

**CHECKLIST OF ISSUES ON ENFORCEMENT<sup>1</sup>**

Responses from Viet Nam

**Civil and Administrative Procedures and Remedies**

*(a) Civil judicial procedures and remedies*

**1. Specify the courts which have jurisdiction over IPR infringement cases.**

People's Courts (Civil Court), at district and provincial level, had jurisdiction over disputes of infringement relating to intellectual property rights. The People's Court could adjudicate cases with respect to claims of abuse of industrial property rights, disputes concerning royalty or remuneration, claims on registration right and the right of authorship, and disputes relating to contracts concerning assignment of ownership right or licensing contract for the right to use objects of industrial property.

**2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?**

Which persons have standing to assert IPRs?

According to Article 198 of the Intellectual Property Law, intellectual property right holders shall have the right to apply certain measures to protect their intellectual property rights, including the right to initiate a lawsuit at a competent court or an arbitrator to protect their legitimate rights and interests. And Article 4.6 together with Article 203 of the same law defines intellectual property right holders as the owners and transferees (including assignees and licensees) of intellectual property rights. In summary, the owners or assignees or licensees of intellectual property rights have standing to assert IPRs, particularly, he/she can bring action for civil remedies: compelling the termination of infringing acts; compelling the public apology and rectification; compelling the performance of civil obligations; compelling the payment of damages; compelling destruction, distribution or use for non-commercial purposes of goods, raw materials, materials or trading of intellectual property right distribution or use does not affect the exploitation of rights by intellectual property right holders.

How may they be represented?

According to the Civil Proceedings Code, all individuals, bodies and organizations with legal capacity in civil proceedings have rights to petition the Court to protect their lawful rights and interests.

For individual, he himself can exercise the rights and obligations in the civil proceedings or to authorize a representative to participate in the civil proceedings.

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<sup>1</sup> Document IP/C/5.

For body or organization, its legal representative will be in its name to participate in the proceedings.

Are there any requirements for mandatory personal appearances before a court by the right holder?

According to the Civil Proceedings Code, personal appearance before a court by the right holder is one of the obligations that the intellectual property right holder must comply with in a civil case. In the case the right holder authorizes his representative to appear before a court, the representative will do that in the name of the holder.

**3. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence that lies within its control?**

As a general rule, when participating in proceedings, a litigant has the rights and obligations to provide evidence or to substantiate in order to protect his or her lawful rights and interests. However, where a concerned party which has taken necessary measures to gather evidence still fails to gather the evidence by itself, it may petition the Court to adduce evidence in order to ensure the proper resolution of the civil affair. At that request, the Court may request directly or in writing individuals or organizations which are controlling or holding the evidence to provide such evidence.

Where evidence is being destroyed or is in danger of being destroyed or it will be difficult to gather the evidence in the future, any concerned party may submit an application to petition the Court to take necessary measures to preserve the evidence. The Court may decide to take one or a number of measures including sealing, keeping, photographing, audio-recording, video-recording, restoring, examining, making a record and other measures.

In addition, under Intellectual Property Law concerned parties have rights to request the court to apply provisional urgent measures to protect their legitimate rights and interests. Particularly, upon or after the initiation of a lawsuit, an intellectual property right holder has the right to request the court to apply provisional measures in the following cases:

- there exists a danger of irreparable damage to such intellectual property right holder;
- goods suspected of infringing upon intellectual property rights or evidence related to the act of infringing upon industrial property rights are likely to be dispersed or destroyed unless they are protected in time.

The court will decide to apply provisional urgent measures at the request of the industrial right holder as mentioned above before listening to the party subject to such measures.

**4. What means exist to identify and protect confidential information brought forward as evidence?**

As a general rule, every item of evidence shall be publicly and equally disclosed and used. However, at the legitimate request of the concerned parties, the Court shall not disclose publicly evidence relating to State secrets, national fine customs, professional secrets, trade secrets or private secrets of individuals.

