

## VIETNAM

## Is site blocking the solution to online piracy?

Tilleke &amp; Gibbins

Hanoi



Loc Xuan Le and Duc Anh Tran

Websites offering pirated content can inflict tremendous damage on copyright holders, but due to the simplicity of sharing digital content in today's high-speed, always-connected online environment, copyright protection is a serious challenge for both rights holders and government authorities.

Copyright owners such as professional sports leagues, movie studios, and legitimate streaming sites are increasingly turning to site blocking, which targets internet service providers (ISPs) to prevent users accessing websites hosting pirated content. In many countries around the world, this has become a common approach to protecting the legitimate rights of copyright holders.

In Vietnam, although paid streaming services are gaining a foothold, online copyright infringement and pirated content are still widespread. Site blocking may offer a possible alternative for rights holders in the fight against online piracy.

### Obligations of ISPs under the law

While not explicitly stated in Vietnamese law, the obligations of ISPs to block access to pirated content are implied or suggested in various legal documents:

*Information Technology Law 2006:* Under Article 16.3, at the request of competent authorities, transmitters of digital information must promptly implement necessary measures to stop illegal access to information or deletion of information. As ISPs transmit digital information, they are therefore obliged to stop illegal access to information, through methods which could include site blocking, upon a request from the authorities.

*Joint Circular No. 07/2012/TTLT-*

*BT/TT-BVHTTDL on obligations of intermediary service providers in protection of copyright and related rights on the internet and telecom network environments:* Under Article 5.3, ISPs have the obligation to remove and delete digital content which violates copyright and related rights, and to cut, stop or suspend internet or telecom connections (of their customers/users), upon the receipt of a written request from the authorities. Although preventing or blocking access to sites not hosted/operated by the ISP itself is not mentioned, there is an implication that ISPs could be required to do so, if there is a request from the authorities.

*Cybersecurity Law 2018:* Under Article 21, ISPs have the responsibility to cooperate with professional cybersecurity forces of the Ministry of Public Security to prevent, detect and respond to cybersecurity emergencies. Cybersecurity emergencies are events in cyberspace that seriously violate national security, public order, or the lawful rights and interests of an organisation or individual, and are further defined to include IP and copyright infringement. ISPs that detect a cybersecurity emergency must promptly inform a professional cybersecurity force and implement response measures which include preventing or minimising the damage caused by the emergency. In the case of copyright infringement, this could be done by initiating a site-blocking action. The law, however, does not specifically provide guidance on how to determine the seriousness of a violation.

*Circular 38/2016/TT-BTTTT on cross-border provision of public information:* Article 5.1 provides a mechanism for blocking Vietnamese users' access to "illegal online information." However, this only covers anti-state propaganda, pornography, defamation etc. and does not explicitly include IP or copyright infringement.

Based on the above analysis, ISPs under Vietnamese law would seem to have an obligation to block their users from accessing infringing websites, but only upon an order from the competent authorities. Without such orders, there is no requirement to block users' access to pirated content.

### Route to obtaining site blocking order

In theory, rights holders may rely on the court (via preliminary injunction or final judgment) or other competent authorities, such as the Authority of Broadcasting and Electronic Information (ABEI), to seek a site-blocking order.

In practice, no court orders on site blocking have yet been recorded. This may be the result of not having any rights holders requesting such actions before the court yet, due to obstacles in achieving preliminary injunctions (only a few have been granted in IP disputes in Vietnam) and the length of time required for obtaining final court judgments (normally 10-14 months).

As a result, so far, the ABEI has been the most active authority in administering site blocking. Last year, one of the very first site-blocking actions on the basis of copyright and related rights infringement was granted by the ABEI, in which it ordered multiple ISPs to block users' access to 18 infringing websites which were illegally broadcasting events from the Asian Games.

### Outlook

Site blocking is not a perfect or final solution, and in some cases can feel like chasing a moving target, as infringing websites can change their online locations easily and at a relatively low cost (e.g. from .vn to .org). However, it is still a worthwhile tactic for owners of valuable copyrights, as it can be an effective deterrent to would-be infringers with limited resources or determination, and can reduce large-scale piracy by decentralising the pirated content and making it harder to find. Frustrated users forced to spend countless hours tracking down the football matches or movies they want to watch are likely more willing to pay for legal access.

In the long run, in addition to seeking site-blocking orders, rights holders should coordinate with other authorities like the police to handle infringement at the root through more serious actions like initiating criminal lawsuits.