of objectives related to defence, security, and people's lives and other interests of the state and society specified in the IP Law should be guaranteed, the state can:

- Prohibit or restrict the exercise of IP rights by the holders.
- Compel the licensing by the holders of one or several of their rights to other organisations or individuals with appropriate terms.

14. What limitation periods apply to copyright infringement actions?

For a civil action, the statute of limitations is three years from the date the copyright holder becomes aware of the infringement.

For an administrative action, the statute of limitations is two years from the date the infringement is ceased or the date the copyright holder becomes aware of the infringement.

For a criminal action, the statute of limitations is five years, counting from the date a crime is committed. The limitation period is

extended if the offender commits a new crime, and the time already past must not be counted, and the statute of limitations for the previous crime must be re-calculated from the date the new crime was committed.

15. To what extent can the enforcement of copyright expose the copyright holder to liability for an anti-trust violation?

Vietnam competition law provides a set of Articles to prohibit abuse of a dominant or monopoly position on the market. If enforcement of a copyright may distort competition, the copyright holder may be held liable for anti-trust violations.

PARTIES TO LITIGATION

16. Who can sue for copyright infringement?

In civil litigation, the following persons/entities can sue for copyright infringement:

- Authors.
- Owners of copyright and related rights.
- Legal inheritors of the authors/owners of copyright and related rights.
- Individuals or organisations to whom the rights of the owners of copyright and related rights, including the rights to sue for copyright infringement, are transferred. Either exclusive or non-exclusive licensees may have the right to sue for copyright infringement, provided they are authorised to do so.
- Individuals or organisations using the works under contract.
- Performers.
- Producers of audio/visual recordings.
- Broadcasting organisations.
- Empowered copyright/related rights collective management organisations.

In addition, relevant state authorities and organisations, within their competence and obligations, have the right to take civil proceedings to request the courts to protect the public and state interests in the field of copyright and related rights (see also Question 17).

The law does not require a licensee to be registered to be eligible to sue.

17. Can copyright collecting societies sue for copyright infringement to enforce their members' rights?

Organisations acting as collective representatives of copyright or related rights can initiate a lawsuit to enforce their members' rights if they are vested with a power of attorney to do so. As a case can only be heard once, the copyright holder and the collecting societies cannot bring the same case to court in parallel.

18. Under what conditions, if any, can an alleged infringer bring proceedings to obtain a declaratory judgment of non-infringement?

The Vietnamese legal system does not confer rights on alleged infringers to initiate a lawsuit to obtain a declaratory judgment of non-infringement.

19. Who can be sued for copyright infringement?

For civil cases, any person (individual or organisation) who violates copyright can be sued for copyright infringement. Company directors (with status as individuals) can be sued personally if they personally infringe copyrights.

For criminal cases, under the Penal Code of 2015, both individuals and commercial organisations can be prosecuted for copyright infringements in accordance with criminal law.

20. How is the liability of intermediaries, such as internet service providers treated? Under what conditions can they be liable for copyright infringement? Are there any specific defences available to them?

Internet service providers (ISPs) have a duty to remove and delete digital content that violates copyright and related rights, and can cut, stop or suspend an individual's internet/telecommunication line under a state agencies' order. In addition, ISPs are directly responsible for paying damages due to violation of copyright and related rights in the following circumstances:

- Where the ISP acts as the source of the start of any publishing, transmitting or supplying digital content by internet or telecommunication network without permission of the right owner.
- Where the ISP is involved in editing, truncating, copying digital content in any manner without permission of the right owner.
- Where the ISP intentionally disables any technical measures performed by the rights owners for protection of copyright and related rights.
- Where the ISP operates as a source of secondary distribution of digital content obtained through violation of copyright and related rights.

ISPs may also be considered jointly liable with copyright infringers where they supply technical means to abet copyright infringement.

21. Is it possible to add or remove parties during litigation?

Following a request from one of the parties or the prosecutors, the court may consider adding or subtracting more parties during litigation in a copyright infringement case, in both criminal and civil proceedings.

ENFORCEMENT OPTIONS

22. What options are open to a copyright holder when seeking to enforce its rights in your jurisdiction?

Copyright holders are open to self-defence remedies or may request an enforcement agency to handle the IP right infringement through civil, administrative or criminal remedies and border control measures.

