

Chapter 39

Vietnam

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I. MEDIA LAW

A. SOURCES

§ 39:1 Basic principles

The Vietnamese Constitution¹ and the Law on Media² provide general principles for the administration of the media by the Government of the Socialist Republic of Vietnam (the State). The State is mandated to create favorable conditions for the media to develop and for citizens to exercise their rights in relation to freedom of the media and freedom of speech. The law provides that the media and journalists shall be protected by the State. No organization or individual is permitted to limit or obstruct the operation of the media or journalists, and the media shall not be subject to censorship prior to printing or broadcasting.³

Statutory law emphasizes that the media must operate within the legal framework. Abuse of the right to freedom of the media or freedom of speech through the media is not permitted, and such acts may be construed as violations of the interests of the State, collectives, or citizens.⁴

§ 39:2 Constitutional sources

The Constitution declares that the State shall develop and encourage the development of activities in the field of information, press, radio, television, cinema, publishing, libraries, and other means of mass communication. This proposition is limited by the prohibition of any activity that is detrimental to national interests and undermines the fine

[Section 39:1]

¹Vietnamese Constitution, dated April 15, 1992, amended on December 25, 2001.

²Law on Media, dated December 28, 1989, as amended June 12, 1999.

³Law on Media, dated December 28, 1989, as amended June 12, 1999, Article 2. See also Law on Publishing, Article 5.2.

⁴Law on Media, dated December 28, 1989, as amended June 12, 1999, Article 2. See also Law on Publishing, Article 5.3.

personality, morality, and way of life of the Vietnamese people.¹

§ 39:3 Codified sources

The Law on Media governs all activities in the field, including: print media (newspapers, magazines, news bulletins from news agencies); audio media (radio programs); visual media (television programs, audio-visual programs made by various technical means); electronic media; and the computer information network (Internet), in Vietnamese, the languages of minority ethnic groups of Vietnam, and foreign languages.¹

In addition to this consolidated law, the Law on Publishing² and legal normative documents related to the Internet govern media activities.

§ 39:4 Case law sources

Vietnam is a civil law country and, as such, customary law, precedent, court decisions, and opinion juris are not sources of law. Judicial decisions are not considered to have precedential effects for future decisions. In principle, similar but unrelated decisions of the Supreme Court will not be binding on lower court decisions; however, lower courts may refer to decisions of a Supreme Court judge. Judgments are not broadly published in Vietnam, and approaching case law is not easy. The Supreme Court grants publication of certain decisions of the Justice Council of the Supreme Court.

B. REGULATORY FRAMEWORK

§ 39:5 For publishing industry

The publishing industry is mainly governed by the Law on Publishing, which regulates the organization of publishing activities as well as the rights and obligations of public and private organizations and individuals participating in

[Section 39:2]

¹Vietnamese Constitution, dated April 15, 1992, amended on December 25, 2001, Article 33.

[Section 39:3]

¹Law on Media, dated December 28, 1989, as amended June 12, 1999, Article 3.

²Law on Publishing, dated December 3, 2004, amended by Amendment to Publishing Law No. 12/2008/QH12, dated June 3, 2008.

publishing activities.¹ Publishing activities include printing and distribution of publications, including distribution via the Internet.² The Law on Publishing (and Intellectual Property Law)³ provides that the State shall ensure protection of copyright.⁴

The Ministry of Information and Communications (MIC) oversees the uniform administration of public and private publishing activities throughout the country⁵ through the offices of local People's Committees in provinces and cities. The People's Committees exercise the administration of publishing activities, including licensing for printed publications within their respective localities in accordance with the authority delegated by the State. A foreign publishing house may apply for a license to establish a representative office to introduce its products and to expedite transactions related to publications.⁶

Other matters related to publishing activities may be governed by the Law on Media, Intellectual Property Law⁷ and its implementing documents, the Civil Code,⁸ the Penal Code,⁹ as well as the related international commitments of Vietnam, such as the Berne Convention for the Protection of

[Section 39:5]

¹Law on Publishing, dated December 3, 2004, as amended by Amendment to Publishing Law No.12-2008-QH12, dated June 3, 2008.

²Law on Publishing, dated December 3, 2004, as amended by Amendment to Publishing Law No.12-2008-QH12, dated June 3, 2008, Article 1.

³Intellectual Property Law, No. 50/2005/QH11, dated November 29, 2005, amended by Law 36-2009-QH12, dated June 19, 2009, effective January 1, 2010.

⁴Law on Publishing, Articles 5.1, 19. See also Intellectual Property Law, No. 50/2005/QH11, dated November 29, 2005, amended by Law 36-2009-QH12, dated June 19, 2009, effective January 1, 2010.

⁵Law on Publishing, Articles 7.1, 7.2.

⁶Law on Publishing, Article 24.

⁷Intellectual Property Law, No. 50/2005/QH11, dated November 29, 2005, amended by Law 36-2009-QH12, dated June 19, 2009, effective January 1, 2010.

⁸Civil Code, No. 33/2005/QH11, dated June 14, 2005.

⁹Penal Code, No. 15/1999/QH11, dated December 21, 1999, Article 271.

Literary and Artistic Works (Berne Convention)¹⁰ and the Agreement on Trade-Related Aspects of Intellectual Property rights (TRIPs).¹¹

§ 39:6 For broadcasting industry

Activities in the broadcasting industry, which by statutory definition include audio and visual media, fall under the governance of the Law on Media,¹ the Law on Cinematography,² Intellectual Property Law³ and its implementing documents, and Article 271 of the Penal Code, relating to the publication and distributions of books, newspapers, audio discs and tapes.⁴

The granting of a licence to broadcast is based on conditions stipulated in the Law on Media.⁵ The technical broadcasting units of public and private radio and television stations are responsible for ensuring that broadcasts reach permitted areas. Radio and television stations that produce audio and visual current affairs programs are not permitted to broadcast media items which have been prohibited or confiscated.⁶

§ 39:7 For on-line services

Electronic media is a component of “the press” and is

¹⁰Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, as revised at Paris on July 24, 1971, and amended in 1979, S. Treaty Doc. No. 99-27 (1986).

