Not Registered in Vietnam: Can Copyright Infringement Still Be Examined?

A work created and registered for copyright protection in a foreign country is unlawfully copied in Vietnam. The copyright owner holds a copyright registration certificate issued by a competent foreign authority, but has never registered the work with the Copyright Office of Vietnam. Is the owner required to register the copyright in Vietnam before requesting a copyright infringement assessment?

According to the Vietnam Copyright Protection Center, the answer is: **not necessarily**. This conclusion is not merely a simplification of an administrative procedure. Rather, it signals an important shift in the approach to intellectual property (IP) enforcement in Vietnam—from a mindset that relies on domestic protection certificates toward an approach based on the **nature of how rights arise and the quality of evidence.**

1. Copyright Infringement Assessment in Dispute Resolution: Scope, Value, and Practical Application

Unlike trademarks or industrial designs, whose scope of protection is relatively clearly defined through protection titles, copyright protects the **"form of expression" of an idea**. This makes copyright a type of asset that is often perceived as "intangible, difficult to measure, and difficult to enforce."
When a dispute arises, enforcement authorities must address a range of highly specialized questions:

- Does the work satisfy the requirement of originality to qualify for copyright protection?
- Which elements constitute protected forms of expression, and which are ideas excluded from copyright protection?
- Did the alleged infringer actually copy the work, or did they independently create a similar work by coincidence?
- Does the alleged conduct fall within any statutory exceptions or limitations to copyright?

Copyright assessment serves as a mechanism for translating abstract legal rights into specific technical and legal conclusions, possessing persuasive value before competent authorities and dispute-resolution bodies.

Under **Article 92 of Decree No. 17/2023/ND-CP**, as amended and supplemented by Decree No. 134/2026/ND-CP, copyright assessment includes determining the basis for the arising of copyright, identifying infringing elements, evaluating similarity or identical features, and determining the amount of damages.

Notably, statistics from the Copyright and Related Rights Assessment, Information and Transfer Center under the Copyright Office of Vietnam indicate that more than 90% of publicly disclosed assessment cases concern works of applied art, including logos, packaging, and brand identity designs. Copyright infringement assessment is therefore a direct tool for protecting the commercial assets of businesses, rather than merely serving as a mechanism for resolving purely academic or theoretical disputes.

2. The Fundamental Distinction: Registration Does Not Create Copyright

To understand why a foreign copyright registration certificate may be accepted as evidence, it is necessary to return to the fundamental principle distinguishing copyright from industrial property rights.

BASIS FOR ACQUISITION OF RIGHTS	
INDUSTRIAL PROPERTY RIGHTS (Trademarks, Patents, Industrial Designs)	**COPYRIGHT (Literary, Artistic Works, etc.)**
• Rights generally arise on the basis of REGISTRATION. • Protection is subject to the principle of territoriality. • A trademark registered abroad DOES NOT automatically enjoy protection in Vietnam.	• Rights arise AUTOMATICALLY upon creation and fixation of the work. • Registration is NOT a mandatory prerequisite for copyright protection (Article 49.2 of the IP Law)

Under **Article 6.1** of the Intellectual Property Law, copyright arises automatically upon the creation of a work that is expressed in a certain material form. A copyright registration certificate does not create copyright; rather, it records relevant information and provides an evidentiary advantage in the event of a dispute.

Accordingly, for copyright, the key questions are not: "Has the work been registered in Vietnam?" Instead, the relevant questions are: **Has copyright lawfully arisen? Can the claimant establish their status as the**

copyright owner and/or author? Does the conduct under consideration constitute copyright infringement under Vietnamese law?

3. The Berne Convention and the Boundaries of Foreign Evidence

Vietnam is a member of the Berne Convention for the Protection of Literary and Artistic Works. The Convention operates on three fundamental principles:

- **National Treatment:** Works originating from other member countries are afforded protection on an equal basis with works of domestic authors.
- **Automatic Protection:** The enjoyment and exercise of copyright are not subject to compliance with any formalities, such as registration or deposit.
- **Independence of Protection:** Protection in the country where protection is sought is independent of the protection available in the country of origin.

However, the Berne Convention does not create a **"global copyright certificate."** Any conduct occurring in Vietnam must still be assessed on the basis of **Vietnamese law**, including the grounds for the arising of rights, the scope of protection, and the relevant acts of infringement.

The legally accurate interpretation is therefore as follows: **a copyright registration certificate issued by a foreign competent authority does not automatically "produce legal effect" in Vietnam. However, it may constitute important documentary evidence supporting the existence of copyright, the date of creation, and the claimant's status as the relevant rights holder, subject to the Berne Convention and Vietnamese IP law.**

If a foreign rights holder were required to re-register the work in Vietnam before being permitted to request a copyright infringement assessment, the registration procedure would effectively become an **indirect condition for enforcement**, which would run counter to the principle of automatic protection under the Berne Convention.

4. Foreign Copyright Registration Certificates: Legal Value and Limitations

The acceptance of a foreign copyright registration certificate by an assessment center as a basis for conducting a copyright infringement assessment represents a significant development. However, rights holders should maintain realistic expectations. Such a document is a **starting point, not a final determination**.

