

Handling intellectual property rights infringement in Vietnam: Which measures are effective?

Protecting intellectual property rights (IPR) involves the use of legal measures by state agencies and IPR holders to protect the ownership of their IP objects, prevent any infringement to ensure the integrity of these assets. Protecting IPRs entails not only preventing actual acts of infringement but also addressing and resolving infringements in order to cease the infringement and seek compensation for damages incurred.

What legal measures can be applied to address IP infringement? In which cases must "criminal" measures be applied rather than "administrative" ones? Can both measures be simultaneously applied to handle an IP infringement? KENFOX IP & Law Office provides detailed answers to these questions to equip IPR holders with the necessary knowledge and strategies to effectively protect and enforce IPRs in Vietnam in accordance with the law.

Measures for protecting and enforcing IPRs

To enhance flexibility in protecting and [enforcing IPR](#), the IP Law stipulates various measures to protect IPR. These protective measures can be divided into two types based on the "subjects" carrying out acts of protecting IPRs:

1. Self-protection measures

Self-protection measures for IPRs are actions taken by the IPR holders themselves, as stipulated in Article 198 of the Intellectual Property Law. This is the measure that best demonstrates the self-determination by subjects in legal relationships, allowing them to proactively protect their rights without depending on any legal procedures. The law grants IPR holders (*owners of IPRs or organizations or individuals to whom IPRs have been transferred*) the right to self-protect against infringements.

Article 198 of the Intellectual Property Law stipulates the right of IPR holders to apply the following measures [to self-protection of their IP rights](#):

- (i) *Apply technological measures to protect rights, implementing rights management information or other technological measures to prevent acts of IPR infringement;*
- (ii) *Request entities and individuals engaged in infringing activities to stop infringements, remove and delete infringing content on the telecommunications network and Internet environment, apologize, make public corrections, and provide compensation for damages;*
- (iii) *Request competent state agencies to handle IPR infringements according to the provisions of this Law and other relevant legal regulations;*
- (iv) *File a lawsuit in court or arbitration to protect their legitimate rights and interests.*

2. Legal Measures Implemented by Competent Authorities

2.1. Civil measures

Overview of civil measures: Civil measures can be applied to address acts of IPR infringement at the request of the rights holder or individuals or organizations harmed by such acts. Civil remedies may be utilized even if the infringement has been or is being handled through administrative or criminal measures. Procedures for requesting the application of civil remedies, as well as relevant jurisdiction and processes, are governed by the provisions of civil legal proceedings.

Civil sanctions: These includes measures such as requiring the cessation of infringing acts, compensation for damages, or other remedies.

IPRs in general, and copyright rights in particular, are civil property rights, so [compensation for damages](#) is one of the measures to handle copyright infringements. However, due to the intangible nature of intellectual property assets, the mechanism for protecting and handling violations has unique characteristics distinct from tangible assets. The IP Law not only defines the forms of legal liability to protect copyright but also aims to recover damages suffered by the rights holders.

No	Civil sanctions	Details	Notes
1	Requirement for ceasation of infringing acts	The infringer must immediately stop all actions that infringe on IPRs	IP Law 2005, amended in 2009, 2019 and 2022 Civil Code 2015 and Civil Procedure Code 2015
2	Requirement for apology and public correction	The infringer must make a public apology and correction through media channels to restore the honor and reputation of the rights owner.	
3	Requirement for performance of civil obligations.	This includes obligations such as restoring the original state or performing other specific actions to remedy the consequences of the infringement.	
4	Requirement for compensation for damages.	This includes compensation for both material and non-material damages. The plaintiff needs to prove actual damages and the basis for determining the compensation amount according to Article 205 of the Intellectual Property Law	
5	Requirement for destruction, distribution or use for non-commercial purposes	Goods, raw materials and materials, and facilities primarily used for producing and trading infringing products must be destroyed, distributed for non-commercial purposes, ensuring they do not affect the right holder's ability to exploit their rights.	

2.2. Administrative measures

Overview of administrative measures: Administrative measures are applied to address acts of IP infringement when falling under the cases specified in Article 211 of the Intellectual Property Law. The application of administrative measures can be carried out at the request of the rights holder, the individual or organization that suffers damages, the individual or organization that detects the infringement, or by a competent authority proactively detect the infringement.

