

VIETNAM

A new trend in copyright litigation

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A decade ago, intellectual property lawsuits were rarely handled by Vietnamese courts. They have become more common in recent years, but almost always with overseas IP owners in the plaintiff role, charging local Vietnamese entities with infringement, piracy, or counterfeiting.

However, in the course of its rapid economic and technical development, Vietnam has emerged as a legitimate brand creator and content generator, and it appears that the tables may have turned. A good example of this shift is a high-profile copyright infringement lawsuit filed in mid-September at the People's Court of Ho Chi Minh City by TV production company Vie Channel against the online streaming music giant Spotify.

Vie Channel specialises in the design and development of game shows such as *Rap Viet* and *Who Is Single Vietnam*, popular programmes on Vietnamese TV. The company has charged Spotify with extracting audio files from these shows—19 recordings from each—to broadcast on Spotify's free and paid platforms without Vie Channel's permission. Vie Channel sent several letters of notification to Spotify's headquarters in Sweden before initiating the proceedings, and also clearly confirmed that there is no business relationship between Vie Channel and Spotify; therefore, these acts are deemed to infringe the protected moral rights and economic rights attached to the two programmes.

In its lawsuit, Vie Channel is requesting that Spotify terminate all acts of infringement and make a

public apology, and is also seeking compensation for damages provisionally calculated at nearly VND 10 billion (\$433,000), a massive amount in the context of Vietnam.

The case presents many interesting legal issues to be settled by the court, such as the determination of the Vietnamese courts' jurisdiction in lawsuits with foreign elements. Particularly, although the defendant in this case is present in Vietnam through its online music platforms, it has never been present in Vietnam in the traditional sense through any subsidiary, branch, or representative office. What will happen if the defendant is summoned to court in Vietnam and does not appear? Which legal measures will be applied by the court to ensure that the proceedings take place normally and, more importantly, that the judgments are enforced afterward? We can imagine that the court will have to resolve many legal issues before it even brings the case to trial.

Another aspect that will certainly draw public attention is the large amount of the compensation claim, which is unprecedented for a copyright dispute in Vietnam. The plaintiff showed some creativity in determining damages. Even though the suit is related to intellectual property, in its request for compensation, the plaintiff referred only to Article 589 of the Civil Code of Vietnam, which provides for "damages caused by infringements of assets/property," rather than referring to more specific provisions on copyright infringement in the IP Law. While this is an unorthodox approach, it is likely a deliberate attempt to maximise the damages sought.

The plaintiff has asked the court to approve amounts ranging from VND 50 million (\$2,200) to VND 500 million (\$22,000) for each act of infringement, covering 38 audio recordings (and thus 38 acts) in total, based on the scope of investment, manufacturing expenditures and royalties of each show.

It is worth noting that, under the IP

Law, VND 500 million is the maximum amount the court can apply for compensation when it is impossible to determine the specific level of damages. If the court accepts this approach, this single lawsuit will effectively contain numerous constituent lawsuits related to each act of infringement and, therefore, there will be a respective level of compensation for each act.

The court's handling of the case will be closely watched. Regardless of the final judgment, the high visibility of this lawsuit, even at the initial stages, could have a positive influence on public behaviour by raising awareness of IP law issues, and giving the general public an opportunity to understand the basics of copyright disputes and the parties' opposing points of view. Perhaps, to some extent, they will see that the victims of IP infringements are not just giant, faceless corporations from overseas, they can also be compatriots creating distinctly Vietnamese intellectual assets.

This lawsuit is still in the early stages and it is difficult to predict how it will be resolved, but it could mark a new normal in IP cases in Vietnam, where the plaintiffs are not always foreign entities but will also be Vietnamese enterprises suing offshore giants.