Persons conducting proceedings and persons participating in proceedings must keep confidentiality in accordance with the law in respect of evidence which is not allowed to be disclosed

publicly relating to State secrets, national fine customs, professional secrets, trade secrets or private secrets of individuals.

In special cases where it is necessary to maintain State secrets or work-related secrets in accordance with the law; to keep national fine customs and morals, to maintain occupational secrets, trade secrets and privacy of individuals upon the legitimate request of concerned parties, the Court shall carry out closed hearings but must pronounce publicly its judgment.

In special cases where it is necessary to protect State secrets; to keep national fine customs, protect occupational secrets, trade secrets and privacy of individuals upon the request of a concerned party, the Council of Adjudicators shall not disclose documents in the case file.

**5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use;**

- **injunctions;**
- **damages, including recovery of profits, and expenses, including attorney's fees;**
- **destruction or other disposal of infringing goods and materials/implements for their production;**
- **any other remedies.**

Injunction

Injunction is one of the civil remedies which courts apply to handle organizations and individuals having committed acts of infringing upon intellectual property rights. It is understood that at the right holder's request in writing, the court will base on evidence, arguments, etc. provided by him to decide whether an injunction is made.

Damages including recovery of profits, and expenses, including attorney's fees

Compelling the payment of damages is one of the civil remedies which courts apply to handle organizations and individuals having committed acts of infringing upon intellectual property rights.

According to Article 204 of the Intellectual property Law, principles of determination of damage caused by infringements of intellectual property rights:

- Damages caused by acts of infringing upon industrial property rights: (i) material damage, including property losses, decreases in income and profit, loss of business opportunities, reasonable expenses for prevention and remedying of such damage; (ii) spiritual damages, including damage to honor, dignity, prestige, reputation and other spiritual losses caused to the authors of literary, artistic and scientific works; to performers, authors of inventions, industrial designs, lay-out designs; and breeders of plant varieties.
- The extent of damage shall be determined on the basis of actual losses suffered by intellectual property right holders due to acts of infringing upon intellectual property rights.

According to Article 205 of the Intellectual Property Law, bases for determination of compensations for damage caused by infringements of intellectual property rights:

- Where the plaintiff can prove that an act of infringing upon intellectual property rights has caused material damages to him or her, he or she shall have the right to request the court to determine the compensation level on one of the following bases:
  - The total material damage determined in an amount of money plus profits gained by the defendant as a result of an act of infringing upon intellectual property rights where the reduced profits amount of the plaintiff has not yet been calculated into the total material damage;
  - The price of the licensing of an intellectual property subject matter with the presumption that the defendant has been licensed contract by the plaintiff to use that object under a license contract within a scope corresponding to the committed infringing act;
  - Where it is impossible to determine the level of compensation for material damage on the bases specified in the two subparagraphs above, such compensation level shall be set by the court depending on the damage extent but must not exceed VND 500 million.
- If the plaintiff can prove that an act of infringing upon intellectual property rights has caused spiritual damage to him or her, he or she shall have the right to request the court to determine the compensation level ranging from VND 5 million to VND 50 million, depending on the damage extent.
- In addition to the damages referred to in clauses 1 and 2 mentioned above, an intellectual property holder may request the court to compel organizations or individuals that have committed acts of infringing upon industrial property rights to pay reasonable costs of hiring attorneys.

Destruction or other disposal of infringing goods and materials/implements for their production

One of civil remedies in handling organizations and individuals having committed acts of infringing upon intellectual property rights is to compel destruction, distribution or use for non-commercial purposes of goods, raw materials, materials and means used largely for the production and trading of interest of intellectual property right infringing goods, provided that such destruction, distribution or use does not affect the exploitation of rights by intellectual property right holders.

Any other remedies

In addition to the civil remedies mentioned above, courts can apply others to handle organizations and individuals that have committed acts of infringing upon intellectual property rights, particularly:

- compelling the public apology and rectification;
- compelling the performance of civil obligations.