Administrative sanctions: Forms, fines, authorities, procedures for sanctioning infringements and remedial measures comply with the provisions of the Intellectual Property Law and the law on sanctioning administrative violations in the field of copyright and related rights, industrial property rights and plant variety rights. The administrative measures are applied to acts of infringement but not to the extent of requiring criminal prosecution. These measures are implemented by the police, market management, inspectors, customs and people's committees at competent levels.

Sanctions often applied to acts of IP infringement by administrative measures include Fines, confiscation of counterfeit goods, and temporary suspension of business activities.

The level of fines for administrative violations in the field of copyright depends on the type of infringement committed by the organization or individual.

No	Violating subject	Maximum fine level	Note
1	Individual	250,000,000 VND	Decree No. 131/2013/ND-CP (amended and supplemented by Decree No. 28/2017/ND-CP) of October 16, 2013, on Sanctioning Administrative Violations of Copyright and Related Rights
2	Organization	500,000,000 VND	

2.3. Criminal measures

Overview of criminal measures: Criminal measures are applied to protect IPRs, specified in Article 212, aiming to handle acts of IPR infringement that are considered crimes under the Criminal Code. The objective of criminal measures is to prosecute criminal liability for acts that constitute crimes, with the authority, procedures and processes in compliance with criminal procedural law. Individuals and commercial legal entities committing IP infringement that meet the elements of a crime are subject to criminal liability. The 2015 Criminal Code, amended in 2017, has provided an increase in the level of severity in handling IP violations,

thereby protecting the rights and interests of authors and owners. Specifically, the law defines two crimes: **Infringement of copyright and related rights** (*Article 225*) and **Infringement of industrial property rights** (*Article 226*).

Criminal sanctions: Applicable in cases where acts of IPR infringement are considered crimes under the Criminal Code.

The Intellectual Property Law stipulates: "*Individuals and commercial legal entities committing acts infringing upon IPR that constitute a crime shall be subject to criminal liability.*" (Article 212 of the Intellectual Property Law).

Criminal sanctions apply to four categories of intellectual property, including:

- (i) Copyright;
- (ii) Related rights;
- (iii) Trademarks (specifically, Trademark Counterfeit Goods), and
- (iv) Geographical Indication (**GI**) (specifically, GI Counterfeit Goods).

Crime of infringing copyright and related rights: Criminal sanctions for acts [infringing upon copyright and related rights](#) are prescribed in Article 225 of the 2015 Criminal Code as follows:

CRIMINAL SANCTIONS FOR INDIVIDUALS		
Articles	Infringement	Penalty
Article 225.1	<ul style="list-style-type: none"> ▪ Making copies of works, video recordings, audio recordings without permission. ▪ Distributing the copies of works, video recordings, audio recordings to the public without permission. 	<ul style="list-style-type: none"> ▪ Fine from 50 million VND to 1 billion VND. ▪ Non-custodial reform for up to 03 years ▪ Imprisonment from 06 months to 03 years
Article 225.2	<ul style="list-style-type: none"> ▪ The offence is committed by an organized group ▪ The offence has been committed more than once ▪ The illegal profit reaped is VND 300,000,000 or over; ▪ The loss incurred is VND 500,000,000 or over; ▪ The infringing goods are valued at VND 500,000,000 or over. 	<ul style="list-style-type: none"> ▪ Fine from 300 million VND to 1 billion VND. ▪ Imprisonment from 06 months to 03 years.
Article 225.3	Other criminal sanctions	<ul style="list-style-type: none"> ▪ Fine from 20 million VND to 200 million VND ▪ Prohibition from holding certain positions, practicing certain professions or doing certain jobs for 01 - 05 years.
CRIMINAL PENALTIES FOR LEGAL ENTITY		
Article 225.4(a)	<ul style="list-style-type: none"> ▪ Making copies of works, video recordings, audio recordings without permission. ▪ Distributing the copies of works, video recordings, audio recordings to the public without permission. 	<ul style="list-style-type: none"> ▪ Fine from 300 million VND to 1 billion VND.
Article 225.4(b)	<ul style="list-style-type: none"> ▪ The offence is committed by an organized group ▪ The offence has been committed more than once ▪ The illegal profit reaped is VND 300,000,000 or over; ▪ The loss incurred is VND 500,000,000 or over; ▪ The infringing goods are valued at VND 500,000,000 or over. 	<ul style="list-style-type: none"> ▪ Fine from 1 billion VND to 3 billion VND, or ▪ Temporary suspension of operations from 6 months to 2 years
Article 225.4(c)	Other criminal sanctions	<ul style="list-style-type: none"> ▪ Fine from 100 million VND to 300 million VND