23. Is interim relief available for the rapid removal of infringing content from the internet?

There is no specific procedure for the rapid removal of infringing content from the internet. Under the current law, preliminary injunctions are available for civil actions. However, they are rarely

awarded. For administrative actions, ISPs must remove and delete the infringing content under a state agencies' order.

24. Is it advisable to send a letter before action (cease and desist letter) to an alleged infringer before commencing copyright infringement proceedings?

It is advisable to send a cease and desist letter to an alleged infringer before commencing copyright infringement proceedings in cases where the infringement is clear and/or the infringers appear to be committing the infringement due to ignorance of the law.

It is worth noting that if the threats in a cease and desist letter are not justified, the alleged infringers may bring a civil lawsuit against the alleged to recover the damages to compensate for any losses they have suffered as a result of the threats.

25. To what extent are your national courts able to grant cross-border or extra-territorial injunctions (preliminary or permanent)?

The courts cannot grant worldwide injunctions in the field of copyright litigation.

26. To what extent are arbitration, and alternative dispute resolution (ADR) methods (such as mediation), available to resolve copyright disputes?

Arbitration

Arbitration is also available for copyright disputes related to commercial matters. However, in practice, arbitration is not widely used, and mediation and conciliation are more popular methods (see below, ADR).

ADR

ADR methods are available for copyright holders. The court also encourages parties to resolve the disputes through conciliation or mediation. In the course of settling civil cases, courts still accept settlements.

PROCEDURE IN CIVIL COURTS

27. What is the format of copyright infringement proceedings?

To initiate a copyright infringement proceeding, the claimant must first file a petition and the necessary documents to the people's court of the applicable rural district, urban district, provincial capital or provincial town, within three years from the date on which they discovered that their rights were infringed.

The court will then consider the complaint, and within five working days from the date of receiving the petition must issue a decision on whether to (*Article 191, Civil Procedure Code (CPC)*):

- Accept the case.
- Transfer the lawsuit petition to other competent courts.
- Return the lawsuit petition to the litigator (in practice, this can be one to two months).

If the court deems that the case falls within its jurisdiction and that the lawsuit petition is sufficient, the court will notify the claimant of this in writing and will officially accept the case once the claimant has submitted the court fee advance payment receipts (*Article 195, CPC*). Within three working days from the date of receiving the case,

the court must send written notice to the defendant and to the Procuracy of the same level on their acceptance of the case (*Article 196, CPC*). In Vietnam, the Procuracies (the People's Procuracies) are authorities at national and local level which oversee legal compliance and have the power to exercise the right to prosecution as stipulated by law.

Within 15 days from the date of receiving the notice, the defendant must submit their written opinion on the claimant's claim along with any supporting evidence (*Article 199, CPC*).

The deadline for the court to bring the case to trial is two months from the date of acceptance of the case (*Article 203, CPC*). If the case has complex details, the timeline can be extended by an additional two months (*Article 203, CPC*). During this preparation time, the court will carry out conciliations for the involved parties to reach an agreement on the resolution of the case and only where a settlement cannot be reached, will the court proceed with the hearing. However, in practice, it usually takes the court about six to eight months or more to bring the case to trial.

28. What are the rules and practice concerning evidence in copyright infringement proceedings in your jurisdiction?

In Vietnam, the court relies heavily on testimonies or opinions of expert witnesses due to the judges' limited knowledge and experience in the field of IP. According to Article 79 of the Civil Procedure Code (CPC), expert witnesses are persons who have legally-prescribed necessary knowledge and/or experience in the fields of the objects requiring expertise.

On the optional agreement of the involved parties, or at the request of one or more of the involved parties, judges may issue decisions calling on expert witnesses for their expertise (*Article 102, CPC*). The court may also consider relevant documents, affidavits and witness testimonies to decide on the case. According to Article 79 of the CPC, persons who know details related to the contents of cases can be summoned by the courts to participate in the procedures in the capacity as witnesses. There is no provision in Vietnam's national law for the cross-examination of witnesses.