**6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution?**

According to laws of Viet Nam, in civil proceedings judicial authorities have no authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution.

**7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?**

Describe provisions relating to the indemnification of defendants wrongfully enjoined

In the event of requesting the court to apply provisional urgent measures by a right holder, he or she is obliged to pay compensations for damage caused to persons subject to such measures in cases where the latter are found having not infringed upon industrial property rights. To secure the performance of this obligation, he has to deposit a security in one of the following forms:

- a sum of money equal to 20% of the value of the goods subject to the application of provisional urgent measures, or at least VND 20 million where it is impossible to value such goods.
- a guarantee deed is issued by a bank or another credit institution.

**8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.**

Describe provisions governing the length and cost of proceedings

Regarding the length of proceedings: According to the Civil Proceedings Code, time-limit for proceedings includes: time for providing evidence, time for reviewing application for initiation of a legal proceeding, preparation for trial at first instance, appeal proceedings, judicial review, new trial; time for appeals and protests against judgments or decisions of the Court; time for issuance, service and notification of legal process; time for complaints and resolution of complaints in civil proceedings, etc. Therefore, it depends on the complicated level of the case to determine the length of a proceeding.

Regarding the cost of proceedings: According to laws of Viet Nam, the court carries out handling of civil cases due to faults of parties or parties' own interest through the State budget. Therefore, parties have to bear a certain cost (charges and fees) for such activity.

There are many kinds of fees and charges such as court fee deposits, charge deposits, court fees and charges, and other judicial expenses such as deposits for expenses of examination and expenses of examination, etc. Moreover, parties must bear some other proceeding cost such as cost of evaluation, cost of interpretation, Therefore, the total cost of proceedings depends on many factors such as the length of action, quality of lawyer, successful party, etc.

Provide any available data on the actual duration of proceedings and their cost

Because proceedings have different length and cost and the number of intellectual property infringement cases handled in the courts in Viet Nam is not considerable, thus it is not possible to provide meaningful data on this issue at the present time.

(b) *Administrative procedures and remedies*

**9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.**

The bodies competent to take administrative action in relation to infringement of intellectual property rights are the market control agencies of the trade administration (Market Control Department and Market Control Branch Offices), customs agencies (Customs Department, Customs branch offices, anti-smuggling inspection office), specialized inspection authorities such as the Culture and Information Inspectorates at the national and provincial levels and the Science and Technology Inspectorates at the national and provincial levels, the People's Committees at the district and provincial levels, and public security agencies (District Police, Provincial Police, and the Economic Police).

Administrative handling of IPR infringement is applicable to counterfeiting, pirating, intentional infringements and infringements of remarkable social effect (Article 211 of the Intellectual Property Law).

The responsibility of each agency depends on their area of administration and jurisdiction, as spelled out in Article 200 of the 2005 Intellectual Property Law. Market control agencies can impose administrative remedies and other measures against infringements of industrial property rights and trade in cultural-informational products and services occurring in the country. Customs agencies have the competence to impose administrative remedies against infringements of intellectual property rights in the course of exportation and importation, Science and Technology Inspectorates against infringements of industrial property rights, Culture and Information Inspectorates against infringements of copyright, and People's Committees against infringements of intellectual property rights occurring within their jurisdiction. As for public security agencies, these are responsible for handling infringements of intellectual property rights in the course of production and trade. The Economic Police - composed of the heads of the District Police and Economic Police Division, of the Director of the Provincial Police, and of the Director General of the Economic Police Department - have the competence to investigate and handle infringements of intellectual property rights in all areas of production and business. The Economic Police can search the houses of persons deemed to hide instruments involved in or evidence of infringement cases, and suspend business licenses in case of serious violation of the provisions regulating the use of business licenses. It may impose administrative remedies against acts of industrial property infringement related to business and production activities and acts of copyright infringement associated with public order and security.

