



By Yen Vu

Principal, Rouse Legal Vietnam Ltd. cum chairwoman, IPR Committee at the European Chamber of Commerce in Vietnam

The EU-Vietnam Free Trade Agreement (EVFTA) officially entered into force in August. From day one, the EVFTA has started to phase out almost 99 per cent of tariff lines and barriers to trade between Vietnam and the EU. This should result in €15 billion (\$17.5 billion) a year in additional exports from Vietnam to the EU by 2035, while EU exports to Vietnam would expand by €8.3 billion (\$9.68 billion) annually.

For Vietnam, the tariff elimination will benefit key export industries, including the manufacturing of smartphones and electronic products, textiles, footwear, and agricultural products, such as coffee. On the other hand, European companies will also have better access to Vietnam's emerging and potential market with a population of nearly 100 million.

However, the Vietnamese market is now a level playing field and its partners are from very high-developed countries, which requires Vietnam to play to a higher standard. To that end, there are many changes Vietnam needs to make, and improving its intellectual property rights (IPR) system is a key part.

IPR protection is indeed very important to EU companies. According to a 2019 report by the European Patent Office, industries that make intensive use of IPR such as patents, trademarks, industrial designs, and copyright generate 45 per cent of GDP in the EU. Accordingly, EU exporters have a high demand for IPR protection and would expect Vietnam's IPR law and practice to help enforce their rights effectively.

Vietnam's legal framework in this matter has been internationally standardised to comply with treaties such as the Berne Convention. However, the EVFTA has set higher standards tailored to Vietnam and the EU.

There are many changes Vietnam needs to make to its IPR law to comply with its EVFTA commitments, including provision of rights of performers, producers of phonograms to make public their performances and phonograms; process and measures of protection for European geographical indicators; compensation for the patent owner for the reduction in the effective patent life resulting from unreasonable delays in the granting of first market authorisation; and presumption of authorship or ownership.

In the field of IPR enforcement, the introduction of internet service

Improving IP protections to attract fresh EU investment



By guaranteeing apt protection of IPR, Vietnam may attract more value-added investment from the EU

providers (ISP) and their liability in IPR infringement and provision of preliminary injunction for precluding infringements and preserving evidence are notable requirements in the EVFTA. These changes are expected to see in the overhaul of the Law on Intellectual Property in 2021.

A key challenge for Vietnam is the effectiveness of IPR enforcement measures. European businesses expect not only that the Vietnamese IPR legal framework is advanced to the extent it is comparable to that of Singapore, but also enforcement must be highly effective and efficient. Due to the reliance on administrative systems, the limited institutional capacity for related matters at many state agencies has an impact on the effectiveness of the enforcement system.

Infringement and dependence

Vietnam's rapid development of internet and technology has facilitated a boom in e-commerce and digital content businesses with many economic potentials. However, the digital business environment has given rise to an alarming surge of online piracy and IPR infringement.

Meanwhile, enforcement mechanisms seem to be quite far behind the technological landscape. Vietnam does not have a complete or straightforward framework for protection and enforcement of copyright and related rights in the digital environment. Although the laws provide for ISP liability in relation to copyright infringing content available on their system, the concept of "secondary liability" is not clearly established under Vietnamese law. Unlike in other countries, ISPs are not obliged to take down infringing content upon receipt of a right holder's notice.

As for e-commerce, there are rules aimed to tackle online infringement of IPR, but the liability of e-commerce platforms/ISPs has not been established in detail. In practice, right holders normally rely on the cooperation and take-down mech-

anisms available on such platforms instead of any official administrative enforcement or litigation.

The majority of enforcement cases in Vietnam are currently handled via the administrative route. The efficiency of administrative actions is however an issue due to the lack of coordination among various enforcement authorities such as customs, specialised inspectors, the market management bureau, and economic police. There has been some proactive cooperation between enforcement authorities.

However, there are limited formal procedures for cooperation and roles can be unclear which creates delays. Furthermore, administrations are too soft and not enough of a deterrence for IPR infringement in Vietnam. By law, the maximum fine for infringement of IPR is VND500 million (\$21,600) for organisational infringers and VND250 million (\$10,800) for individual infringers. However, enforcement authorities commonly impose fines ranging from several million to tens of millions of VND, much smaller than the actual profits gained from the infringement and do not guarantee deterrence.

Compared to administrative actions, civil litigation is considered to be more effective on large-scale IPR infringements as it allows the owners to claim remedies and damages. However, the number of infringement cases handled by courts via civil actions nationwide are rather limited in quantity and quality.

This may be attributed to the

expensive and prolonged litigation process, unpredictable outcome due to the lack of related expertise in the court, difficulty in proving and calculating actual damages, application for provisional measures, and executing court's judgments.

Due to a heavy backlog at the registration office, IPR owners may face lengthy procedures for registration. During the pending time for examination, the owners do not have the protection titles for timely and effective enforcement of their IPR. The prolonged examination process has therefore considerably hindered the protection and development of related assets in Vietnam.

Tackling the problems

To have a more efficient enforcement, an adequate and solid legislation is a must. In Vietnam, the current legal framework simply does not have sufficient provisions to protect IPR on the internet.

More regulations should be immediately introduced to deal with this issue, for example, to facilitate the collection of information to identify owners of infringing platforms; impose liabilities of ISPs for providing information about the owners of platforms with piracy and counterfeiting; promulgate legal mechanisms to permit IPR holders to notify and request violators to remove infringing contents; and prescribe the relevant responsibility in cooperation for tackling such infringements.

More capacity building and train-

ing for enforcement authorities is also necessary. This will assist officials to learn the best practice with updated knowledge and skills to tackle online infringement, which is never easy due to the increasing sophistication of online infringers.

The law should impose a stricter level of punishment, which is at least compatible to the damage caused to the IPR holders. Given the majority of enforcement cases are still resolved via the administrative route (and many are counterfeit cases), it makes sense to do this to ensure the deterrent effect of the sanctions against future infringers and minimise repeated violations.

In addition, the timeline for resolving enforcement cases must be improved. IPR owners need a speedy response from enforcement authorities to stop infringement. The quicker the cases are resolved, the lesser damages they cause to rightful owners.

It is essential for Vietnam to encourage such owners to use civil measures more in tackling infringement. Accordingly, the implementation of the relevant EVFTA commitments needs to be prioritised. Civil measures are specially crafted to ensure the complete resolution to increasing complex infringement.

For example, the EVFTA requires Vietnam to allow IPR holders to apply for provisional measures with judicial authorities in order to prevent an infringement from occurring and preserve relevant evidence in respect of the alleged infringement. Compared to the current law, which provides that provisional measures can only be filed under the circumstance of a lawsuit, the EVFTA has granted IPR holders the right to apply provisional measures at any time with reasonable available evidence.

In addition, Vietnam needs to focus on creating an IP-specialised court and training for IPR judges in the long term. Once owners are reassured that the enforcement of rights can be adequately resolved via civil litigation in a fair and predictable judicial system, more high value-added foreign investment will come.

Vietnam has made significant progress in improving public awareness of IPR protection in the past few years. It is important to develop and maintain a culture where people are clearly aware of how important it is to protect rights, including their own, and to respect others' IPR.

An effective protection and enforcement of IPR is not just for the benefit of foreign investors who come to Vietnam or to implement Vietnam's commitment in bilateral and international agreements like the EVFTA. It is for the benefit of every business, including Vietnamese businesses, operating in this country. ■



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