

# WHAT DO AUTHORS BENEFIT FROM WHEN EVFTA COMES INTO EFFECT?

GV Lawyers would like to introduce an article by **Lawyer Le Quang Vy & Lawyer Nguyen Thi Hang** with the title "**What do authors benefit from when EVFTA comes into effect**" posted on the website of Vietnam Online Lawyers.

\*\*\*

(LSO) - On February 12, 2020, the European Parliament officially ratified the Free Trade Agreement between Vietnam and the European Union ("EVFTA"). This opens the opportunity but equally poses enormous challenges for Vietnam in the process of deep integration with the world economy.

In addition to outstanding regulations related to goods, import and export, tariffs, etc., there are many notable regulations that govern the commitments to intellectual property protection and the Copyright and Related Rights (Section B Chapter 12 of EVFTA). It can be said that in general, the Copyright and Related Rights of the current Vietnamese Intellectual Property Law are quite progressive, relatively consistent with the international conventions to which Vietnam has acceded.

Therefore, EVFTA stipulates that in order to have the Copyright and Related Rights protected, the Parties must comply with the rights and obligations specified in international treaties (i) Berne Convention (Vietnam acceded to in 2004); (ii) Rome Convention (having acceded to in 2007); (iii) TRIPs Agreement (having acceded in 2007); in addition, within 3 years of entry into force of the EVFTA, the Parties shall accede to the WIPO Treaty and Copyright and the WIPO Treaty on Performances and Phonograms adopted in Geneva on 20 December 1996. Currently, Vietnam is conducting procedures for joining these two Treaties. It should be added that the CPTPP Agreement also has the same terms as EVFTA, whereby within 3 years of January 14, 2019 (the effective date of the CPTPP for Vietnam), the Parties must participate in these 2 Treaties. Thus, by January 14, 2022, Vietnam will have to surely become a member of the aforesaid two WIPO Treaties according to international commitments.

## **Most-favored-nation (MFN) status**

EVFTA's first commitment to the protection of intellectual property in general and the Copyright and Related Rights in particular is the treatment under most-favored nation status. Accordingly, any advantage, preference, privilege or immunity accorded to a national of any third country by either Party will be accorded to a national of the other Party immediately and unconditionally. This commitment is also included in the WTO Agreements, including the TRIPs Agreement on trade aspects related to intellectual property rights among WTO member states. This provides an opportunity for artists and consultants of copyright law to research, explore and apply "case studies" in different countries to review and apply to their own situation in Vietnam. For a "flat world" in

modern times like these days, the music market in particular and cultural and artistic activities in general are increasingly developing on the internet environment, it seems that exchanges know no borders. Therefore, copyright disputes between Vietnamese artists and subjects in other countries, as well as between artists in the world and subjects in Vietnam are inevitable. Therefore, the fact that the Parties grant each other the treatment under most-favored nation status is a fair, reciprocal basis according to international standards.

### **Exclusive rights of authors and performers**

Under EVFTA, each Party shall grant the author the exclusive right to permit or prohibit "the direct or indirect reproduction by any means or form, of any part or all of its work". To this effect, the Vietnamese law also has respective provisions in Articles 20 and 28.6 of the Intellectual Property Law and Article 3.1 of Decree 22/2018 / ND-CP, under which the Vietnamese law defines a copy of the work means a direct or indirect reproduction of the work in part or in its entirety by any means or form. Copying the work without the permission of its author or copyright owner is an infringement of copyright. Likewise, the exclusive rights of performers, Vietnam's current IP Law has also met the basic EVFTA regulations including rights such as (i) shaping the performance; (ii) Directly or indirectly reproduce his or her performance; (iii) broadcast or otherwise transmit its performance to the public; (iv) distributing their performance to the public by selling, leasing or transferring ownership.

### **The right to compensation of performers and producers of recordings**

EVFTA provides that performers and producers of phonograms are entitled to a reasonable remuneration paid by their users when a phonogram has been released for commercial purposes or a copy of such phonogram used for broadcasting by radio means or for public communication. Each Party shall ensure that such remuneration is distributed between the concerned performers and producers of phonograms. Each Party may specify conditions for the distribution of such remuneration in the event of no agreement between performers and producers of phonograms.

Article 33 of the Vietnamese IP Law provides for the right to remuneration of performers and producers of phonograms and video recordings in case organizations or individuals use published phonograms for commercial purposes and use in business and commercial activities. The payment of this remuneration is subject to the agreement, in case the agreement cannot be reached, the Parties shall comply with the Government's regulations or either Party initiates a lawsuit at the Court. As such, Vietnam's current IP Law has not yet to provide for the conditions to distribute this remuneration in the absence of agreement between performers and phonographs. Although EVFTA is not required to stipulate, it only "can" specify conditions for remuneration. For this matter, the first thought is that the law should have clear provisions as a standard for the parties to follow.

Vietnam needs additional conditions for the distribution of remuneration between producers and performers.

### **Provisions on the artist's right to resell works of art**

EVFTA provides that for the benefit of the author of an original work of art, each Party may grant a right to resell, which is determined as a non-transferable right, to receive a royalty based on the sale price for the reselling period of the work after the author has delivered the work for the first time. This is a pretty good rule to ensure that the author can enjoy more benefits from his work, which is regulated by many countries around the world. Specifically, the Copyright Law of Swedish literary and artistic works calls it Special Remuneration (Article 26j Chapter IIa).

Accordingly, remuneration for the resale of copies of a work of art arises when the copy of a work that has been transferred is resold by the trader during the term of copyright protection and the author has the right to receive remuneration from the seller. The author also reserves the right to receive remuneration in other cases where the sale is carried out by a trader within the scope of his or her business. In this case the remuneration will be paid by the trader. Remuneration is 5% of the wholesale price excluding value added tax. This right to special compensation is personal and non-transferable.

Vietnam IP Law does not provide for the rights for the author to resell the work of art, or the right to his special remuneration like the Swedish Law. The transfer of the Copyrights and Related Rights in Vietnam is established on the basis of an Transfer Agreement or License Transfer Agreement. Accordingly, the parties themselves agree on royalties in the contract. Whether the author receives additional remuneration when the purchaser of the work transfers the work to a third party. Although the IP Law has not yet adjusted the matter in question, but on the basis of civil matters if not contrary to law and social ethics, the parties still have the right to negotiate by themselves in the Contract. At a glimpse of the matter, with the artist's Resale Rights in respect of a work of art as provided for in the EVFTA, or in reference to the Special Remuneration as regulated by Swedish Law, for the purpose of guaranteeing the rights of the authors as well as encouraging the spirit of creativity in society, the Vietnamese IP Law should supplement this issue to become a statutory clause.

It can be said that Vietnam's IP Law almost meets the requirements of EVFTA basically with Term of Protection Provisions; Protection of technological measures, Protection of rights management information; Cooperation on collective management rights, etc. Vietnamese IP Law has terms that are compatible with EVFTA. The long awaited expectation from artists as well as law consultants is an effective law enforcement mechanism. In the last analysis, legal documents are "static", only "dynamic" implementation can be of vital nature and true value.