Administrative measures and remedies are governed, under the new legislative framework, by Government Decree No. 106/2006/ND-CP of 22 September 2006 on handling administrative violations in the industrial property field and Government Decree No. 105/2006/ND-CP of 22 September 2006 providing detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law regarding the protection of intellectual property rights and State management of intellectual property. Under the 1998 Law on Complaints and Denunciations, as amended in 2005, any natural or legal person, including non-resident foreigners or foreign legal entities without a representation in Viet Nam, had the right and obligation to denounce a violation by informing the competent authorities in writing or by other means.

Pursuant to Article 214 of the 2005 Intellectual Property Law, main administrative measures are warnings and monetary fines amounting to one to five times the value of the discovered infringing goods. Additional measures include suspension of business activities for a definite term, and in the case of counterfeit and piracy goods, and materials and implements used for manufacturing or trading such goods, confiscation, destruction, distribution, use for non-commercial purposes, or compulsory delivery of transiting goods out of the territory of Viet Nam or re-exportation, after infringing elements had been removed. The cumulative effect of these measures would deter further infringement.

Customs procedures for imports and exports could be suspended to protect intellectual property rights in accordance with Articles 57, 58, and 59 of the Customs Law of 29 June 2001 as amended and supplemented in 2005 by Law No. 42/2005/QH11, Decree No. 154/2005/ND-CP of 15 December 2005, and Article 218 of the 2005 Intellectual Property Law.

Decisions to impose an administrative measure are issued in writing within ten days following the reporting of the violation, or 30 days in complicated cases. Appeals procedures are regulated according to the 1996 Ordinance on procedures for judgment of administrative cases, and the Law on Complaint and Denunciation of 1998 as amended by Law No. 58/2005/QH11 (Articles 1.19 and 2.2). Administrative decisions can be appealed by either party, first to the authority having issued the decision and subsequently either to the administrative court or to a superior administrative body. Decisions of the superior administrative body can be further appealed to the administrative court

### **Provisional Measures**

#### *(a) Judicial measures*

#### **10. Describe the types of provisional measures that judicial authorities may order and the legal basis for such authority.**

The Courts having jurisdiction over violations and disputes in relation to intellectual property rights could decide on the application of provisional measures. Detailed provisions on provisional urgent measures in civil in general and in intellectual property rights in particular are laid down in the 2004 Civil Procedure Code and the 2005 Intellectual Property Law of Viet Nam, respectively.

According to the Intellectual Property Law, the court may apply the following provisional urgent measures to goods suspected of infringing upon intellectual property rights or to raw materials, materials or means of production or trading of such goods:

- seizure;
- distraint;
- sealing: ban from alteration of original state; ban from movement;
- ban from ownership transfer;
- other provisional urgent measures applied according to the provisions of the Civil Procedure Code.

#### **11. In what circumstances may such measures be ordered *inaudita altera parte*?**

Pursuant to Articles 99 and 119 of the 2004 Civil Procedure Code, in an emergency where it is necessary to immediately protect evidence or to prevent potential serious consequences, any individual, body or organization has the right to make an application to petition the competent Court to issue a decision to apply at the same time as filing an application to such Court for initiation of a legal action.

The Court may also on its own initiative issue a decision to grant the provisional measures in cases where the concerned party does not petition for the application of such preliminary injunctive relief.

Pursuant to Article 206.2 of the 2005 Intellectual Property Law, the Court could, prior to hearing the opinion of the party liable for provisional measures, take an immediate decision which would also be effective immediately. The decision could be appealed to the Chief of Justice by either party, in which case the Prosecution Institute would have the right to make a proposal to the Chief of Justice, who was required to respond within three days (Articles 124 and 125 of the 2004 Civil Procedure Code).