In practice, on 3 June 2016, the Copyright Office of Vietnam established the Expertise Center of Copyright, Related Rights (ECCR), the only agency officially authorised to issue an expert opinion in the copyright field in Vietnam. The ECCR is responsible for conducting an assessment on the possibility of copyright infringement. In general, IP holders often obtain expert opinions from IP expert agencies before taking any legal action. The expert opinions are non-binding, but are almost always followed by the enforcement agencies in Vietnam, and therefore help to expedite the process. In our observation, there is an increasing tendency to seek expert opinions from the ECCR.

29. To what extent is survey evidence used?

Vietnam national law does not prohibit the use of survey evidence. The Civil Procedure Code only stipulates that evidence can be gathered from the following sources:

- Readable, audible or visible materials.
- Exhibits.
- Involved parties' testimonies.
- Witnesses' testimonies.
- Expert conclusions.
- On-site appraisal minutes.
- Practice.

- Property evaluation results.
- Other sources prescribed by law.

The costs of carrying out a survey will only be recoverable from the losing party if the winning party can prove that these costs form part of the actual damages that they had incurred.

30. Is evidence obtained for criminal proceedings admissible in civil proceedings, and vice versa?

Vietnam national law does not prohibit the use of evidence obtained for criminal proceedings in civil proceedings and vice versa.

31. Is evidence obtained in civil proceedings admissible in other civil proceedings?

In principle, the law does not prevent the IP holder from using the evidence obtained from other civil proceedings.

32. To what extent is pre-trial discovery permitted and what other mechanisms are available for obtaining evidence from an adverse party or third parties?

The term "pre-trial discovery" is not found anywhere in Vietnam's domestic statutes. Vietnam national law only stipulates that the burden of proof falls on the parties requesting the courts to protect their legitimate rights and interests, and that the parties involved have the responsibility to seek, discover and submit to courts evidence to prove that their requests are well-grounded and lawful (*Article 91, Civil Procedure Code*).

Litigants have the right to study the evidence submitted by the other party to the court.

In relation to collecting evidence that is under the control of the other party, either the claimant or the defendant can request the court to compel the party to produce such evidence.

33. What level of proof is required for establishing infringement?

Vietnam national law does not have any specific regulation on the level of proof required. However, there is no obligation to submit evidence that proves the offence beyond a reasonable doubt.

34. How long do copyright infringement proceedings typically last?

Copyright infringement proceedings typically take six to 18 months for a final decision to be made.

In practice, the defendant usually uses absence from trial as a delaying tactic, because if they do not show up at the first hearing, the court will grant them one more chance to re-appear. However, the claimant can always counter this delaying tactic, because if the defendant still does not appear after being summoned for the second time, the court will conduct the hearing *ex parte*. Moreover, the time limit for postponing a court session must not exceed 30 days beyond the issue of the decision to postpone the court session (*Article 233, Civil Procedure Code*).

PRELIMINARY RELIEF

35. Is preliminary relief available, and if so what measures are available and under what conditions?

Preliminary relief is available. In Vietnamese national law, preliminary relief is referred to as "provisional measures". The claimant is entitled to request the court to apply provisional measures when either (*Article 206, IP Law*):

- There is a threat of irreparable damage to them.
- There is a threat of dispersal or destruction of goods suspected of infringing on IP rights and relevant evidence if they are not protected in time.

The provisional measures available are (*Article 207, IP Law*):

- Seizure.
- Distraintment.
- Sealing (which involves either a ban from alteration of the original state, or a ban from movement).
- Ban on ownership transfer.

In addition, other provisional measures stipulated by the Civil Procedure Code may also be applied by the court at the request of the claimant when necessary. In particular, one or a combination of the following forms of provisional measures may also be taken:

- Blockading of accounts or assets.
- Forbidding the defendant from conducting a certain action or forcing the defendant to conduct a certain action.

To request the application of the provisional measures, the claimant will be requested to either:

- Pay a deposit amounting to 20% of the value of the articles being the subject of the request, or at least VND20 million if the value of the articles being the subject of the request cannot be determined.
- Provide a bank guarantee.

However, despite the regulations on provisional measures provided by law, practical application of these measures is limited and Vietnamese judges rarely issue injunctions in general and in IP cases in particular, due to a lack of detailed guidance on these preliminary relief regulations.

36. Can a protective writ be filed at the court at which an *ex parte* application may be filed against that defendant?

Vietnamese national law does not provide any regulation regarding protective writs.

