

Joint circular sets out new rules for resolving '.vn' disputes Vietnam - Hogan Lovells

Cybersquatting Domain names

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Vietnam has seen a rapid surge in internet use, having one of the highest rates of increase of annual internet users in the world. According to the Vietnam Telecommunications Authority, 52% of the population (over 47.3 million people) are internet users.

'.vn' is the country-code top-level domain for Vietnam. In terms of '.vn' domain name dispute mechanisms, there is no equivalent of the [Uniform Domain Name Dispute Resolution Policy](#). Vietnam has a Law on Information and Communication, which has been in force since January 1 2007 and provides for the protection of IP rights in the field of information technology, including domain names. However, the law and subordinate legal documents do not lay down rules and procedures for implementing administrative decisions, for example whether and how the domain name should be transferred. As a result, in practice, such decisions by IP rights enforcement authorities were very often impossible to implement. This causes difficulties for resolving domain name disputes involving IP rights through such administrative proceedings in Vietnam.

A recent welcome development is a joint circular issued by the Ministry of Information and Communication and the Ministry of Science and Technology. This important document has provided for a set of clear rules and procedures for coordination between the relevant authorities in implementing administrative decisions involving changing, returning and revoking '.vn' domain names which are deemed to be infringing on IP rights. The circular provides for a number of important matters.

First, the circular provides that lawful holders of IP rights would have the right to file complaints to inspectors of science and technology or inspectors of information and communication to take action against '.vn' domain names infringing upon their IP rights, should the case satisfy the following criteria:

- the domain name is used to post information infringing upon IP rights; or
- the domain name is identical, or confusingly similar, to the protected IP subject matter and the content posted on the website to which the domain name points infringes upon IP rights.

Second, when competent authorities have a clear case against '.vn' domain names infringing IP rights, they can issue an administrative decision to implement administrative measures, which include:

1. compelling change of content on the website concerned - this applies where the website to which the domain name points concerns information infringing upon IP rights that are identical, similar or related to, or damage the prestige, reputation and property of, the owner of an IP rights; and
2. compelling transfer of the domain name - this applies where, in addition to the condition stated in (1), the domain name is identical, or confusingly similar, to a protected mark/trade name/geographical indication in which the owner of the domain name has no lawful rights or interests.
3. revocation of the domain name - this applies where the user of the domain name infringing upon IP rights fails to comply with (1) or (2).

While the circular is an encouraging development, unfortunately it still does not address the situation where the domain name is not associated with an active website with content infringing an IP right. In that case, the IP rights owner would be left with the options of complaining to the court in Vietnam, or pursuing arbitration or negotiation. Notwithstanding that, the circular is very welcome in setting out a clearer legal framework for the authorities in coordinating their actions and responsibilities in resolving '.vn' domain name disputes. It is hoped that the circular will enable '.vn' domain name disputes to be resolved in a more efficient and effective manner.

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