**12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.**

The applicant petitioning the Court to apply/grant provisional measures must make an application to the competent Court. Such application must comprise the principal contents:

- date of the application;
- name and address of the applicant;
- name and address of the person who is subject to preliminary injunctive relief;
- summary of the dispute or act of infringing the lawful rights and interests of the applicant;
- reasons for application of preliminary injunctive relief;
- preliminary injunctive relief to be applied and specific requirements.

Subject to the petition for application of provisional measures, the applicant must provide the Court with evidence to substantiate the necessity to grant such preliminary injunctive relief.

Within three days of the receipt of the application, if the applicant is not required to provide security or immediately after such persons provide security, the judge must issue a decision to grant preliminary injunctive relief; where the application is refused, the judge shall notify the applicant in writing of the reasons therefore.

In case of urgency, upon receipt of an application together with an application for a legal action and accompanying evidence, the presiding judge shall appoint one judge to accept and deal with the application. Within 48 hours of receipt of the application, the judge must consider and issue a decision to grant preliminary injunctive relief; where the application is refused, the judge shall notify the applicant in writing of the reasons therefore.

Any body or organization initiating a legal action to protect rights and interests of others can also make a petition in writing to the Court for preliminary injunctive relief specifying reasons therefore; preliminary injunctive relief to be granted; name and address of the person whose lawful rights and interests need to be protected; name and address of the person who is subject to preliminary injunctive relief; summary of the dispute or acts of infringing the lawful rights and interests of concerned parties; and evidence to substantiate that the petition is well-grounded and lawful.

The applicant petitioning the Court to grant one of the provisional measures must deposit a sum of money, precious metals, gemstones or valuable papers which are fixed by the Court, but such deposit must be equivalent to the property obligation to be performed by the obligor aimed at protecting the interests of the person who is subject to the preliminary injunction and preventing any abuse of the right to petition for the application of preliminary injunctive relief by the applicant.



The 2005 Intellectual Property Law regulated that the applicant for provisional measures shall be obliged to pay compensation for loss caused to a person subject to such measures in a case where the latter is found not to have infringed industrial property rights. To secure the performance of this obligation, an applicant for provisional urgent measures shall deposit security in one of the following forms: a sum of money equal to twenty per cent of the value of the goods subject to the application of provisional urgent measures, or at least twenty million (20,000,000) dong where it is impossible to value such goods; or a deed of guarantee issued by a bank or other credit institution.

**13. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.**

Regarding length of proceedings

Any concerned party has the right to lodge a complaint, and the inspectorate shall have the right to lodge a petition against the decision to grant, change or cancel provisional urgent measures, or against the fact that the judge has refused to issue a decision to grant, change or cancel preliminary injunctive relief measures with the chief justice of the Court which is resolving the case. The time-limit for a complaint or petition shall be three working days from the date of receipt of the decision to grant, change or cancel preliminary injunctive relief measures or the response of the judge on the refusal to issue a decision to grant, change or cancel preliminary injunctive relief measures.

The chief justice of the Court will consider and resolve a complaint or petition by any concerned party as mentioned above within three working days from the date of receipt of the complaint or petition.

Regarding cost of proceedings

Notwithstanding fees and charges such as court fee deposits, charge deposits, court fees and charges, total cost of a proceeding depends on many other factors and therefore it is changed due to the complicated level of cases.

Provide available data on the actual duration of proceedings and their cost

There is no available data on the actual duration of proceedings and their cost because the number of decisions to grant provisional urgent measures by the Court which is appealed is not considerable in reality.