37. What is the format for preliminary injunction proceedings?

General

To commence preliminary injunction proceedings, the claimant must file a request for the application of provisional measures to the competent court.

Depending on the request, the claimant will be asked to provide the courts with evidence to prove that the provisional emergency measures being requested are necessary. The claimant will also be asked to deposit a security bond of 20% of the value of the goods subject to the application of provisional measures.

Within three days after the receipt of the request, the judge assigned to settle the case must issue a decision on whether or not to apply the applicable provisional emergency measures. If the request is rejected, the judge must notify this to the claimant in writing, clearly stating the reasons for the rejection. In certain cases, the judge may even grant the decision immediately on receipt of the request (*Article 133, Civil Procedure Code; Articles 2016 to 2010, IP Law*).

Level of proof

Vietnamese national law does not set out regulations regarding the level of proof required for preliminary proceedings. However, there is no obligation to submit evidence that proves the offence beyond a reasonable doubt. It should be noted that evidence that is legalised by bailiffs is highly valued.

Evidence

Vietnamese judges rely heavily on the testimonies or opinions of experts at every stage of copyright litigation proceedings (see *Question 7*). Other types of evidence are also considered (such as documents, affidavits or testimonies of witnesses). Survey evidence is rarely seen presented before courts.

Copyright validity

The defendant can raise the validity of a copyright at any time during litigation, including in preliminary injunction proceedings.

Length of proceedings

The current law and regulations are silent on the time limit of copyright validity. Under Article 55 of the IP Law, any individual or organisation is entitled to request the competent state authority to invalidate a registered copyright. This means that the invalidity of copyright could occur at any time during the copyright protection term.

38. Where a preliminary injunction is granted, is it necessary to start main proceedings to confirm the preliminary injunction, and if so, what is the deadline?

Unlike other countries, preliminary injunctions only arise under civil action and are not separate from the civil action.

39. What remedies are available in a copyright infringement action?

Depending on the level and seriousness of the infringement, or at the request of the copyright holder, a copyright-infringing act can be handled in accordance with administrative, civil, or criminal remedies.

Decree 131/2013/ND-CP of 16 October 2013 on sanctioning of administrative violations in copyright and related rights (Decree 131) sets out in detail the available forms of administrative remedies. According to Decree 131, the infringer will be compelled to cease the infringing acts and will receive a warning or have a monetary fine imposed on them. The highest fine level to be imposed on an individual copyright infringer is VND250 million. The maximum fine level applicable to an organisation committing the same infringement is VND500 million.

In the case of civil remedies, Article 202 of the IP Law sets out five types of civil remedies that courts will apply against a copyright infringer:

- Compelling the termination of infringing acts.
- Compelling a public apology and rectification.
- Compelling the performance of civil obligations.
- Compelling the payment of damages.

- Compelling the destruction, distribution or use for non-commercial purposes of goods, raw materials, materials and means used largely for the production or trading of IP right-infringing goods, provided that the destruction, distribution or use does not affect the exploitation of rights by the IP right holders.

The criminal penalties for copyright infringement are set out in Article 225 of the Penal Code of 2015. According to the Penal Code, offenders can be sanctioned with a fine of between VND300 million and VND1 billion (for individuals) and between VND1 billion to VND3 billion (for commercial organisations), or can be sentenced with between six months and three years of imprisonment (for individuals) and between six months and two years of imprisonment (for commercial organisations) if any of the following applies:

- They commit the crime in an organised manner.
- They commit the crime more than once.
- They obtain an illegal profit of VND500 million or more.
- They cause damages to the owner of the copyright or related rights of VND500 million or more.
- They commit the crime using infringed goods/products valued at VND500 million or more.

In addition, offenders may also be sanctioned with a fine of between VND20 million and VND200 million, and can be banned from holding certain posts, practicing certain professions or performing certain jobs for between one and five years.

40. How are monetary remedies assessed against a copyright infringer?

Monetary remedies available against a copyright infringer are remedies for material damage and spiritual damage (*Article 204, IP Law*). Material damage includes:

- Property losses.
- Decreases in income and profit.
- Loss of business opportunities.
- Reasonable expenses for prevention and remedying of such damage.

