

## How Will the Enforcement of Intellectual Property Rights be Changed under the 2022 IP Law of Vietnam?

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*To ensure compliance with international commitments after joining new-generation free trade agreements including the CPTPP, EVFTA and RCEP, Vietnam has revised quite a lot of provisions with respect to enforcement of intellectual property rights<sup>1</sup> in the Third Amendment to the 2005 IP Law (the “**2022 IP Law**”) just passed by the National Assembly on June 16, 2022. The 2022 IP Law replaces the 2009 First Amendment and the 2019 Second Amendment to the 2005 IP Law (the “**2005 IP Law**”). Bross & Partners is pleased to update major changes in IPR enforcement in Vietnam for your information*

### **Amendments of Self-Protection Rights**

The IP Law 2022 amends, supplements current provisions with respect to the right to self-protection in favor of right holders, the rights of heirs of copyright and the rights of individuals and organizations that have suffered damage or are likely to be damaged by the IPR infringement, in particular:

- (a) Right holders have the right to apply technological measure to protect their rights, transmit rights management information, or apply other technological measures to prevent infringement of intellectual property rights.

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<sup>1</sup> New-generation free trade agreements including the CPTPP, EVFTA, and RCEP require Vietnam to raise standards for protection and enforcement of intellectual property rights, leading the Vietnamese Government to make efforts to amend and supplement quite a lot of provisions in the current IP Law. 8 major changes related to copyright and related rights, patents, industrial designs, trademarks, geographical indications and plant varieties are briefly summarized in the article *Draft law's key amendments to the 2005 Intellectual Property Law to comply with the IP-related commitments in the European Union – Vietnam Free-Trade Agreement (EVFTA) released for public consultation*: <http://bross.vn/newsletter/ip-news-update/Draft-Law%E2%80%99s-Key-Amendments-to-the-2005-Intellectual-Property-Law-to-Comply-with--the-IPrelated-Commitments-in-the-European-Union--Vietnam-Free-Trade-Agreement-EVFTA-Released-for-Public-Consultation>

- (b) Request the allegedly infringing organizations and individuals to stop violation, remove and delete infringement content on the telecommunications network and internet, make a public apology and rectification, and/or pay damages.
- (c) Right holders may also authorize other organizations or individuals to apply the above measures to protect their intellectual property rights.
- (d) Organizations and individuals those who are inherited copyright have the right to demand competent state agencies to handle infringement upon the right to protect the integrity of works.
- (e) Organizations and individuals that suffer damage or are likely to suffer damage due to acts of unfair competition have the right to request competent state agencies to apply civil measures.

### **Presumption of Author’s Rights, Neighboring Rights**

Assumption of the existence of copyright, related rights in the civil, administrative and criminal procedures is first incorporated into a provision in the 2022 IP Law. Under this provision, individuals and organizations named in the usual manner (ie. name appearing on the original work, first fixation of performance, audio and visual fixation, broadcast, or named on their corresponding copies that are legally published) shall be deemed as the right holders.

### **Legal Liability of Online Service Providers**

Legal liability of intermediary service providers (ISPs) for infringement upon copyright and related rights in the internet is a new regulation that appeared first time in Article 198b of the 2022 IP Law.

Article 98b legal liability (also known as “safe harbour”) is materially understood as conditional liability exemption for 3 types of services provided by ISPs, including (a) only performing the function of transmitting information (mere conduit) of users in the telecommunications network; (b) transmission in the telecommunications network of users’ information which is automatically, intermediately and temporarily stored and for the purpose of making the transmission of information more efficient to other users (caching);

and (c) storing digital information content of service users at the request of service users (hosting).

Hence, all ISPs operating in all 5 forms, including: (i) internet service providers; (ii) telecommunications enterprises; (iii) businesses that provide rental services for digital information storage, including rental services for websites; (iv) enterprises providing online social networking services; and (v) businesses providing digital information search services, may be impacted by Article 198b.

### **Assessment on IP Different from Judicial Assessment on IP**

Unlike judicial assessment on intellectual property, which is carried out in accordance with the 2012 Law on judicial examination, assessment on intellectual property is an independent assessment service and is also considered a legitimate source of evidence. IP assessment means that an organization or individual who is granted an intellectual property assessment card is working for an enterprise, cooperative, non-business unit, or law-practicing organization (excluding foreign lawyers' organizations in Vietnam) using professional knowledge and expertise to make an assessment of and conclusion on issues of copyright, related rights, industrial property rights and rights to plant varieties. IP assessment conclusion must neither conclude an infringement nor state settlement conclusion on the dispute.

### **Criminal liability of commercial legal entities and IP Counterfeit Goods**

In addition to individuals possibly subject to criminal liability prosecution, the 2022 IP Law adds a provision saying that commercial legal entities may be criminally prosecuted for their IP infringement if their violations are determined as having constituted a crime. This new provision is to make sure consistence between the criminal law providing for criminal prosecution of commercial legal entities under Articles 225 and 226 of the Penal Code 2015 as amended in 2017.<sup>2</sup>

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<sup>2</sup> See more “*Legal basis of penal liability for criminal offence of infringing upon intellectual property rights according to current Vietnamese laws*”: <http://bross.vn/newsletter/ip-news-update/Legal-basis-of-penal-liability-for-criminal-offence--of-infringing-upon-intellectual-property-rights-according-to-current-Vietnamese-laws>

The 2022 IP Law expands the scope of determining acts of production and sale of counterfeit trademark goods. Particularly, acts of forging stamps and labels containing signs identical or similar to the extent that it is difficult to distinguish from the registered trademark, or geographical indication, used for the same item of goods without the permission of the owner of trademark, geographical indication shall be also deemed as intellectual property counterfeit.

### **Proactive Suspension of Customs Clearance**

Unlike the 2005 IP Law, the 2022 IP Law stipulates that the customs authority is responsible for proactively suspending customs procedures applicable for goods suspected of infringing upon intellectual property rights if, during the inspection, supervision, there are clear grounds to convince that exporting and importing goods are intellectual property counterfeit goods. In this case, the customs authority must immediately notify the right holder (if contact information is available) and the importer or exporter of such suspension. Within ten working days from the date of notification, if the right holder does not initiate a civil lawsuit and the customs authority decides not to accept the case according to administrative violation handling procedures, the customs authority is responsible for continuing to clear customs for the shipment.

*Bross & Partners, an intellectual property company ranked First (Tier 1) by Legal 500 Asia Pacific, has experience in resolving complicated IP disputes including trademarks, copyrights, patents, plant varieties*

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