*(b) Administrative procedures*

**14. Reply to the above questions in relation to any administrative provisional measures.**

The Intellectual Property Law provides for preventive measures and measures to ensure the imposing of administrative remedies. Particularly, Article 215 of that Law reads as follows:

- In the following cases, organizations and individuals shall have the right to request the competent agency to apply preventive measures and measures to ensure the imposing of administrative remedies as provided for in paragraph 2 of this Article:
  - Acts of infringement of intellectual property rights may cause serious damage to consumers or the society;
  - There is a threat of the infringing means being dispersed or the infringer evading his or her liabilities;

- In order to guarantee the implementation of decisions on handling of the administrative offences.
- Preventive measures and measures to ensure the imposing of administrative remedies applicable under administrative procedures for infringing acts of intellectual property rights comprise the followings:
  - Temporary hold of related individuals;
  - Temporary detention of the goods, means and implements used for such infringement;
  - Search of related individuals;
  - Search of means of transport and objects; search of places where infringing goods, materials evidence and means are hidden;
  - Other administrative preventive measures in accordance with the laws and regulations.

#### **Special Requirements Related to Border Measures**

**15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?**

Under Vietnamese laws, all imports and exports suspected as infringing intellectual property rights, not only counterfeit trademark or pirated copyright goods, may be subject to the suspension of the release into free circulation by the customs authorities upon requests of right holders.

However, *ex officio* suspension by the customs authorities is applicable to counterfeited trademark, geographical indication goods and pirated copyright goods only.

There is no exception for goods from another member of a customs union or goods in transit. *De minimis* imports are considered as for personal needs or non-commercial purpose and therefore excluded from these procedures.

The suspension procedures are not applied to imports of goods put on the market in another country by or with the consent of the right holder but to goods destined for exportation, provided that there is reasonable basis to suspect that the preparation of goods destined for exportation (manufacture, storage, offer to sell, trading, etc.) do infringe intellectual property rights that are protected in Viet Nam.

**16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?**

Under Decree No. 105/2006/ND-CP of the Government providing guidelines for implementation of a number of articles of the Law with respect to protection of rights and State administration of intellectual property rights, Customs divisions shall have authority to receive applications at border gates within the administrative authority of such customs division; Customs departments of provinces and cities under central authority shall have authority to receive applications at border gates within the administrative authority of such customs department. The intellectual property right holder may file an application with each division or department in the mentioned circumstances; The General Department of Customs shall have authority to receive suspension applications at border gates within the administrative authority of two or more provincial customs departments.

A suspension application shall contain the following particulars:

- date of the application;
- name and address of the applicant; full name of the representative of the applicant (if the request is made by a representative);
- name of the body receiving the application;
- name and address of the offender; name and address of the object suspected of infringing rights;
- names and addresses of any entities with related rights and interests;
- names and addresses of any witnesses;
- summarized information about the infringed intellectual property right, namely the type of right, the grounds on which the right arose, and a summary of the rights object;
- summarized information about the act of infringement, namely the date and place of occurrence, a brief description of any infringing product and of the act of infringement together with any other relevant information.

Besides, it must contain additional information namely information on the mode of import or export, the country to which the goods will be exported, mode of packaging, the lawful importer or exporter, the special features of lawful imports or exports which distinguish them from infringing goods, the risk of occurrence of circumstances in which it would be necessary to apply preventative measures or measures to secure an administrative penalty, and any other information;

- contents of the claim for application of measures to deal with an infringement;
- list of data and evidence accompanying the application;
- signature and seal (if any) of the applicant.

An applicant for application shall have the following obligations:

- to prove that the applicant is an intellectual property right holder by producing the documents and evidence;
- to supply information sufficient to identify goods suspected of infringing intellectual property rights or to detect goods showing signs of infringing intellectual property rights;
- to file a written request with the customs office and to pay fees and charges stipulated by law;
- to pay damages and other expenses incurred to persons subject to control measures in a case where the controlled goods are found not to have infringed industrial property rights.

When an applicant for the suspension of customs procedures has fulfilled these obligations, the customs office shall issue a decision suspending customs procedures with regard to the goods consignment in question.