¹¹Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299; 33 I.L.M. 1197 (1994).

[Section 39:6]

¹Law on Media, dated December 28, 1989, as amended June 12, 1999.

²Law on Cinematography, dated June 29, 2006. [Film, Video & Television—Production, Import-Export, Distribution, Projection & Broadcasting—Business Conditions—Censorship & Licensing of Content—Advertising—Copyright Protection] Effective as of January 1, 2007, and amended by Law 31-2009-QH12, dated June 18, 2009.

³Intellectual Property Law, No. 50/2005/QH11, dated November 29, 2005, amended by Law 36-2009-QH12, dated June 19, 2009, effective January 1, 2010.

⁴Penal Code, No. 15/1999/QH11, dated December 21, 1999, Article 271.

⁵Law on Media, Articles 18, 19.

⁶Law on Media, Article 22.

therefore governed by the Law on Media and related regulations.¹ Related documents that directly govern on-line services include: Decree No. 97/2008/ND-CP on the management, provision, and use of Internet services and electronic information on the Internet, issued by the Vietnam Government in August 2008; Circular No. 07/2008/TT-BTTTT regulating the provision of information on personal electronic web pages (blogs) issued in December 2008; and Decision No. 28/2002/QD-BVHTT promulgating regulations on publication of news bulletins, documents and leaflets, press releases, and distribution of news items on electronic screens² by foreign agencies and organizations. Individuals and organizations providing on-line services or operating on-line activities must also obey the Law on Cinematography.³

§ 39:8 Regulators and their core competencies

The Ministry of Information and Communications (MIC) is the policy making and regulatory body in the fields of press; publishing; posts; telecommunications and the Internet; radio frequency; information technology, electronics; broadcasting and national information infrastructure; and the management of related public services on behalf of the State. The ministry also regulates standards, technical standards, charges, and tariffs in related services. MIC grants and revokes operating licenses in the fields of broadcast and television.

MIC established the Directorate of Broadcasting and Electronic Information, which directly manages activities related to the broadcasting industry and the provision and use of electronic information. MIC also established the Directorate of the Press and the Directorate of Publishing.

§ 39:9 Public sector in the media industry

In Vietnam, the State controls the field of audio and visual

[Section 39:7]

¹Law on Media, 1989 as amended by Law 12-1999-QH10, dated June 12, 1999.

²This expression covers computer screens; however, the Decision does not specifically refer to the computer network and the Internet.

³Law on Cinematography, dated June 29, 2006. [Film, Video & Television—Production, Import-Export, Distribution, Projection & Broadcasting—Business Conditions—Censorship & Licensing of Content—Advertising—Copyright Protection] Effective as of January 1, 2007, and amended by Law 31-2009-QH12, dated June 18, 2009.

media, from radio channels, public television programs, and cable television to all other forms of audio-visual media. Vietnam Television, or VTV, is called the National Television and is directly under the management of the State. Vietnam Cable Television, known as VCTV, is a component of Vietnam Television.

Another nationwide broadcasting agency is Vietnam Multimedia Corporation, or VTC, which is a State-owned company under the control of the Ministry of Information and Communications. VTC provides audio and visual programs via the Internet, services relating to digital television, and satellite digital television. Provincial and municipal broadcasting agencies are directly under the control of local governments. On-line services provide the greatest freedom for individuals and organizations in both the private sector and civil society.

§ 39:10 Split of legislative/regulatory authority between the federal government and individual states

The legal and political system in Vietnam is centralized with one state and does not follow a federal system.

C. DEFAMATION

§ 39:11 Main sources of law

The law of defamation is mainly based on the Civil Code sections related to personal rights. The Civil Code states that the honor, dignity, and reputation of an individual shall be respected and protected by law.¹ Other sources include Penal Code articles regarding slander and humiliating other persons,² as well as the Law on Complaints and Denunciations, promulgated to facilitate complaints and denunciations related to the activities of public agencies, thus contributing to democracy, the enhancement of the socialist legal system, the protection of State interests as well as the legitimate rights and interests of citizens, agencies, and

[Section 39:11]

¹Civil Code, Article 37, right to protection of honor, dignity, and reputation.

²Penal Code, No. 15/1999/QH11, dated December 21, 1999, Articles 42, 121, 122.

organizations.³ In certain circumstances, provisions of the Law on Competition⁴ and Decree 04-2005-ND-CP of the Government, dated January 11, 2005, Implementing the Labor Code on Labor Complaints and Denunciations may apply.

§ 39:12 Definition and significant subdivisions

Under the Penal Code, persons who commit the crime of slander are those who trump up or spread stories knowing them to be fabricated in order to infringe upon or damage the honor, legitimate rights, or interests of another person or to accuse another person of committing a crime and denouncing them before competent agencies.¹ Persons who commit the crime of humiliating others, “seriously infringe upon the dignity or honor of other persons.”²

§ 39:13 Main factors or elements of claim

The Civil Code simply provides that damage is caused by harm to the honor, dignity, or reputation of an individual or harm to the honor or reputation of a legal entity. The court will interpret the codified definitions and determine if defamation has been proven based on the facts of each case.¹

³Law on Complaints and Denunciations, No. 09/1998/QH10 of December 2, 1998, as amended by Law No. 26/2004/QH11 and Law No. 58/2005/QH11, Preamble.

