

NEW DEVELOPMENTS IN IPR PROTECTION IN VIETNAM



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In 2010, the Vietnamese government took a number of bold actions against intellectual property right (IPR) violations including a historic court ruling, a decree strengthening remedies for IPR violations, and a decree establishing increased fines for acts of piracy.

Landmark Court Decision on Patent Infringement

In June, the People’s Court of Dak Lak province, a remote province in Vietnam’s Central Highlands, rendered the first-ever court decision on patent infringement in Vietnam. For eight years, the patent owner had been seeking to enforce his patent rights in an improved brick extruder with an axial rake and knife. In a landmark decision, the Court ruled in favor of the patent owner, awarding VND 351 million (approximately USD 20,000) in damages and VND 61 million (approximately USD 3,400) in legal fees.

Decree Strengthening Remedies for IPR Violations

On September 21, Vietnam’s Government issued the long-awaited Decree 97/2010/ND-CP on Sanctions Against IP Administrative Violations (Decree 97), replacing earlier regulations issued in 2006. Decree 97, which went into effect on November 9:

- Confirms the maximum monetary fine of VND 500 million for infringement of IPR and remedies previous inconsistencies in various laws and regulations on the enforcement of IPR;
- Expands the scope of IPR violations that are subject to administrative sanctions to include IP-related unfair competition violations, which had not been provided for in the 2006 regulations;
- Specifies (for the first time) that enforcement authorities are entitled to order the removal of infringing information and signage from business facilities, including advertisements and Internet content, as well as the withdrawal of domain names and trade names that contain elements of IP infringement; and
- Contains detailed provisions on infringing acts and sanctions, which will ease the implementation of these regulations in practice.

Decree 97 is a significant step forward in IPR enforcement in Vietnam. It helps to remedy the tremendous uncertainties and difficulties that IPR owners, practitioners, and enforcement authorities had traditionally experienced in handling IP and related violations.

Decree Establishing Increased Fines for Piracy

New anti-pirating legislation aimed at curbing the pirating of DVDs and CDs entered into effect on September 1. 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) and Circular No. 09/2010/TT-BVHTTDL of the Ministry of Culture, Sports and Tourism.

The new regulations fine and otherwise punish persons who sell, offer for rent, or purchase pirated DVDs and CDs, as well as labels for use on pirated DVDs. Under Decree 75, the fines for persons dealing in pirated DVDs and CDs for large-scale infringements have been raised to USD 1,500 and USD 2,000, respectively—increases of 33% to 50% over previous fine levels. For persons dealing in pirated DVDs and CDs, penalties may include seizure of the infringing goods and related items and the following fines:

| Number of Pirated DVDs | Fine on Seller/Renter/Purchaser |
|--|---------------------------------|
| 0 – 19 (for sellers or renters) 10 – 19 (for purchasers only) | USD 25 – USD 50 |
| 20 – 99 | USD 50 – USD 125 |
| 100 – 499 | USD 125 – USD 250 |
| 500 – 999 | USD 250 – USD 500 |
| 1,000 – 4,999 | USD 500 – USD 1,000 |
| 5,000 or more | USD 1,000 – USD 1,500 |

| Number of Pirated CDs | Fine on Seller/Renter/Purchaser |
|-----------------------|---------------------------------|
| 50 – 99 | USD 100 – USD 250 |
| 100 – 499 | USD 250 – USD 500 |
| 500 – 999 | USD 500 – USD 1,000 |
| 1,000 – 4,999 | USD 1,000 – USD 1,500 |
| 5,000 or more | USD 1,500 – USD 2,000 |

While increased fines will likely deter some persons from trading in pirated goods, for large-scale infringers, the fine may simply be factored into the cost of doing business. Note that the fine corresponds to only USD 0.30 to USD 0.50 per pirated DVD for wholesale infringements. Such a regressive penalty must be accompanied by stronger measures, such as the revocation of business licenses, to combat IPR violations in a region where pirated DVDs fetch as much as USD 1.50 to USD 2 each.

Notably, Decree 75 only imposes penalties on purchasers of 10 or more pirated DVDs and 50 or more pirated CDs, whether purchased at one time or over time. While this provision will be quite difficult to enforce, given that purchasers must be caught “red-handed,” restaurants and other places of business that are subject to inspection may be fined for the mere possession of a significant number of pirated DVDs and CDs.

Overall, Vietnam is to be commended for its IP achievements in 2010. Success in these endeavors depends upon whether Vietnam commits itself to vigorous and coordinated enforcement of administrative orders and court decisions. 🐼