

Takedown Notices: How Do ISPs Handle Copyright Infringement Claims in Vietnam?

The landscape of intellectual property rights in Vietnam underwent a significant transformation with the third revision of the Intellectual Property Law in 2022. Among the notable provisions, Article 198b introduced a groundbreaking regulation holding Intermediary Service Providers (**ISPs**) legally responsible for copyright and related rights infringements by their platform users. Subsequently, on April 26, 2023, the Vietnamese government issued Decree No. 17/2023/NĐ-CP, providing detailed measures to implement the Intellectual Property Law regarding copyright and related rights.

1. Responsibilities of Intermediary Service Providers

Upon receiving a removal or blocking request, often in the form of a Cease & Desist Letter, from a copyright holder or related rights holder (hereafter referred to as the requesting party), along with supporting documents (e.g., copyright ownership documents) and evidences (i.e., evidence of infringement), via the tool for receiving requests for removal or blocking of access to digital contents infringing upon copyright and related rights, ISPs are obligated to promptly address the issue.

2. How ISPs Handle a Takedown Notice?

An ISP shall take either of the following actions:

Temporary Removal or Blocking: Within 72 hours of receiving the request, the intermediary service provider shall temporarily remove or block access to the identified digital contents (i.e., alleged copyright infringement content) and notify both the requesting party and the requested party.

Objection Handling: If no objection is received within 10 working days after temporary removal or blocking, the ISPs shall proceed with permanent removal or blocking. In the event of an objection, the service provider must restore access within 72 hours and forward the objection to the requesting party.

Maintaining Digital Contents: If no civil lawsuit is initiated or competent state agency involvement occurs, the intermediary service provider must continue maintaining the digital contents in question.

Compliance with Legal Decisions: If a court or competent state agency decides to accept the lawsuit or request, the intermediary service provider must comply with the decision.

3. What do the rights holders need to provide?

[1] Information of Parties: Full details of the requesting party and the requested party (i.e., the alleged infringing party), including name; current address; email address; contact phone number; serial number of people's identity card, citizen's identity card or passport, for individuals; business registration number, establishment decision or establishment license, for organizations.

[2] Rights Holder Evidence: Documents proving the right holders: (i) A copy of the copyright registration certificate or related rights registration certificate enclosed with the original for collation, except where such copy has been authenticated; or (ii) an extract of the National Register of copyright and related rights or a copyright certification issued by a competent state agency.

[3] Legal Responsibility Commitment: A digitally signed document from the requesting party or the requested party committing to bear all legal liabilities for the removal, blocking, or objection, including compensation for damages to stakeholders.

[4] Infringement Evidence: Documents proving the infringement of copyright or related rights as specified in Article 78 of the Decree, along with evidence of damages.

The following documents and objects are regarded as evidences proving infringements:

- (i) Original works, performances, phonograms, video recordings and broadcasts (subject matters eligible for copyright and related rights protection) or lawful copies thereof;

- (ii) Relevant documents or objects, photos, phonograms and video recordings of subject matters under consideration;
- (iii) Written explanations and comparisons between subject matters under consideration and subject matters eligible for copyright and related rights protection;
- (iv) Minutes, statements, deeds and other documents proving infringements.

[5] Content Details: Information about the position and link to the infringing digital contents and a description of the infringing contents. For the requested party, provide information about the position and link to the temporarily removed or blocked digital contents.

[6] Power of Attorney: A legally power of attorney if the requesting party or the requested party is acting on behalf of an authorized party.

4. Legal Implications

The request for removal or blocking serves as evidence that the ISP is aware of digital content infringing upon copyright and related rights, thus preventing potential indirect violations by the ISP

5. Liability for False Documents

Parties providing untruthful documents and evidences, causing harm to the lawful rights and interests of other stakeholders, shall bear corresponding legal liability in accordance with the law.

Final thoughts

The takedown notice mechanism, outlined in Article 114 of Decree No. 17/2023/NĐ-CP expected to significantly contribute to mitigating the widespread issue of copyright infringement. This mechanism ensures a prompt and efficient response to instances of copyright infringement, facilitating the expeditious removal or blocking of content that is purportedly in violation. This rapid response is deemed critical in preventing further detriment to the rights of copyright holders.

Despite these positive aspects, concerns arise regarding potential false takedown notices leading to the unintended removal of lawful content. Striking a delicate balance between the rights of ISPs, copyright holders, and users remains a challenge. In addition, the effectiveness of the takedown mechanism, as stipulated in Article 114 of Decree No. 17/2023/NĐ-CP, relies on the responsiveness and collaborative engagement of ISPs, copyright holders, and associated parties. Addressing these complexities is vital for refining and strengthening the takedown mechanism, thereby safeguarding intellectual property rights in the digital realm.

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