⁴Law on Competition No. 27/2004/QH11, dated December 3, 2004.

[Section 39:12]

¹Penal Code, Article 122.

²Penal Code, Article 121.

[Section 39:13]

¹See also the Law on Media, Article 10(4) which states that the media is not permitted to disseminate information which is untruthful, distorted, or slanderous and harmful to the reputation of organizations or the reputation and dignity of citizens.

§ 39:14 Types of relief available

Depending on the facts and circumstances of a defamation claim, relief is available pursuant to civil law,¹ criminal law,² the Law on Publishing,³ and the Law on Media.⁴

The Vietnamese Civil Code provides that any person who intentionally or unintentionally harms the life, health, honour, dignity, reputation, property, or other legal rights or interests of an individual, or harms the honor, reputation, or property of a legal entity, thereby causing damage, must compensate a plaintiff for such damage.⁵ Article 611(1) of the Civil Code provides for (a) reasonable costs for mitigating and remedying the damage and (b) loss of or reduction in actual income.

A person causing harm to the honor, dignity, or reputation of another person must also pay compensation for the mental suffering of the aggrieved person.⁶ The amount of compensation for mental suffering will be agreed upon by the parties, and if the parties are not able to agree, the maximum sum will not exceed 10 months wages at the minimum monthly wage rate provided by the State.⁷

Furthermore, if damage is caused by harm to the life, health, honor, dignity, or reputation of a person, or a decrease or loss of authors' credit (prestige) or confidence, the perpetrator must cease the harmful acts, make a public apology and retraction, and pay a sum of money to compensate for the spiritual damage caused.⁸

Articles 42 and 122(1) of the Penal Code set forth that those who are found guilty of slander are subject to a warning, noncustodial reform for up to two years, or a prison

[Section 39:14]

¹Civil Code, Article 611.

²Penal Code, Article 42.

³Law on Publishing, dated December 3, 2004, as amended by Law 2-2008-QH12, dated June 3, 2008, Article 9.

⁴Law on Media, 1989 as amended by Law 12-1999-QH10, dated June 12, 1999, Articles 9, 10.

⁵Civil Code, Articles 608–612.

⁶Civil Code, Article 611.2.

⁷Civil Code, Article 611.2.

⁸Civil Code, Articles 307 and 604. A person causing spiritual damage to another person by harming his or her life, health, honor, dignity, or reputation or a decrease in or loss of authors' credit (prestige) or confidence. *See also* Articles 307.1 and 307.3.

term of between three months and two years. The sentence shall be between one and seven years imprisonment if the person commits the crime (i) in an organized manner; (ii) abusing their position and power; (iii) against more than one person; (iv) against their own grandfathers, grandmothers, fathers, mothers or persons who teach, nurture, look after, educate and/or medically treat them; (v) against persons who are performing their official duties; or (vi) by slandering other persons regarding serious crimes.⁹ Furthermore, offenders may be subject to a fine of between one million and ten million Vietnam dong, as well as a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.¹⁰

The Law on Publishing regulates complaints and denunciations regarding publishing activities. Individuals have the right to lodge a complaint about any conduct contrary to law in publishing activities.¹¹ When appropriate, a publishing house, body, or organization may be required to publish a correction in the press or to compensate for loss and damage. Also, a complainant may request civil proceedings or request the competent State body to institute a prosecution when a publication contains errors, slanders, or offends honor and dignity, causing loss and/or damage to legal rights and interests.¹²

The Law on Media also clearly provides that if the media reports information which is untruthful, distorted, or slanderous and harmful to the reputation and dignity of an organization or citizen, it shall publish or broadcast a correction and an apology. If an authorized State body has reached a conclusion on the matter, the media organization must also publish or broadcast that conclusion.¹³

In addition, organizations and individuals shall have the right to express their opinion about the matters mentioned in the media when there are grounds for believing that the media has reported information that is untruthful, distorted, or slanderous and harmful to them. The media organization

⁹Penal Code, Articles 42 and 122.2.

¹⁰Penal Code, Articles 42 and 122.3.

¹¹Law on Publishing, dated December 3, 2004, Article 9.1.

¹²Law on Publishing, dated December 3, 2004, Article 9.2.

¹³Law on Media, Article 9.1.

must publish these opinions.¹⁴ The correction and apology must be printed within 10 days and/or broadcast within five days of the original news item.¹⁵ In cases where the media organization does not make a correction or apology, or does not do so properly in accordance with the law, then the complainant has the right to lodge a complaint with the media managing body and with the State management body responsible, or to initiate legal proceedings.¹⁶

§ 39:15 Defenses available

Defenses are not specifically mentioned in Vietnam's law of defamation. Defendants facing a defamation complaint may explain any extenuating or mitigating circumstances.

§ 39:16 Time period for asserting claim

The time period for initiating a legal action claiming compensation for damage is two years. Time is calculated from the date on which the legal rights or interests of an individual, legal entity, or other subject were infringed.¹

D. INVASION OF PRIVACY

§ 39:17 Main sources of law

The right to privacy is set forth in Article 38 of the Vietnamese Civil Code.¹ The article clearly states that the right to privacy of an individual and the safety and confidentiality of the mail, telephone, electronic mail, and other forms of electronic information shall be respected and protected by law. Control of personal mail, telephone, electronic mail, and other forms of electronic information may only be conducted by law and pursuant to a decision issued by an authorized State body.² Consent is required for the collection and publi-

¹⁴Law on Media, Article 9.2.

¹⁵Law on Media, Article 9.2.

¹⁶Law on Media, Article 9.4.

[Section 39:16]

¹Civil Code, Article 607.

[Section 39:17]

¹Civil Code, Article 38.1.

