

## VIETNAM

## Softer approach effective in copyright fight

Tilleke & Gibbins

Hanoi



Thomas J. Treutler and Loc Xuan Le

Among the many challenges in enforcing IP rights in developing countries such as Vietnam, those that arise from violations occurring on the internet may be the most difficult to handle. However, an American entertainment production company's recent success in dealing with online copyright violations shows that progress can be made with the right strategy.

### Big market, big challenges

With a population of more than 90 million people, a large percentage of them under the age of 30, Vietnam has one of the fastest internet growth rates in the world. Moreover, because its internet infrastructure is new, bandwidth and download speeds in Vietnam are some of the highest in Asia. Along with this trend, numerous internet-related business models have appeared, with the online music space being particularly active. Despite the immense amount of activity, nearly every film and music production company has expressed concerns about the state of rampant copyright violations of their works. While the market for their products has grown dramatically, this has not brought about a corresponding increase in profits, as the vast majority of songs and videos accessed via Vietnamese websites are bootlegs or illegal downloads, offered to consumers for free, or for a small fee that never reaches the copyright holder.

In Vietnam, as in most countries, the legal framework has struggled to keep pace with the digital economy. Typical measures of dealing with IP infringements have been ineffective in the online environment, with its ever-evolving series of loopholes and moving targets. Efforts to encourage consumers to comply with copyright on a voluntary basis, such as

the "Listen with Awareness" campaign being spread by Vietnamese singers and songwriters, have had a limited impact, and "music is free" seems to have become the *de facto* expectation of many Vietnamese consumers.

### Music production companies fight back

In January 2014, Lang Van, a US-based music production and distribution company geared toward overseas Vietnamese consumers, filed a high-profile lawsuit in a US district court against Vietnamese tech company VNG, the owner of the popular music and social network site Zingyn. Lang Van accused the site of illegally sharing over 3,000 of its copyrighted recordings. Although the website is based in Vietnam, is in the Vietnamese language, and primarily targets a domestic Vietnamese audience, Lang Van chose to sue in the US with the hope that the American legal system would be more effective than the Vietnamese legal system in defending copyright, and, just as importantly, would award greater damages.

In contrast, another US company specialising in music and videos embarked on a different, more conciliatory approach to dealing with online copyright violations, which has proved successful. A key to this approach was recognising that, contrary to popular belief, as the market has matured, the majority of Vietnamese music websites now have a genuine interest in providing copyrighted content through legitimate means.

The company prepared its strategy carefully. First, it gathered evidence of the violations in a statement of fact. This is a form of establishing evidence with the witness of a notary, and evidence recorded in this form cannot be rejected in terms of accuracy. This evidence would also serve for every subsequent step of enforcement whether within or outside the territory of Vietnam.

Gently worded cease-and-desist letters were then delivered to six websites which were illegally offering the company's copyrighted content, drawing attention to the evidence of their violations but expressing a desire for a cooperative rather than adversarial relationship going forward. These letters yielded positive re-

sults almost immediately, as the website owners (including some of the largest companies in Vietnam's high-tech/telecom sector) acknowledged the seriousness of the problem and the professional approach of the owner. Within just two weeks, almost all of the infringing content – more than 1,800 songs and videos – was removed from the websites, while the owners wait to negotiate with the copyright holder on the (legal) use of the works.

The success in this case shows the value of local insight in effectively dealing with Vietnamese companies and infringement cases, and hints that Vietnam might be ready to shake off its reputation as a haven for digital piracy. Furthermore, the lessons of this case may be heeded by other movie and music companies who often complain about the situation of easily available downloads, but do not take a proactive approach. The key is to create an overall strategy with an emphasis on: (i) airtight evidence gathering and certification; (ii) communicating to the infringers the legal risks they are assuming; and (iii) providing readily available licensing options.

Tilleke & Gibbins acted for the US company mentioned in this article.