

# Managing Intellectual Property

## The Global IP Resource

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### New anti-pirating legislation

On September 1 2010, new anti-pirating legislation aimed at curbing the pirating of DVDs and CDs entered into effect. The new regulations are set forth in Decree No 75/2010/ND-CP Providing Regulations on Administrative Penalties in the Area of Culture (Decree 75), which was promulgated by the Government on July 12 2010. Further guidelines for the new regulations were prescribed under Circular No 09/2010/TT-BVHTTDL of the Ministry of Culture, Sports and Tourism, which was issued on August 24 2010.

Fines for acts of piracy have been increased, which should lead to a stronger deterrent effect. Notably, Decree 75 also imposes penalties on purchasers of 10 or more DVDs. Persons who sell, rent or purchase pirated DVDs may be subject to the following fines:

Number of pirated DVDs	Fine on seller/renter/ purchaser
0 – 19 (Note: for purchase, must be at least 10)	\$25 – \$50
20-99	\$50 – \$125
100-499	\$125 – \$250
500-999	\$250 – \$500
1,000-4,999	\$500 – \$1,000
5,000 or more	\$1,000 – \$1,500

Additionally, persons dealing in pirated DVDs may be subject to having the pirated DVDs and equipment seized. Penalty levels for pirating CDs are also set forth in Decree 75, and may be as high as \$2,000 for large-scale infringements.

The fine is only \$1 to \$2 per pirated DVD for the lowest-scale infringements, and only \$0.30 to \$0.50 per pirated DVD for large-scale infringements. Because DVDs can be sold for as much as \$1.50 to \$2.00 in Vietnam, the fine may just ultimately be viewed a cost of doing business, especially in the case of large-scale infringers, unless it is coupled with stronger measures, such as a revocation of business licence for repeat offenders.

Commentators have expressed concern that this regulation, while possibly having a good public awareness effect, contains a glaring loophole wherein purchasers of fewer than 10 pirated DVDs will not be penalised. Additionally, the law may be difficult to apply, because as a practical matter, purchasers must be caught red-handed by Cultural Inspectors. If purchasers undertake cumulative purchases of 10 or more DVDs, they may also be subject to a fine. Mere possession of 10 or more pirated DVDs may also result in a fine; thus, it is possible that the regulation may ensnare restaurants or karaoke bars that keep many pirated DVDs on site and may be subject to inspection.



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