²Civil Code, Article 38.4. *See also* Law on Information Technology, 67-2006-QH11 29/06/2006, Article 21; Law on E-transactions, Article 46; Decree 90/2008/ND-CP on Anti-spam.

cation of information and data about the private life of an individual.³

Article 125 of the Penal Code stipulates that those who appropriate letters, telegrams, telex, facsimile, or other documents transmitted by telecommunication or computer or commit illegal acts infringing upon the secrecy or safety of letters, telephone conversations, or telegraphs and who have been disciplined or administratively sanctioned for such acts but continue to commit violations shall be subject to sanctions.⁴

The Law on Information Technology states that an authorized State body is responsible to monitor and supervise digital information and to investigate breaches of the law arising from the process of transmitting or storing digital information.

Organizations and individuals collecting, processing, and using the personal information of another person in the network environment must obtain consent from such person, unless otherwise stipulated by law. Organizations and individuals collecting, processing, and using personal information of another person shall have the responsibility to notify persons as to the form, scope, place and purpose of the collection, processing, and use of his or her personal information; to use the collected personal information for proper purposes and to store such information only for a certain period as stipulated by law or as agreed upon by the parties; to take necessary managerial or technical measures to ensure that the personal information shall not be lost, stolen, disclosed, modified, or destroyed; to immediately take necessary measures upon receipt of a request for re-examination, correction, or cancellation; and not to supply or use relevant personal information until such information is corrected.⁵

Organizations and individuals are entitled to collect, process, and use the personal information of another person without the consent of the latter in a case where such personal information is used for the following purposes: signing, modifying, or performing contracts for use of information, products, or services in the network environment; pricing or calculating charges for use of information, products,

³Civil Code, Article 38.3.

⁴Penal Code, Article 125.1.

⁵Law on Information Technology, 67-2006-QH11, June 29, 2006, Article 20.

or services in the network environment; and performing other obligations in accordance with the law.⁶

Individuals are entitled to request any organization or individual storing his or her personal information in the network environment to check, correct, or cancel such information.

Organizations or individuals are not permitted to supply the personal information of another person to any third party unless otherwise stipulated by law or agreed by such person. Individuals are entitled to claim compensation for loss caused by a breach during the supply of personal information.⁷

§ 39:18 Definition

Privacy law is defined in the Civil Code, Penal Code, the Law on Information Technology, and the Law on E-transactions. The court interprets and applies the law according to specific cases and circumstances.¹

§ 39:19 Main factors or elements of claim

In a claim for invasion of privacy, the elements of tort law or criminal law are applied where appropriate.

§ 39:20 Types of relief available

The relief available for claims of invasion of privacy is not clear. However, sanctions for an invasion of personal privacy or safety of letters, telephone, and/or telegraph clearly include a warning, a fine of between three million and 20 million Vietnam dong, or noncustodial reform for up to one year.¹ Offenders are subject to noncustodial reform for one to two years or a prison term of between three months and two

⁶Law on Information Technology, 67-2006-QH11, June 29, 2006, Article 21.

⁷Law on Information Technology, 67-2006-QH11, June 29, 2006, Article 22.

[Section 39:18]

¹Penal Code, Article 125.1.

[Section 39:20]

¹Decree 75/2010/ND-CD on Administrative Sanctions for Violations in the Cultural Activities, Art. 7 (VND10-15 million); Decree 02/2011/ND-CP on Administrative Sanctions for Violations in the Media & Publishing Activities, Art. 7 & 18 (VND3-20 million); Decree 47/2009/ND-CP on

years if they commit the crime in one of the following circumstances:

- (a) in an organized manner;
- (b) abusing their positions and/or powers;
- (c) committing the crime more than once;
- (d) causing serious consequences; or
- (e) recidivism.

Offenders may also be subject to a fine of between two million and twenty million Vietnam dong and/or to a ban from holding certain posts for one to five years.²

§ 39:21 Defenses available

Defenses for invasion of privacy are not clearly indicated in Vietnam law.

§ 39:22 Time period for asserting claim

If there is any damage caused by an invasion of privacy, the limitation period for asserting a claim related to such violation is two years from the date on which the right to privacy of an individual, legal entity, or other subject was infringed.¹

E. RIGHT OF PUBLICITY

§ 39:23 Main sources of law

Article 38 of the Civil Code protects persons against illegal publication of their private information. “The collection and publication of information and data about the private life of an individual must have the consent of that person.”¹

§ 39:24 Protection of right of publicity after death

Regarding the protection of right of publicity of a person after death, the Civil Code states that if a person has died, lost the capacity for civil acts, or is not yet 15 years of age,

Administrative Sanctions for Violations in the Area of Copyright and Related Rights, Art. 8 (VND 5-10 million).

²Penal Code, Article 125.

[Section 39:22]

¹Civil Procedure Code, 2004, 24-2004-QH11, June 15, 2004, Article 159.

[Section 39:23]

¹Civil Code, Article 38.

the consent of a parent, spouse, adult child, or representative of that person must be obtained, except where the collection and publication of information and data is required pursuant to a decision of an authorized State body.¹

§ 39:25 Main factors or elements of claim

The elements of a violation of the right to publicity are not specifically mentioned in Vietnam's laws. It can be understood that the court will interpret specific cases and circumstances.

§ 39:26 Types of relief available

There is no concrete provision regarding the relief available for a plaintiff claiming violation of the right to publicity.

§ 39:27 Defenses available

Defenses for violating the right to publicity are not clearly mentioned in Vietnam's laws.