	<ul style="list-style-type: none"> ▪ Prohibition from certain business activities, certain operations in certain fields, or ▪ Prohibition from raising capital from 1 year to 3 years.
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Crime of infringement of industrial property rights: Criminal sanctions for acts [infringing IPRs](#) (including: infringement of trademarks rights (trademark counterfeit goods) or GIs (GI counterfeit goods) currently protected in Vietnam are stipulated in Article 226 of the 2015 Criminal Code as follows:

CRIMINAL SANCTIONS FOR INDIVIDUALS		
Rules	Infringement	Penalty
Article 226.1	<ul style="list-style-type: none"> ▪ Attaching a sign identical to a protected trademark (or GI) for goods and services identical to those in the list registered with the trademark (or GI) on the goods and packaging of goods, business means, service means, transaction documents in business activities. ▪ Selling, offering for sale, advertising for sale, displaying for sale, storing for sale, transporting goods bearing a protected trademark (or geographical indication). ▪ Importing goods and services bearing protected trademarks (or GI). 	<ul style="list-style-type: none"> ▪ Fine from 50 million VND to 500 million VND. ▪ 03 years' community sentence
Article 226.2	<ul style="list-style-type: none"> ▪ The offence is committed by an organized group ▪ The offence has been committed more than once ▪ The illegal profit reaped is VND 300,000,000 or over; ▪ The loss incurred is VND 500,000,000 or over; ▪ The infringing goods are valued at VND 500,000,000 or over. 	<ul style="list-style-type: none"> ▪ Fine from 500 million VND to 1 billion VND. ▪ Imprisonment from 6 months to 03 years
Article 226.3	Other criminal sanctions	<ul style="list-style-type: none"> ▪ Fine from 20 million VND to 200 million VND ▪ Prohibited from holding certain positions, practicing certain professions or doing certain jobs for 01 - 05 years.
CRIMINAL PENALTIES FOR LEGAL ENTITY		
Article 226.4(a)	<ul style="list-style-type: none"> ▪ Attaching a sign identical to a protected trademark (or GI) for goods and services identical to those in the list registered with the trademark (or GI) on the goods and packaging of goods, business means, service means, transaction documents in business activities. ▪ Selling, offering for sale, advertising for sale, displaying for sale, storing for sale, transporting goods bearing a protected trademark (or geographical indication) . ▪ Importing goods and services bearing protected trademarks (or GI). 	<ul style="list-style-type: none"> ▪ Fine from 500 million VND to 2 billion VND.

Article 226.4(b)	<ul style="list-style-type: none"> ▪ The offence is committed by an organized group ▪ The offence has been committed more than once ▪ The illegal profit reaped is VND 300,000,000 or over; ▪ The loss incurred is VND 500,000,000 or over; ▪ The infringing goods are valued at VND 500,000,000 or over. 	<ul style="list-style-type: none"> ▪ Fine from 2 billion VND to 5 billion VND, or ▪ Temporary suspension of operations from 6 months to 2 years.
Article 226.4(c)	Other criminal sanctions	<ul style="list-style-type: none"> ▪ Fine from 100 million VND to 500 million VND. ▪ Prohibition from certain business activities, certain operations in certain fields, or ▪ Prohibition from raising capital from 1 year to 3 years.

KENFOX IP & Law Office, with extensive practical experience and expertise, has been successfully supporting many IPR holders in handling and enforcing their IPRs. Please contact us if you need a professional IP representative to effectively handle IP infringements in Vietnam.

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