

## Copyright in Vietnam: Enforcement Mechanisms & Practical Tips

Vietnam's intellectual property (IP) enforcement landscape has undergone significant reforms over the past decades, aligning with international treaties like the WTO's TRIPS Agreement and recent trade agreements such as the EVFTA and CPTPP. Notwithstanding these progressive reforms, challenges persist in the effective enforcement of copyright protections in Vietnam.

KENFOX IP & Law Office is dedicated to furnishing clients with comprehensive guidance on strategic approaches to copyright enforcement, grounded in an in-depth analysis of the prevailing legal framework, available enforcement mechanisms, and practical measures aimed at safeguarding intellectual property rights in Vietnam.

### 1. Understanding Copyright in Vietnam

Under Vietnam's Law on Intellectual Property (**IP Law**), copyrights are automatically protected upon the creation and fixation of the work, without the need for registration. This protection is granted to a wide range of literary, artistic, and scientific works as specified in Article 14.1 of the IP Law. However, obtaining a [copyright registration](#) certificate can be advantageous, as it shifts the burden of proof regarding ownership in disputes to the alleged infringer (*Article 49.3 of the IP Law*).

### 2. Acts Constituting Copyright Infringement

Article 28 of the IP Law outlines various acts that constitute [copyright infringement](#), including:

- **Moral rights infringement:** The violation of an author's moral rights, which include the right to claim authorship, be credited when their work is used, decide when and how to publish their work, and protect their work from alteration or distortion that could harm their honor or reputation.
- **Economic rights infringement:** The violation of an author's economic rights, which include the exclusive rights to reproduce, distribute, perform, display, and create derivative works from their copyrighted material.
- **Non-compliance with exceptions and limitations:** The failure to adhere to the specific exceptions and limitations to copyright outlined in the law. These exceptions allow for certain uses of copyrighted material without the author's permission, but often require attribution or payment of royalties.
- **Circumvention of technological protection measures:** The deliberate bypassing of technological measures implemented by authors or copyright holders to protect their works. This includes disabling or deactivating digital rights management (DRM) or other access control technologies.
- **Distribution of circumvention tools:** The manufacturing, distribution, or sale of devices or services designed to circumvent technological protection measures.
- **Removal or alteration of rights management information:** The intentional removal, alteration, or deactivation of information that identifies the copyright holder, author, or terms of use of a work.
- **Distribution of works with missing or altered rights management information:** The distribution of copies of works where the rights management information has been tampered with, especially when done to facilitate or conceal copyright infringement.
- **Non-compliance by Intermediary Service Providers:** The failure of online service providers to implement regulations that could exempt them from liability for copyright infringement occurring on their platforms.

### 3. Enforcement mechanisms

Vietnam offers a multi-pronged approach to copyright enforcement, encompassing administrative, civil, and criminal remedies. [Infringement proceedings](#) before the Vietnamese enforcement authorities (administrative and judicial bodies) can be: **(i)** administrative proceedings before the infringement-handling agencies, **(ii)** at first instance in the civil courts, or **(iii)** at first instance in the criminal courts

#### [i] Administrative enforcement

Vietnam's administrative enforcement system is unique, allowing right holders to file complaints (petitions) with government bodies that can inspect, investigate, and make determinations on IP disputes. administrative enforcement serves as a crucial mechanism to address copyright infringement, offering a relatively swift and efficient alternative to civil or criminal proceedings. The legal framework for administrative enforcement against copyright infringement in Vietnam is primarily outlined in **Decree No. 131/2013/ND-CP**.

- **Copyright administrative enforcement process in Vietnam:** It typically involves:
  - *Filing a petition:* The copyright holder files a complaint with various government bodies, including inspectorates, police, market management, customs, and People's Committees at different levels, providing evidence of ownership and infringement.
  - *Inspection and investigation:* The competent authority initiates an inspection or investigation upon receiving a complaint or on its own initiative.
  - *Establishment of infringement:* If evidence supports the claim, the authority issues a decision confirming the infringement.
  - *Imposition of sanctions:* The authority then imposes appropriate administrative sanctions based on the nature and severity of the violation.
  - *Appeal:* The infringer has the right to appeal the decision to a higher administrative body or to the administrative court (the Provincial People's Court). The court allows the submission of new evidence during the appeal process. If the decision is not favorable, further appeals may be made.
- **Sanctions and Remedies:** Upon establishing infringement, the competent authorities can impose a variety of administrative sanctions, such as: Warnings or monetary fines (up to VND 500 million, the amounts can vary based on the severity of the infringement), confiscation and destruction of infringing goods, confiscation of materials and means used in the infringement, suspension of production, trading, or provision of infringing goods for up to three months and forcible removal of infringing elements from products and/or from the internet.
- **Advantages:** Administrative proceedings are generally faster and less complex than court cases. The costs associated with administrative enforcement are typically lower than those of litigation. The possibility of swift sanctions can act as a deterrent to potential infringers.
- **Challenges and limitations:** Administrative enforcement may not offer the full range of remedies available in civil proceedings, such as damages for losses. Ensuring consistent application of sanctions across different authorities can be a challenge.