§ 39:28 Time period for asserting claim

If there is any damage caused by the violation of the right to publicity, the time period for asserting a claim of such violation is two years from the date on which the right to publicity of an individual, legal entity, or other subject was infringed.¹

II. ADVERTISING LAW

A. SOURCES OF ADVERTISING LAW

§ 39:29 Basic principles

Advertising activities are governed mainly by the Ordinance on Advertising.¹ Pursuant to Article 3 of the Ordinance, the State shall protect the legal rights and interest of

[Section 39:24]

¹Civil Code, Article 38.2.

[Section 39:28]

¹Civil Code, Article 607.

[Section 39:29]

¹Ordinance on Advertising, No. 39-2001-PL-UBTVQH10, November 16, 2001, Article 1.1.

advertisers and create favorable conditions for persons conducting advertising services.² Organizations and individuals who wish to advertise goods or services may do so directly or through an advertising service.³ Information included in advertisements for goods, services, and business activities must be true, accurate, and clear; must not be misleading or confusing; or cause loss or damages to producers, business persons, and consumers. Moreover, the form of an advertisement must be clear, comprehensible, and aesthetically pleasing.⁴

§ 39:30 Constitutional sources

There are no provisions in the Constitution specifically governing advertising activities; however, the Constitution and the Ordinance on Advertising stipulate that the State strictly punishes all production or business activities that harm the legitimate interests of the State, collectives, and citizens.¹ Furthermore, the State has general policies to protect the interests of producers and consumers.

§ 39:31 Codified sources

At the time of writing, Vietnam does not have a uniform law on advertisement, although a draft Law on Advertisement is currently available. Until this draft becomes the law, advertisement is regulated by various pieces of legislation, with the most pertinent provisions found mainly in the Ordinance on Advertising and its guiding legal documents, Commercial Law, and Competition Law.¹ Only Vietnamese

²Ordinance on Advertising, No. 39-2001-PL-UBTVQH10, November 16, 2001, Article 3.

³Ordinance on Advertising, No. 39-2001-PL-UBTVQH10, November 16, 2001, Article 2.

⁴Ordinance on Advertising, No. 39-2001-PL-UBTVQH10, November 16, 2001, Articles 5, 6.2, 7.2.

[Section 39:30]

¹Constitution, April 15, 1992, as amended 2001, Article 28, Ordinance on Advertising, No. 39-2001-PL-UBTVQH10, November 16, 2001, Article 5.

[Section 39:31]

¹Ordinance on Advertising, No. 39-2001-PL-UBTVQH10, November 16, 2001, Article 1; Decree 24/2003/ND-CP Implementing Advertising, Article 1.1; Commercial Law, Articles 102–106; Competition Law, Articles 39, 45.

business entities, branches of foreign business entities, and foreign invested enterprises in Vietnam may directly, or through advertising business enterprises, advertise their products, goods, or services. Foreign business entities that do not have commercial representatives in Vietnam who wish to advertise their products or services must hire Vietnamese business entities to conduct advertising services.²

The Ordinance on Advertising regulates the advertisement of “conditional products” such as alcohol, medical drugs, cosmetics, and products that are a substitute for mother’s milk.

Advertisements on spoken, visual or electronic media, printed media and advertisements in publications, films, photos, videos, pictures disks, sound video, and sound disks are also governed by the Ordinance on Advertising.

With respect to advertising cosmetics, Circular 06/2011/TT-BYT Promulgating Regulation on Management of Cosmetics regulates the subject matter.³

Advertising drugs is regulated mainly by Circular 13/2009/TT-BYT.⁴ It prohibits certain advertising activities for medicine such as providing material benefits for doctors and medicine users in order to influence them to prescribe or use a medicine. Abusing the name, symbol, or image of pharmaceutical organizations, doctors, or health officers in order to advertise medicine is also prohibited.

The Ministry of Culture, Sport and Information issued Circular 78/2008/TT-BVHTT,⁵ amending some articles of Circular 19/2005/TT-BVHTT and Resolution 12/2005/NQ-CP on the prohibition of advertisements for tobacco. Vietnamese law strictly prohibits tobacco advertisement in all forms, including using the label, symbols, and appellation of tobacco products with products and services not related to tobacco.

Advertisements in public places are regulated by the Ordinance on Advertising and its regulations. Organizations or individuals placing an advertisement on a billboard, placard, panel, banner, illuminated object, air-borne or underwa-

²Commercial Law, Article 103.

³Circular 06/2011/TT-BYT Promulgating Regulation on Management of Cosmetics dated November 25, 2011.

⁴Circular 13-2009-TT-BYT of the Ministry of Health on Information and Advertisement of Medicines, dated 1 September 1, 2009.

⁵Circular 78/2008/TT-BVHTT, dated May 12, 2008, amended August 29, 2008.

ter object, mobile object, and other similar objects must protect urban beauty, landscape, and environment in compliance with the laws on advertising, rural and urban planning, traffic order and safety, and the safety of society.⁶

Advertising through e-mail and text messages is regulated by Decree 90/2008/ND-CP (Decree 90) on anti-spam, dated August 13, 2008.⁷ E-mail and text message advertising may only be conducted by (i) enterprises advertising their own products and (ii) licensed advertising service providers.⁸ Decree 90 also imposes the following general restrictions on email and text message advertising: (i) entities advertising their own products may not send an email or text message advertisement without the prior consent of the recipient; (ii) an opt-out function must be placed at the end of an email or text message advertisement and must be clearly expressed in both Vietnamese and English, and the advertiser must stop sending email and text message advertisements when the recipient exercises the opt-out option; and (iii) advertising companies may only send up to five email advertisements to one address in each 24-hour period, and they may only send a maximum of five text message advertisements to one telephone number within a 24-hour period, and only between the hours of 7:00 a.m. to 10:00 p.m., unless otherwise agreed by the recipient.⁹

§ 39:32 Case law sources

Advertising cases are handled by State bodies rather than courts.