The duration of suspension of customs procedures shall be ten (10) working days from the date of issuance of the suspension decision. Where the applicant has justifiable reasons, this duration may be extended but must not exceed twenty (20) working days, provided that the applicant deposits the security in one of the following forms: a sum of money equal to twenty (20) per cent of the value of the goods consignment subject to the application of the measure of suspension of customs procedures, or at least twenty million (20,000,000) dong where it is impossible to value such goods; or a deed of guarantee issued by a bank or other credit institution.

Upon expiry of the duration, if the applicant does not initiate civil proceedings and the customs office does not issue a decision accepting jurisdiction to deal with the case in accordance with administrative procedures as an administrative breach by the importer or exporter of the goods, then the customs office shall have the following responsibilities: to continue customs procedures for the goods consignment in question; to compel the applicant to compensate for all loss and damage caused to the owner of the goods consignment due to the unreasonable request for suspension of customs procedures, and to pay expenses for warehousing and preservation of goods as well as other expenses incurred by the customs office and any related body, organization or individual in accordance with the law on customs; to refund to the applicant the remaining security amount after the obligation to pay compensation and expenses has been fulfilled.

**17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?**

According to Article 36 of Decree No. 105/2006/ND-CP on enforcement of intellectual property rights, within 24 working hours since the receipt of the request for temporary suspension of completion of customs procedures, the customs authority shall be liable to consider and issue a notice on acceptance of the request, if the applicant has satisfied the requirements under Articles 217.1(a), (b), (c) and Article 217.2 of the Intellectual Property Law. In case of refusal, the customs authority must reply in writing to the applicant and specify the reasons thereof.

Notwithstanding fees and charges such as court fee deposits, charge deposits, court fees and charges, total cost of a proceeding depends on many other factors and therefore it is changed due to the complicated level of cases.

The validity of decisions by the competent authorities for the suspension of the release of goods into free circulation shall be ten (10) working days from the date of issuance of the suspension decision. Where the applicant has justifiable reasons, this duration may be extended but must not exceed twenty (20) working days.

Actual duration of proceedings and their cost are the same as stipulated in the laws. There is no available data on the actual duration of proceedings and their cost by now.

**18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?**

According to Article 200 of the Intellectual Property, Law and Customs offices have the authority to handle administrative violations in the field of intellectual property with regard to import and export goods at their own initiative. Particularly, import and export goods that are subject to *ex officio* actions by the customs offices comprise of intellectual property counterfeit goods (i.e. counterfeit trademark, geographical indication goods and pirated copyright goods) and articles bearing a mark or a geographical indication that is identical or confusingly similar to a protected mark or a protected geographical indication. When detecting such goods or articles, the customs offices shall have the right and duty to impose administrative remedies referred to in Article 214 and Article 215 of this Law.

**19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.**

In those cases as indicated in the answers to question 18 above, the customs offices have the authority to order the following remedies:

- compelling termination of the infringing act;
- warning;
- Imposing of monetary fine;
- confiscation of intellectual property counterfeit goods, materials, raw materials and implements mainly used for manufacturing or trading such intellectual property counterfeit goods;
- compelling destruction, distribution or use of the intellectual property counterfeit goods for non-commercial purposes and materials, raw materials and implements mainly used for manufacturing or trading such intellectual property counterfeit goods provided that such distribution and use do not affect the exploitation of rights by the intellectual property right holder;
- compelling delivery of the transiting goods out of the territory of Viet Nam or re-export of the intellectual property counterfeit goods, implements and materials that are imported mainly for manufacturing or trading such intellectual property counterfeit goods, after having removed infringing elements;

In addition, the preventive measures and measure to ensure the imposing of administrative remedies as described in the answer to question 14 above are also under authority of the custom office.

### **Criminal Procedures**

**20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.**

Criminal courts of the People's Courts, at district and provincial level, have jurisdiction over crimes relating to intellectual property rights.

Pursuant to Article 170 of the Criminal Procedure Code, as amended in 2004, the District People's Courts had the jurisdiction as the first instance over offences subject to less than seven years imprisonment, except offences harmful to national security and peace, war crimes, crimes against humanity, and other specific cases as specified by law. District People's Courts therefore have jurisdiction as the first instance over offences in respect of intellectual property rights.

