



Copyright protection for digital content on online platforms: A comparative study of Vietnamese and European Union law

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Abstract

The rapid growth of the Internet and online platforms has created major opportunities for the dissemination of digital content, while at the same time posing serious challenges to copyright protection. In recent years, Vietnam has gradually reformed its legal framework by introducing platform liability mechanisms, notice-and-takedown procedures, and conditional safe harbor provisions. By contrast, the European Union has taken the lead with the 2019 Digital Single Market Directive and the 2022 Digital Services Act, establishing a comprehensive legal framework that balances the protection of authors with users' freedom of expression. A comparison of the two systems shows that Vietnam has made significant progress but still lags behind in terms of legal sophistication and the proactive governance of platforms. In the future, Vietnam may draw on the EU's experience to further improve its copyright regime, ensuring a harmonious balance of interests among authors, platforms, and the public.

Keywords: Digital content, online platforms, creative protection, copyright, copyright infringement

Introduction

The First Indian Law Commission ^[1] was established in 1834 and was chaired by Lord Thomas Macaulay. Its objective was to examine the power, jurisdiction, and in the digital era, the explosive growth of the Internet and online platforms (such as social networks, video-sharing sites, streaming services, etc.) has made the distribution and consumption of digital content easier than ever before. However, along with these benefits comes a major challenge of copyright infringement: digital works of authors can be copied and shared illegally on a global scale within seconds. This situation requires the legal system to modernize in order to protect the rights and legitimate interests of creators, while also ensuring a balance with the public's right to access information. In Vietnam, copyright infringement of digital content has reached an alarming level. Recent studies indicate that Vietnam is among the countries with the highest rates of digital copyright violations in the Asia-Pacific region. This has caused significant damage to creators and the content industry, while also raising the urgent need to improve legislation to effectively regulate online platforms and safeguard copyright. Meanwhile, the European Union (EU) is regarded as one of the pioneers in copyright law reform for the digital age, exemplified by the adoption of the Directive on Copyright in the Digital Single Market in 2019 (Directive (EU) 2019/790). This directive aims to ensure fair benefits for authors and artists, while strengthening the responsibilities of platforms such as YouTube and Facebook regarding user-uploaded content.

Legal Provisions On Copyright For Digital Content On Online Platforms Under Vietnamese Law And European Union Law

1. Legal Provisions on Copyright for Digital Content on Online Platforms under Vietnamese Law

Vietnamese copyright law is primarily regulated under the Intellectual Property Law (2005), which has been amended

and supplemented several times, most recently in 2022. In the digital environment, prior to 2022, Vietnam did not have a clear "liability exemption" mechanism for intermediary service providers (such as online platforms) comparable to the "safe harbor" provisions of the United States or the European Union. The handling of copyright infringements on the Internet mainly relied on administrative measures (sanctions, takedown requests issued by competent authorities) or on general provisions of the Intellectual Property Law concerning acts of copyright infringement. However, the widespread reality of violations and international commitments (for instance, the CPTPP requires certain mechanisms for copyright enforcement in the digital environment) have driven Vietnam to reform its legal framework ^[1].

A significant turning point was the 2022 amendment to the Intellectual Property Law, which took effect on January 1, 2023, introducing for the first time Article 198b on the legal liability of intermediary service providers for copyright and related rights infringements committed by their users. This provision, together with its guiding documents, establishes a mechanism of "secondary liability" for Online Service Providers (OSPs) if they fail to comply with the statutory conditions required to benefit from liability exemptions. More specifically, Vietnam has introduced a "safe harbor" mechanism for OSPs. Under this framework, OSPs may be exempted from legal liability for copyright infringements committed by users on their platforms, provided that they fully comply with statutory obligations—such as implementing technical measures to protect copyright, promptly cooperating with state authorities and right holders upon request, and applying a notice-and-takedown mechanism for infringing content. Conversely, if OSPs fail to comply with or inadequately perform these obligations, they may be deemed accomplices of infringing users and held jointly liable for copyright infringements occurring on their platforms ^[2].