B. FALSE ADVERTISING

§ 39:33 Main sources of law

False advertising is regulated by a number of Vietnamese laws, namely, the Penal Code, Commercial Law, the Ordinance on Advertising, Law on Competition, the Ordinance on Consumer Protection, and Law on Quality of Goods and

⁶Ordinance on Advertising, Article 14.

⁷Decree 90/2008/ND-CP, Chapter II, Articles 7–16.

⁸Decree 90/2008/ND-CP, Article 7. *See also* Decree 90, Article 3.12.

⁹Decree 90, Article 7. *See also* Decree 90, Articles 12 and 16.

Products.¹ Any individual or organization providing false advertising, depending on the nature and seriousness of the offense, shall be charged with an administrative liability or criminal penalty.² Additionally, under the Ordinance on Consumer Protection, consumers have the right to request a refund or compensation for loss and damage when goods and services do not satisfy the standards, quality, quantity, and price as offered by the suppliers, and may complain, denounce, and institute proceedings in respect of any false information or advertising.³

§ 39:34 Definition and significant subdivisions

The Commercial Law prohibits false advertisement of goods and services with respect to any of the following: quantity, quality, price, usage, design, origin of goods, type, packaging, method of service, and warranty period.¹ The Law on Competition defines false advertising as providing false or misleading information to consumers relating to one of the following:

- (i) price, quantity, quality, usage, design, type, packaging, date of manufacture, use expiry, origin of goods, manufacturer, place of manufacture, processor, or place of processing;
- (ii) manner of use, method of services, warranty period; or
- (iii) other false or misleading information.²

[Section 39:33]

¹Penal Code No. 15/1999/QH10, passed by the National Assembly on December 21, 1999 (“Penal Code”); Commercial Law No. 36/2005/QH11, passed by the National Assembly on June 14, 2005 (“Commercial Law”); Ordinance on Advertising No. 39/2001/PL-UBTVQH10 of the Standing Committee of National Assembly, dated November 16, 2001 (“Ordinance on Advertising”); Law on Competition No. 27/2004/QH11, passed by the National Assembly on December 3, 2004 (“Law on Competition”); Law on the Protection of Consumers’ Rights; Law on Quality of Goods and Products No. 05/2007/QH12, adopted by National Assembly on November 21, 2007 (“Law on Quality of Goods and Products”).

²Ordinance on Advertising, Article 33.

³Law on Protection of Consumers’ Rights, Article 8.

[Section 39:34]

¹Commercial Law No. 36/2005/QH11, passed by the National Assembly on June 14, 2005, Article 109.

²Law on Competition, Article 45.

§ 39:35 Main factors or elements of claim

Regarding compensation for damages in cases of false advertising, the Commercial Law, Law on Advertising, Law on Quality of Goods and Products, and the Law on Protection of Consumers' Rights refer to principles of the Vietnam Civil Code.¹ Under the Civil Code, an injured person may claim compensation based on the following elements:

- (i) there has been an illegal act committed (such as providing false advertisements);
- (ii) there has been damage caused and the damage caused must be the result of the illegal acts and vice versa (an injured person must prove the damage was caused by false advertising, which may include material damage and mental suffering); and
- (iii) the party causing damage was at fault.

§ 39:36 Examples of claims found false or misleading and claims found not false or misleading

There have been few cases related to false advertising in Vietnam's courts. Furthermore, as Vietnam applies a civil law system, judgments are not binding on future courts and are rarely published. Thus, the facts of a case and full text of a court's decision are not easily obtained. Certain cases decided by competent authorities have been published on the web-site of such authorities.

Several cases handled by the Vietnam Competition Administration Department (VCAD) may serve as examples.

In August 2011, a television shopping company advertised its cosmetic products as having magical effects that would have tremendous beautifying effects on consumers within a short time. These cosmetic products had completed the necessary quality standards process with the Ministry of Health of Vietnam, but when they were advertised on television, the product functions and uses were magnified as compared with the approved products standards. When questioned by the VCAD about these claims, the company could not prove the claimed results. The company was fined VND 45 million (approximately USD 2,140) for violation of Article 45 of the Law

[Section 39:35]

¹Civil Code No. 33/2005/QH11, passed by the National Assembly on June 14, 2005 ("Civil Code").

on Competition. Additionally, the company revised the advertisement content to comply with Vietnamese laws.¹

In another case, a leading electronics company advertised a product with the functions that it acted “against wrinkles in clothes” or “water safe to 50%” but later failed to prove these functions. In September 2011, the company was fined VND 30 million (approximately USD 1,428) for violation of Article 45 of the Law on Competition.²

§ 39:37 Types of relief available

If it is proved that an individual or organization committed an act of false advertisement, administrative sanctions or criminal penalties may be applied. In cases where a false advertisement causes damage to an individual or organization, the latter may claim compensation for extra-contractual damage.¹

Administrative sanctions include monetary fines and warnings. Providing false advertisements can result in a fine up to VND 30 million (approximately USD 1,450). Supplemental sanctions may include confiscation of products that are falsely advertised and removal of the advertisement.² With respect to an act of providing false advertisement that is aimed at unfair competition, an individual or organization may be subject to a fine up to VND 50 million (approximately USD 2,375).³ Additional sanctions and measures for remedying consequences may also be applied, including confiscation of material evidence and facilities used to commit the breach, all profits earned from such breach, and public retraction.⁴

Criminal penalties may be applied to an offender only when the false advertisement causes serious consequences

[Section 39:36]

¹<http://baodatviet.vn/Home/kinhte/-bi-phat-vi-quang-cao-lo/201110/173138.datviet>.