What a foreign copyright registration certificate may help establish:

- **The existence and form** of expression of the work as of the date of registration.
- **The date associated with the creation or publication** of the work.
- **The initial status** of the person named on the certificate as the purported author or copyright owner.

What a foreign registration certificate does not automatically establish:

- That the work satisfies the protection requirements under Vietnamese law.
- **The continuing validity of the ownership rights,** including whether such rights have been transferred, challenged, or otherwise affected up to the date of the assessment request.
- **The originality of the work** i.e., whether the person named on the certificate actually created the work independently or copied it from a third party.
- The alleged infringer's access to the work and **whether unauthorized copying actually occurred**.
- Whether the alleged conduct constitutes an **infringing element under Vietnamese law**

Important*: Where the person named on the certificate is a legal entity (as the copyright owner), the assessment dossier should be supplemented with a chain of title demonstrating the transfer or acquisition of rights, such as an employment agreement, work assignment agreement, copyright assignment agreement, or other relevant documents*

5. Assessment and Protection of Unregistered Works: Legal Basis and Options Available to Rights Holders

What happens when a work **has never been registered** in either Vietnam or a foreign country, but is infringed in Vietnam? This presents a more comprehensive test of the principle of automatic copyright protection.
Under the current legal framework:

- **Article 65 of Decree No. 17/2023/ND-CP:** The identification of the protected subject matter in respect of unregistered rights is based on documents and evidence establishing the grounds for the arising of rights and relevant legal presumptions.
- **Article 77.2 of Decree No. 17/2023/ND-CP:** The status of the holder of unregistered rights may be established through the original or copy of the work bearing the author's name; documents evidencing the creation, publication, or distribution of the work; or other relevant evidence.
- **Article 101 of Decree No. 17/2023/ND-CP:** A request for copyright assessment must include **"**documents evidencing the author and copyright owner**,"** and **is not limited** exclusively to a copyright registration certificate.

Accordingly, from a legal perspective, the absence of a copyright registration certificate does **not constitute an absolute barrier** to the acceptance of a copyright assessment request. The decisive factor is not the **"piece of paper"** itself, but rather the **reliability, consistency, and logical continuity of the chain of evidence establishing the creation and ownership of the work.**

6. Copyright Evidence Dossier for Unregistered Works or Works Registered Abroad: What Documents Are Required?

Where no copyright registration certificate has been issued by the Copyright Office of Vietnam, the burden of proof rests with the rights holder. To facilitate the acceptance and processing of a copyright assessment request, businesses should prepare five core categories of evidence.

COPYRIGHT EVIDENCE DOSSIER
1. EVIDENCE OF CREATION AND FIXATION • Original design files (.ai, .psd, .cad, etc.), source code, and metadata. • Preliminary sketches and successive versions showing the development history of the work over time. • Emails and records of work-related communications exchanged during the creative process
2. EVIDENCE OF AUTHORSHIP AND COPYRIGHT OWNERSHIP • Employment agreements / commissioned work agreements, together with relevant job descriptions. • Acceptance records, payment records, and documents evidencing the assignment or transfer of rights. • Declarations or statements made by the author who directly created the work.
3. EVIDENCE OF FIRST PUBLICATION OR DISCLOSURE • Publication materials, catalogs, website posts, and social media posts containing identifiable timestamps. • Records of participation in exhibitions, trade fairs, or product launch events.
4. EVIDENCE OF ORIGINALITY • Documents demonstrating the creative differences between the work and pre-existing commonplace works or materials in the public domain.
5. EVIDENCE OF INFRINGEMENT AND ACCESS TO THE WORK • Bailiff-certified records documenting the infringing conduct online or in the physical marketplace. • Samples or specimens collected from the market. • Evidence demonstrating that the alleged infringer previously had an opportunity to access the original work, such as a prior business relationship, participation in the same trade fair, website visits, or other relevant circumstances.

Procedural Note: Documents prepared or issued abroad should be **translated and notarized/certified as required**, with a plan for **consular legalization** prepared where required, depending on the specific requirements of the authority receiving the assessment dossier.

Conclusion

The broader acceptance of foreign copyright registration certificates by copyright assessment authorities in Vietnam may be regarded as an important development in the practical protection of copyright. This mechanism can enable international businesses to protect their intellectual property more efficiently, reduce administrative costs, and minimize delays in urgent enforcement situations.

However, an assessment conclusion—even one carrying substantial professional and technical value—remains one source of evidence for competent state authorities, such as courts, market surveillance authorities, and inspectorates, to consider when making a final determination. Rights holders should therefore not regard a foreign copyright registration certificate as an instrument providing absolute protection. Its real value lies in establishing a systematic evidence-management strategy: preserving creative records from the moment a work is created, maintaining a robust chain of contractual documentation, and proactively coordinating with IP professionals in Vietnam. Such an approach helps transform legally recognized rights into an effective enforcement tool for protecting the business's intellectual assets.

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