

NOVEMBER 2009 Vietnam: New copyright penalties issued

01 Nov 2009

In June 2009, the National Assembly adopted amendments to Vietnam's Criminal Code regarding copyright and related rights offences. Once the amendments take effect on January 1 2010, pursuant to Article 170a, anyone who copies or distributes copyright protected works to the public on a commercial scale without the permission of the copyright owner will be subject to a fine of between D50 million (\$2,800) and D500 million (\$27,800) or non-custodial reform for up to two years. Convicted offenders may also be banned from holding certain posts, practising certain occupations or doing certain jobs for one to five years.

In the past, criminal sanctions were mainly applicable to repeat offenders who had previously been administratively or criminally sanctioned for a copyright infringement offence, but in reality, even in such cases criminal penalties were rarely applied. The new amendments provide for significant fines or non-custodial reform for first time offenders. Recidivism is punishable by higher fines (approximately \$22,200 to \$55,500) or imprisonment.

Considering the similar requirements for commercial scale infringement of trade marks or geographical indications, jointly introduced by the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Police and the Ministry of Justice in circular no 01/2008/TTLT-TAND-VKSNDTC-BCA-BTP dated February 29 2008, it is clear that law makers have decided to codify the requirement of commercial scale activities for all IP infringement offences.

Regrettably, the term "commercial scale" is not defined in the circular and the amended Criminal Code. This could result in delayed implementation by enforcement authorities as they arrive at guidelines for determining the interpretation of this term. This ambiguity could also lead to inconsistent enforcement of the law in different regions of the country as the scope of commercial scale activities may vary from region to region. Further guidance to clarify the elements of the offence for enforcement authorities and to provide guidance on fine levels is expected.

Criminalising first time offences is an important step forward in the implementation of copyright law, in accordance with Vietnam's commitments under the Berne Convention and TRIPs. Increased financial penalties and other sanctions should act as a deterrent to those copying and/or distributing copyrighted works. However, the ambiguity in the wording of the elements of the offence is likely to delay implementation by enforcement authorities in the near future.



Jennifer Sloan and Thomas Treutler

Tilleke & Gibbins Consultants Limited

HAREC Building, 4th Floor

4A Lang Ha Street

Ba Dinh District

Hanoi, Vietnam

Tel: +84 4 3772 6688

Fax: +84 4 3772 5568

thuylien.v@tillekeandgibbins.com

www.tillekeandgibbins.com