²<http://baodatviet.vn/Home/kinhte/-bi-phat-vi-quang-cao-lo/201110/173138.datviet>.

[Section 39:37]

¹Ordinance on Advertising, Article 33.1.

²Decree No. 75/2010/ND-CP on Administrative Sanctions for Violations in the Cultural Activities, Article 30.6.

³Decree No. 120/2005/ND-CP of the Government, dated September 30, 2005, on dealing with breaches in competition sector (“Decree 120”), Article 35.

⁴Decree 120, Articles 35 and 30.3.

or the offender has continued to commit an offense after being administratively sanctioned or sentenced for such offense and not yet entitled to criminal record remission.⁵ The offender may be subject to a fine of between VND 10 million (approximately USD 495) and VND 100 million (approximately USD 4,950), noncustodial reform for up to three years, or a prison term of between six months and three years. There may also be supplemental sanctions of a fine up to VND 50 million (approximately USD 2,375) or a ban from practicing certain occupations or doing certain jobs for one to five years.

§ 39:38 Defenses available

Pursuant to Decree 55, a consumer has the right to make a claim of false advertising against an advertising party.¹ When faced with such a claim, an advertising party must prove that all contents of its advertisement are true and not misleading to consumers. If an advertising party is successful in proving that it is not at fault in creating consumer confusion, it may not be liable.² In a civil proceeding, the responsibility to prove the damage caused by the defendant belongs to the plaintiff.³

§ 39:39 Evidence required to support advertising claims based on tests

There is no specific regulation regarding scientific tests or surveys used to substantiate claims made in advertisements. Tests and examinations may vary from case to case. In cases of advertising claims relating to the quality of goods, the Vietnam official standards (*i.e.*, TCVN) issued by Vietnam Standard and Quality Center can be used to verify whether the advertised products reach the quality standard or not.¹

⁵Penal Code, Article 168.

[Section 39:38]

¹Decree 55, 55-2008-ND-CP, Government, 24/04/2008, Articles 15–18.

²Decree 55, 55-2008-ND-CP, Government, 24/04/2008, Articles 15–18.

³Civil Procedure Code, Article 79.

[Section 39:39]

¹<http://www.tcvn.gov.vn/tochuc/infor/english/tcvnnet.htm>.

§ 39:40 Time period for asserting claim

The time limit for the authority to impose a penalty for a criminal offense pursuant to administrative procedures is one year from the date on which the offense was committed.¹ If within such time limit, an offender commits a similar offense or intentionally evades or obstructs justice, the time limit will commence from the date on which the new offense was committed or the act of evasion or obstruction ceased.²

The time limit for criminal liability prosecution is five years from the date on which false advertising was carried out.³ If the offender deliberately flees, and a warrant is issued, the limitation is tolled, and the time limit must be recalculated from the time when the offender is arrested.⁴

The time limit for initiating legal action claiming compensation for damage is two years from the date on which the legal rights or interests of an individual or organization were infringed.⁵

**C. THIRD PARTY TRADEMARKS AND
COPYRIGHTS IN ADVERTISING****§ 39:41 Permissibility of using another party's
trademark in advertising without that party's
authorization**

Vietnamese regulations strictly prohibit “advertisements that defame, compare, or cause confusion with other productions, business or service-providing establishments; using names or images of other organizations and/or individuals for advertisements without their consent.”¹

[Section 39:40]

¹Ordinance No.44/2002/PL-UBTVQH10 of the Standing Committee of National Assembly, dated July 2, 2002, on Dealing with Administrative Offences, Article 10.

²Ordinance No.44/2002/PL-UBTVQH10 of the Standing Committee of National Assembly, dated July 2, 2002, on Dealing with Administrative Offences, Article 10. See also Penal Code, Article 23.

³Penal Code, Article 23.3.

⁴Penal Code, Article 23.2.

⁵Civil Code, Article 607.

[Section 39:41]

¹Article 3, Decree 24/2003/ND-CP, detailing the implementation of the Ordinance on Advertisement. See also Intellectual Property Law, No.

§ 39:42 Permissibility of using another party's copyrighted work in advertising without that party's authorization

Under Vietnam's Law on Intellectual Property, a copyright holder shall have the right to communicate, or publish, its works to the public by any means.¹ When a party attempts to use another party's copyrighted work in an advertisement, it must ask for permission from the copyright holder and must pay royalties, remuneration, or other material benefits to the copyright holder.²

§ 39:43 Time period for asserting claim of trademark infringement or copyright infringement

Under Vietnamese civil law, if any damage is caused by trademark or copyright infringement, the time period for asserting a claim of such infringement is two years from the date on which the infringement was conducted.

III. ENTERTAINMENT LAW

A. SOURCES

§ 39:44 Basic principles

The Vietnamese government tends to encourage the entertainment activities of its citizens. However, these activities must not violate the nation's legal framework or the Constitution.

§ 39:45 Constitutional sources

The Vietnamese Constitution provides general principles on cultural and artistic activities in Article 32, which states that art and literature help nurture the noble personality and soul of the Vietnamese people. The State invests in the development of culture, literature, and art, creates favorable conditions for the people to enjoy literary and artistic works

50/2005/QH11, dated November 29, 2005, amended by Law 36-2009-QH12, dated June 19, 2009, effective January 1, 2010.

[Section 39:42]

¹Intellectual Property Law, No. 50/2005/QH11, dated November 29, 2005, amended by Law 36-2009-QH12, dated June 19, 2009, effective January 1, 2010, Articles 19.3, 20.

²Intellectual Property Law, No. 50/2005/QH11, dated November 29, 2005, Article 20.

of high value, and sponsors the promotion of creative literary and artistic talents. The State also develops diverse forms of literary and artistic activities, as well as encourages popular literary and artistic activities.¹

§ 39:46 Codified sources

Vietnam does not have codified law governing entertainment activities. Any case relating to a specific aspect of entertainment will be regulated by the applicable law (*e.g.*, Law on Cinematography, etc.).