Spiritual damage includes damage to honour, dignity, prestige, reputation and other spiritual losses caused to performers or authors of literary, artistic and scientific works.

The claimant can request the court to decide on the level of compensation for the above damages using one of the following as a basis for the calculation:

- The total material damage calculated in an amount of money plus profit gained by the defendant as a result of an act of IP infringement where the reduced profit amount of the claimant has not yet been calculated into such total material damage.
- The price of the licensing of an IP object with the presumption that the defendant has been licensed by the claimant to use that object under a licence contract within a scope corresponding to the committed infringing act.

If it is not possible to determine the level of compensation using either of the above, the level of compensation will be set by the court, but must not exceed VND500 million.

Punitive damages are not available under Vietnamese law. Vietnamese law is also silent on whether liability and the quantum of monetary remedies must be assessed by the court at the same time.

APPEAL REMEDIES

41. What routes of appeal are available to the unsuccessful party and what conditions apply?

In main proceedings, the defendant has the right to appeal the judgment of the first instance court to the immediate superior court within 15 days from the date of the announcement of the judgment (*Articles 270, 271, 272 and 273, Civil Procedure Code (CPC)*). In addition, the director of the Procuracy of the same or immediately higher jurisdiction also has the right to protest that judgment and request the superior court to directly resolve the matter in accordance with the appellate proceedings (*Article 277, CPC*).

For preliminary injunction proceedings, the defendant has the right to complain, and the Procuracies have the right to petition to the chief judges of the court handling the case. The time limit for lodging an appeal in the case of preliminary injunction proceedings is three working days from receipt of the decision (*Article 140, CPC*).

Remedies awarded by the first instance court will stay pending during the appeal proceeding, except for the parts of the remedies granted in the first instance court's judgement not being appealed.

An appeal proceeding typically lasts from one to four months, depending on the complexity of the case.

LITIGATION COSTS

42. What level of cost should a party expect to incur to take a case through to a first instance decision, preliminary injunction proceedings and appeal proceedings?

According to Ordinance 10/2009/PL-UBTVQH12 on court fees dated 27 February 2009, court fees are calculated based on the value of the disputed property or the amount being claimed. For example, where the value of the disputed property/amount being claimed is:

- Up to VND40 million: the court fee is VND2 million.
- Over VND40 million and up to VND400 million: the court fee is 5% of the value of the disputed property/amount being claimed.
- Over VND400 million and up to VND800 million: the court fee is VND20 million and 4% of the value of the disputed property/amount being claimed that is over VND400 million.

- Over VND800 million and up to VND2 billion: the court fee is VND36,000 and 3% of the value of the disputed property/amount being claimed that is over VND800 million.
- Over VND2 billion and up to VND4 billion: the court fee is VND72 million and 2% of the value of the disputed property/amount being claimed that is over VND2 billion.
- Over VND4 billion: the court fee is VND112 million and 0.1% of the value of the disputed property/amount being claimed that is over VND4 billion.

In practice, due to the high costs involved (the costs involved usually exceed the recoverable damages) and the prolonged process of handling disputes, it is common for Vietnamese people to not bring copyright cases to court, because the cost that the claimant has to incur includes not only the court fees but also the legal fees and other costs. Typically, the legal fees can range from USD3,000 to USD50,000.

According to Article 205.3 of the IP Law, the claimant has the right to request the court to compel the defendant to pay reasonable costs of hiring attorneys.

REFORM

43. What are the important developing and emerging trends in your country's copyright law?

In Vietnam, much attention has been paid with respect to copyright enforcement recently. By gradually bringing relevant copyright legislation in line with TRIPS, the government has shown a continued willingness to strengthen copyright enforcement and protect the legitimate rights and interests of the copyright holders. In particular, given the new Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) signed in March 2018 with ten other member states, Vietnam has been committed to undertaking the necessary amendments and/or changes to its national legal regimes (including changes to laws and regulations in relation to copyright protection and enforcement) in order to be compatible with the CPTPP requirements. Accordingly, copyright owners can expect the national legal framework regarding copyright enforcement to improve quickly in the coming years.

The promising policy of establishing a specialised judicial tribunal to handle IP matters is also in the pipeline. In addition, Vietnam is also focusing on training judges in IP matters, especially in relation to the application of provisional measures and the calculation and awarding of monetary damages.

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