The conditions and obligations of Online Service Providers (OSPs) under current Vietnamese law are specified in Decree No. 17/2023/ND-CP, which provides guidance on copyright and related rights under the Intellectual Property Law. According to Decree 17/2023, intermediary service providers (ISPs/OSPs) are defined to include services of “mere conduit,” “caching,” and “hosting” (content storage at the request of users). Among these, the specific obligations are primarily imposed on OSPs providing hosting services, such as social networks, video-sharing platforms, or cloud storage services, since they directly store and provide digital content uploaded by users. These OSPs are required to establish mechanisms to receive requests for takedown or blocking access to infringing digital content. Such mechanisms may take the form of an online program, an email address, or a dedicated electronic portal, and OSPs must notify the Copyright Office of Vietnam (under the Ministry of Culture, Sports and Tourism) of their designated contact points (email, telephone number). At the same time, OSPs must warn their users about potential legal liability for copyright infringement and must verify user information during account registration (to facilitate enforcement when necessary). Upon receipt of a valid request, OSPs are obligated to promptly remove or disable access to the infringing digital content and notify the relevant parties.

Decree No. 17/2023 establishes two procedures for the removal of copyright-infringing content in the digital environment: (i) upon request of the right holder (author or copyright owner), and (ii) upon request of an intellectual property enforcement authority. First, the “72 hours & 10 working days” procedure applies when the right holder proactively submits a request to the Online Service Provider (OSP). Specifically, the right holder must provide evidence of their rights, evidence of infringement, and identifying information of the infringing content (such as a link or storage location). Within 72 hours of receiving the request, the OSP must temporarily remove or disable access to the allegedly infringing digital content, while also notifying both the requesting party and the uploader. Subsequently, within the next 10 working days, if the OSP does not receive any objection from the uploader (together with supporting evidence that the content is non-infringing), the OSP must permanently remove or block access to the content. Conversely, if the uploader submits a timely objection accompanied by evidence proving that the content does not infringe, the OSP must restore the content within 72 hours and notify the right holder. At this stage, the OSP acts as an intermediary transferring the dispute to the parties: if, within a reasonable period of time, the right holder neither initiates legal action nor requests intervention by competent authorities or if the authority or court refuses to accept the case, the content is restored and deemed allowed to remain online. If the case is brought before a court or administrative authority and accepted, the decision of that court or authority serves as the final basis for the OSP to either remove or retain the content. Notably, with respect to livestream (live-broadcast) content, the decree requires the right holder, if they detect a potential infringement in advance, to notify the OSP at least 24 hours before the livestream is scheduled in order to ensure timely prevention. The OSP must then immediately suspend the livestream once it begins and subsequently follow the same 72-hour and 10-working-day procedure as outlined above.

In addition to the aforementioned notice-and-takedown mechanism, Vietnamese law has also been strengthening other enforcement measures to protect copyright in the digital environment. Regulatory authorities have actively cooperated with telecommunications enterprises to implement site blocking at the Internet service provider (ISP) level an approach considered relatively effective and already adopted in many Southeast Asian countries. In practice, an increasing number of illegal movie and music websites have been blocked by Vietnamese ISPs at the request of the Ministry of Information and Communications (now under the Ministry of Science and Technology), thereby facilitating the shift of users toward legitimate platforms. Furthermore, Vietnam has encouraged the application of digital technologies in copyright protection, such as Digital Rights Management (DRM) systems and artificial intelligence tools for monitoring and detecting infringements on online platforms. These technical and enforcement efforts, combined with the new legal framework (the 2022 Intellectual Property Law and Decree No. 17/2023/ND-CP), have created a more comprehensive legal landscape for copyright protection in Vietnam’s online environment ^[3].