§ 39:47 Case law sources

Vietnam is a civil law country; case law has no precedential authority.

B. TYPES

§ 39:48 Legal matters characterized as entertainment law

In Vietnam, cultural and informative activities can be characterized as entertainment activities, including press, publishing, cinematography, performing arts, public cultural activities and cultural services, fine arts, cultural and art exhibition, and photography.¹

IV. ART LAW

A. SOURCES

§ 39:49 Main sources of law relating to sale of artworks

Generally, Commercial Law governs the sale of artwork, as it is treated as any other kind of goods. The Commercial

[Section 39:45]

¹Vietnamese Constitution, dated April 15, 1992, amended on December 25, 2001, Article 32.

[Section 39:48]

¹Decree 75/2010/ND-CP on Administrative Sanctions for Violations in the Cultural Activities.

Law provides for trade fairs and exhibitions.¹ The moral rights attached to artistic goods are regulated by Intellectual Property Law.²

§ 39:50 Sources of law for artists' rights

Vietnam's Intellectual Property Law clearly states artists' rights related to their artworks. Artists' rights are comprised of moral rights and economic rights.

The moral rights of authors are listed in Article 19, as follows:

1. Right to give titles to their works.
2. Right to attach their real names or pseudonyms to their works; to have their real names or pseudonyms acknowledged when their works are published or used.
3. Right to publish their works or to authorize other persons to publish their works.
4. Right to protect the integrity of their works, and to forbid other persons to modify, edit, or distort their works in whatever form, causing harm to the honour and reputation of the author.¹

The economic rights of authors are stipulated in Article 20, as follows:

1. To make derivative works.
2. To display their works to the public.
3. To reproduce their works.
4. To distribute or import the original or copies of their works.
5. To communicate their works to the public by wireless or landline means, electronic information networks, or other technical means.
6. To lease the original or copies of cinematographic works and computer programs.

[Section 39:49]

¹Commercial Law No. 36/2005/QH11, passed by the National Assembly on June 14, 2005, Articles 129–140.

²Intellectual Property Law, No. 50/2005/QH11, dated November 29, 2005, amended by Law 36-2009-QH12, dated June 19, 2009, effective January 1, 2010.

[Section 39:50]

¹Intellectual Property Law, No. 50/2005/QH11, dated November 29, 2005, amended by Law 36-2009-QH12, dated June 19, 2009, effective January 1, 2010, Article 19.

Economic rights can be transferred to another party, while the artists' moral rights cannot.²

B. RELATIONSHIPS

§ 39:51 Relationship between dealer and artist

The economic rights of artists and the relationship between dealers and artists is simply the relationship between buyers and sellers under Vietnamese Commercial Law.¹ However, the moral rights of the artists will be governed by Intellectual Property Law.²

§ 39:52 Relationship between purchaser and dealer

The relationship between an art purchaser and a dealer is governed by Commercial Law, and transactions can be considered as a shift of property rights.¹ This will not affect the moral rights of the artist related to such artwork.²

C. ART AUCTIONS

§ 39:53 Laws relating to auctions and auction houses

Vietnamese Commercial Law¹ provides a clear definition of auction as an “auction of goods means a commercial activity whereby the seller conducts, or hires an auctioneer to conduct, the public sale of goods in order to select the purchaser offering the highest price.”² The law requires auctioneers and sellers of goods to be business entities with

²Intellectual Property Law, No. 50/2005/QH11, dated November 29, 2005, amended by Law 36-2009-QH12, dated June 19, 2009, effective January 1, 2010, Article 20.

[Section 39:51]

¹Commercial Law No. 36/2005/QH11, passed by the National Assembly on June 14, 2005, Articles 129–140.

²Intellectual Property Law, No. 50/2005/QH11, dated November 29, 2005, amended by Law 36-2009-QH12, dated June 19, 2009, effective January 1, 2010.

[Section 39:52]

¹Commercial Law No. 36/2005/QH11, passed by the National Assembly, Articles 129–140.

²Intellectual Property Law, No. 50/2005/QH11, dated November 29, 2005, amended by Law 36-2009-QH12, dated June 19, 2009, effective January 1, 2010.

[Section 39:53]

¹Commercial Law No. 36/2005/QH11, dated December 31, 2005.

²Commercial Law, Article 185.

a business registration for auctioneering services or a seller who conducts an auction of their own goods. A “seller of goods” means the owner of goods or the person authorized by the owner of goods to sell the goods.³

D. “STOLEN” ART WORKS

§ 39:54 Legal issues regarding “stolen” artworks

Under Vietnamese civil law, the purchase or sale of stolen property is an invalid transaction.¹ However, according to Article 138, if the property is “moveable,” not subject to ownership registration, and has already been transferred to a bona fide third party through another transaction, the transaction with that bona fide third party will still be valid, except for the following situation: Owners may reclaim movable property not subject to ownership right registration from bona fide possessors in cases where such bona fide possessors have acquired such property through unindemnifiable contracts with persons who have no right to dispose of the property. In similar cases with indemnifiable contracts, the owners may reclaim the movable property if such movable property has been stolen, lost, or possessed against the owner’s will.²

Whether a bona fide purchaser of a stolen artwork must return the artwork to the person from whom the artwork was stolen or to that person’s heirs will be determined based on the facts of the case.

³Commercial Law, Article 186.2. *See* Commercial Law, Section 2, Auction of Goods, Articles 185–213.

[Section 39:54]

¹Civil Code, Article 138.

²Civil Code, Article 257.