## [ii] Civil enforcement

- **Procedure:** Civil litigation is often pursued when seeking damages or in cases involving significant economic harm. The copyright holder initiates a lawsuit in the civil court, presenting evidence of ownership and infringement. The court then adjudicates the case and, if the infringement is proven, awards remedies.
- **Remedies:** Civil remedies include injunctions, damages, destruction of infringing goods, and publication of the court's decision. **Preliminary Injunctions:** Right holders may request preliminary injunctions to prevent irreparable harm or the destruction of evidence. Courts must decide on such requests within 48 hours of receiving them, highlighting the urgency of these measures (*Article 206 of the IP Law*). **Damages Calculation:** The court calculates damages based on the actual losses suffered by the right holder. If exact losses cannot be quantified, the court may award up to VND 500 million based on the extent of the infringement (*Article 205 of the IP Law*).
- **Advantages:** One of the advantages of civil IP proceedings compared with administrative action is that a rights owner can seek not only a public apology and rectification but also [compensation](#) for material or spiritual damage. These remedies are not available in an administrative action. This can serve as a strong deterrent.
- **Challenges:** The process can be time-consuming and costly, requiring legal representation and expert witnesses.

## [iii] Criminal Enforcement

Not all copyright infringements rise to the level of criminal offenses; only those that meet certain thresholds of severity or impact are subject to criminal prosecution.

### Conditions for Criminal Prosecution:

The following conditions must be fulfilled for copyright infringement to be considered a criminal offense:

**Infringing acts:** The infringement must involve either the unauthorized reproduction or the unauthorized distribution to the public of copyrighted works or audio/visual recordings.

**Severity thresholds:** At least one of the following conditions must also be met:

- The infringement is conducted on a **commercial scale**.
- The infringement results in an **illegal profit of VND 50 million or more** for an individual infringer or VND 200 million or more for a corporate infringer.
- The infringement causes a **loss of VND 100 million or more** to the copyright/related right holder.
- The value of the infringing goods exceeds VND 100 million

In the context of **corporate infringers**, if the entity has prior administrative sanctions or unspent convictions for copyright/related right infringement, the thresholds for illegal profit, loss to the right holder, and value of infringing goods are reduced to VND 100 million.

- **Procedure:** The Economic Police are responsible for investigating suspected criminal copyright infringement. If sufficient evidence is gathered, they initiate criminal proceedings.
- **Remedies:** If convicted, offenders face criminal penalties, including fines and imprisonment.
- **Advantages and challenges:** Criminal enforcement carries the most severe penalties and can be highly effective in combating large-scale piracy. However, the threshold for criminal prosecution is high, and cases can be complex and lengthy.

#### 4. Online Copyright Infringement

- **Enforcement:** Online infringement can be addressed through any of the three enforcement mechanisms. The law also imposes a duty on Internet Service Providers (ISPs) to remove infringing content upon receiving a notice from the authorities or the copyright holder.
- **Challenges:** The fast-paced nature of online infringement and the cross-border nature of the internet pose challenges for enforcement.

#### 5. Practical strategies for effective copyright enforcement

- **Registration:** While copyright protection is automatic, registering your work and maintaining proper documentation can strengthen your position in enforcement actions.
- **Evidence:** Gathering strong evidence of ownership and infringement is crucial for successful enforcement. This may include sales records, expert opinions, and evidence of online infringement.
- **Seek assessment before filing a case:** Whether pursuing administrative, civil, or criminal action, rights holders are encouraged to request an ECCR assessment prior to filing an infringement case. This assessment adds credibility to the rights holder's claims, providing an official evaluation of the suspected infringement.
- **Cease-and-Desist Letters:** Sending well-crafted cease-and-desist letters can often lead to the voluntary cessation of infringing activities, saving time and resources.
- **Collaboration with enforcement authorities:** Building relationships with relevant authorities and providing them with clear evidence and information can facilitate effective enforcement.
- **Online brand protection:** Utilizing online monitoring tools and takedown procedures offered by platforms can help combat online piracy.
- **Collective Management Organizations:** For certain types of works, joining a collective management organization (CMO) can streamline licensing and enforcement efforts.
- **Consider alternative dispute resolution:** In some cases, mediation or arbitration may offer a faster and more cost-effective solution than litigation.

#### Final thoughts

Effective [copyright enforcement](#) in Vietnam requires a strategic approach, utilizing the appropriate mechanisms based on the *nature* and *severity* of the infringement. Copyright holders must carefully evaluate the nature of the infringement and use the appropriate mechanisms, whether *administrative*, *civil*, or *criminal*. The legal framework, while robust, can be complex and challenging to navigate. Thus, copyright holders should seek professional advice from reputable IP firms in Vietnam, collecting strong evidence, and collaborating with relevant stakeholders to effectively protect their rights effectively in the fight against rampant copyright infringement in Vietnam.

By QUAN, Nguyen Vu | Partner, IP Attorney  
PHAN, Do Thi | Special Counsel  
HONG, Hoang Thi Tuyet | Senior Trademark Attorney

#### Contact

##### **KENFOX IP & Law Office**

Building No. 6, Lane 12/93, Chinh Kinh Street, Nhan Chinh Ward, Thanh Xuan District, Hanoi, Vietnam

**Tel:** +84 24 3724 5656

**Email:** [info@kenfoxlaw.com](mailto:info@kenfoxlaw.com) / [kenfox@kenfoxlaw.com](mailto:kenfox@kenfoxlaw.com)