**21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?**

The Criminal Code of 1999 includes provisions on copyright infringement (Article 131), production and trade in counterfeit (Articles 156-158), deceptive practices (Article 162), false advertising (Article 168), and infringement of industrial property rights (Article 171). Acts of willful trademark counterfeiting and copyright piracy on a commercial scale are considered crimes under Articles 156-158 of the Criminal Code and Article 213 of the 2005 Intellectual Property Law. (More details are included in the answer to question 24 below)

**22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?**

Investigation Agencies (the Police), People's Procuracies (People's Prosecution Institute) and Courts are responsible for initiating criminal proceedings. They are required to do this both on their own initiative and/or in response to complaints. In fact, criminal proceedings for intellectual property infringement cases are identical to procedures for other criminal cases and usually involve the denouncement of the crime before the competent police, an investigation, the transfer of the file to the prosecution agency (Supreme People's Prosecution Institute), criminal proceedings at the competent court, judgment and enforcement of the judgment.

**23. Do private persons have standing to initiate criminal proceedings and, if so, who?**

Under Vietnamese laws, private persons do not have standing to initiate criminal proceedings. However, any private person who detects a crime has the right and duty to denounce the crime before the competent authorities for criminal proceedings, usually the investigation agencies (the police).

**24. Specify, by category of IOPR and type of infringement where necessary, the penalties and other remedies that may be imposed:**

- **imprisonment;**
- **monetary fines;**
- **seizure, forfeiture and destruction of infringing goods and materials and implements for their production;**
- **other.**

Under the Criminal Code of 1999, any person appropriating copyrights, wrongfully assuming an author's name or illegally amending, publishing or disseminating copyrighted works is subject to a fine of 20 to 200 million dong or non-custodial probation of up to two years (Article 131). Infringements of organized character or carrying very serious consequences, and repeated offence are punishable by imprisonment from six months to three years. Offenders also risk fines from 10 to 100 million dong and being banned from holding certain positions or practicing certain professions during one to five years.

Persons producing or trading counterfeits valued up to 150 million dong risk six months to five years imprisonment, or three to ten years for organized or professional counterfeiting, recidivism, abuse of position, abuse of names of organizations, counterfeits priced between 150 to 500 million dong, large illicit profits, and acts resulting in very serious consequences (Article 156). In case of counterfeited value exceeding 500 million dong, very large illicit profits and extremely serious consequences, the penalty shall be increased from seven to 15 years imprisonment. Offenders would also face a fine of 5 to 50 million dong, possible confiscation of property, interdiction to hold certain positions and practice certain professions during one to five years.

Persons falsely advertising goods or services are subject to a fine ranging from 10 to 100 million dong, non-custodial probation for up to three years or imprisonment of six months up to three years (Article 168). They also risk a fine of 5 to 50 million dong and an interdiction to practise certain professions during one to five years.

According to Article 171, infringements of industrial property rights constituting criminal acts are subject to a fine of 20 to 200 million dong or non-custodial probation of up to two years. Violations of organized character or carrying very serious consequences, and repeated infringements, are punishable by six months to three years imprisonment. Offenders also risk a fine of 10 to 100 million dong and an interdiction to hold certain posts and practise certain professions during one to five years.

Article 41 of the Criminal Code also provides for the seizure, confiscation and destruction of materials and implements used for committing the acts of crime, i.e. including materials and implements used for production of the infringing goods.

**25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.**

Length of a proceeding depends on the complicated level of the criminal cases. Each stage of the proceeding has different time-limit, therefore there is no fixed provision governing the length of proceedings.

Notwithstanding fees and charges, cost of proceedings depends on different factors such as the complicated level of the criminal cases, length of the cases, etc.

There is no available data on the actual duration of proceedings and their cost by now.

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