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NAVIGATING SOFTWARE PIRACY IN VIETNAM: CHALLENGES AND STRATEGIC SOLUTIONS FOR COMPLIANCE

OVERVIEW

Although detailed reporting on software piracy rates in Vietnam is limited, the Business Software Alliance (BSA) continues categorizing Vietnam as a high-risk market. Vietnamese law grants software owners the right to pursue intellectual property rights through administrative, civil, and criminal actions. In our experience, the effectiveness of enforcement largely hinges on the software owner's active involvement, particularly in issuing warnings and engaging in negotiations. However, these efforts are often met with significant challenges due to the unique dynamics of Vietnam's software copyright enforcement landscape.

In this article, we will discuss key insights into the obstacles faced by software compliance teams in Vietnam and offer recommendations for streamlining the process.



DIFFICULTIES IN MANAGING UNAUTHORIZED USERS

Firstly, in software infringement cases, the primary objective often shifts from halting unauthorized usage to transforming those users into legitimate customers. This strategy emphasizes the importance of educating individuals on the legal risks associated with unlicensed software use. Additionally, it involves providing incentives that encourage compliance with licensing agreements.

The absence of significant deterrent penalties compounds the issue of unlicensed software use. Many companies, especially local ones, are often willing to risk minimal legal consequences to take advantage of the economic benefits that unlicensed software can provide.

Secondly, gathering evidence of software infringement presents several challenges. While phone-home technology can alert users to unauthorized software usage, enforcement officers often face difficulties in interpreting the generated data. This can result in delays and complications in pursuing legal actions. Additionally, specialized software is usually utilized by a limited number of engineers within the target organization, necessitating physical access to the premises to verify ongoing usage. Without strong evidence of infringement and precise information about the locations of users, it becomes significantly more challenging to persuade enforcement authorities to conduct raids on suspected companies.

Thirdly, companies that infringe upon software usage often attempt to defend their actions by asserting that the software is only utilized for personal activities by temporary employees or non-commercial purposes. However, this claim usually lacks substantial evidence and is frequently undermined by data obtained from the software itself. For instance, phone-home data can reveal patterns of usage that indicate regular, work-related activities occurring during business hours, contradicting the company's assertions. Despite the weakness of these arguments, they can still create significant frustration for software owners, as they may feel discouraged from pursuing legal action due to the perceived complexity of the case or the potential for drawn-out disputes. This situation highlights a common challenge in enforcing software rights, where the burden of proof can become a significant hurdle for those seeking to protect their intellectual property..



RECENT FAVORABLE DEVELOPMENTS

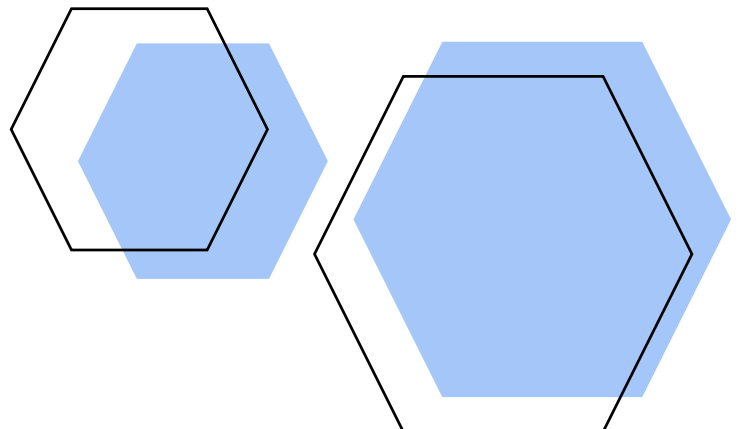
The government is actively addressing these issues by implementing administrative and civil actions. However, it is noteworthy that there have not been any reported criminal cases related to this matter in Vietnam.

Civil actions involving software piracy have gained increasing importance in recent years, marked by a significant uptick in the volume of cases filed and the amounts awarded in damages to software owners. In 2022 and 2023, several notable cases related to software piracy resulted in substantial financial awards, cumulatively amounting to billions of VND. These damages encompassed material losses, spiritual damages, and legal fees incurred by the plaintiffs.

For instance, in a landmark ruling in 2022, the People's Court of Binh Duong handed down an award of 4.6 billion VND (approximately US\$185,000) to a software owner for material damages. This award is particularly striking as it is 65 times greater than the maximum administrative sanction that could have been imposed for such an offense, indicating a significant shift in the judicial approach to enforcing compliance. The ruling sends a clear and powerful message regarding the severity of consequences associated with software piracy, acting as a much stronger deterrent than previously issued administrative fines.

Moreover, the anticipated establishment of a specialized Intellectual Property (IP) Court is expected to take civil actions against software piracy to new heights. This latest court is designed to address gaps in technical knowledge among judges and legal practitioners, which has historically hindered the effective adjudication of complex technology-related cases. By providing a focused platform for these disputes, the IP Court aims to facilitate more consistent rulings and expedited resolutions, particularly in areas such as calculating damages and issuing search orders, where current regulations may lack clarity.

With these developments, the legal framework surrounding intellectual property rights is poised for a transformation that could significantly improve the predictability of copyright litigation. Enhanced enforcement capabilities and more precise guidelines will likely bolster software licensing compliance strategies among businesses, fostering a more robust environment for intellectual property rights protection and the software industry.





PROPOSALS

The IP Court is anticipated to begin operations after January 1, 2025. It is crucial to stay updated on any developments and implications related to this new court system to adjust your piracy enforcement strategies effectively.

In light of the current dependence on active participation from software owners, it is essential to enhance negotiation strategies when addressing suspected infringements. Here are some key actions that can improve success rates:

Revise User Agreements: Incorporating substantial audit rights within user agreements can provide additional leverage during negotiations, enabling software owners to monitor compliance effectively.

Understand Legal Frameworks: Gaining a comprehensive understanding of copyright laws and civil liability regulations can facilitate smoother negotiations. This knowledge helps in addressing customer objections and justifications for non-compliance.

Gain Operational Insights: Gathering insights into users' operational practices can inform and refine negotiation strategies. Effective negotiations should encompass not only legal and financial aspects but also consider the potential reputational risks for the infringer.

Engage Key Stakeholders: Successful negotiations often involve decision-makers at the management level, legal counsel, and IT professionals to clarify technical issues during discussions.

Strategic Use of Warnings: While large-scale warnings can increase awareness, escalating legal action against significant infringers or repeat violators sends a definitive message. Including references to these actions in warning letters can enhance their persuasive impact and encourage unlicensed users to transition to legitimate use.

Software owners can better navigate negotiations and improve compliance outcomes by implementing these strategies.



CONCLUSION

Although there are ongoing challenges in enforcing software piracy laws in Vietnam, the government's proactive involvement and the development of enhanced legal mechanisms are essential for strengthening intellectual property protection over time.

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