2. Legal Provisions on Copyright for Digital Content on Online Platforms under European Union Law

The European Union has undertaken a major reform of copyright law to adapt to the digital era, most notably with the adoption of Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (commonly referred to as the DSM Directive 2019). The Directive was adopted by the European Parliament and the Council in April 2019, and EU Member States were given 24 months (until June 2021) to transpose it into their national laws [4]. The overarching objective of the DSM Directive 2019 is to modernize EU copyright law, ensuring fair benefits for authors and performers in the digital economy, while at the same time fostering the development of the online market for copyrighted digital content. The Directive introduces several reform measures, among which two are particularly significant for online platforms: (i) the right of press publishers concerning the use of press publications in the digital environment (Article 15 of the Directive), and (ii) the liability regime for content-sharing platforms regarding user-uploaded content (Article 17 of the Directive) [5]. Within the scope of this article, the focus will be placed on issue (ii), the mechanism for regulating user-generated content on online platforms, since this is the point of convergence for comparison with the Vietnamese legal framework previously analyzed.

Prior to 2019, the EU applied a general liability exemption mechanism for intermediary services under the E-Commerce Directive 2000/31/EC. Under this framework, hosting providers were not held liable for user-uploaded content, provided that they had no knowledge of the infringing activity or acted expeditiously upon becoming aware (through notification) of such infringement. This mechanism was comparable to the “safe harbor” provisions under the U.S. DMCA 1998. However, the EU recognized that this older framework was insufficient to address the so-called “value gap”, the situation in which online platforms significantly benefited from copyrighted content shared by users, while right holders received disproportionately low remuneration. Consequently, the DSM Directive 2019,

particularly Article 17, introduced a paradigm shift: online content-sharing service providers (OCSSPs), such as YouTube, Facebook, TikTok, and others, are now held directly liable (primary liability) for copyrighted content uploaded by their users without the authorization of right holders. In other words, the operation of a platform that enables the public to access user-uploaded content is considered an act of “communication to the public” of copyrighted works, and such platforms must obtain authorization from authors or right holders in order to operate lawfully. At the same time, the Directive makes clear that these platforms can no longer rely on the liability exemptions provided under Article 14 of the E-Commerce Directive 2000, effectively excluding the old safe harbor regime for certain types of platforms.

To comply with the new rules and avoid liability, Online Content-Sharing Service Providers (OCSSPs) have two options: either (1) negotiate and conclude licenses with right holders for the content that their users may upload, or (2) implement proactive technical and managerial measures to ensure that infringing content does not appear on their platforms. Specifically, Article 17(4) of the DSM Directive sets out three cumulative obligations that platforms must fully meet (except for certain exemptions granted to small start-up enterprises under Article 17(6), which are not considered here): (i) make best efforts to obtain authorization from right holders; (ii) make best efforts to prevent access to works for which right holders have provided sufficient information indicating that they must be blocked (for example, through content recognition mechanisms); and (iii) upon receiving a notification from a right holder, act expeditiously to remove or disable access to the infringing content, while also making best efforts to prevent its future re-upload. If a platform can demonstrate compliance with all three obligations, it may be exempted from liability; if not, it will be held legally liable for infringing content in the same manner as a direct infringer.

Importantly, the DSM Directive 2019 requires a balance between copyright protection and users’ freedom of expression. After extensive debate, the final provisions of Article 17 incorporated safeguards to prevent platforms from overusing content filtering in ways that would obstruct lawful uses (e.g., quotation, criticism, parody, uses permitted under copyright law). Specifically, Article 17(7) stipulates that platforms and right holders may not cooperate to block uploads of content that does not infringe copyright. Article 17(9) further requires Member States to ensure that users retain the ability to use works under existing copyright exceptions and limitations (such as quotation, illustration for teaching, and parody). It even emphasizes that these exceptions constitute “user rights” that must be respected. As a result, automated filtering measures employed by platforms are not permitted to block lawful content, and if the system cannot distinguish between infringing and non-infringing uses, pre-emptive blocking may be deemed a violation of users’ freedom of expression. To operationalize this safeguard, Article 17 obliges platforms to establish complaint and redress mechanisms for content removal, allowing users to request reinstatement if they believe their content was wrongly blocked. When transposing the Directive, EU Member States must also ensure the availability of efficient and expeditious out-of-court dispute resolution mechanisms for such cases, while users retain the right to bring claims before the courts if necessary.

By 2023, most EU Member States had transposed Article 17 into their national laws, albeit with differing timelines. The European Commission also issued Guidance on the application of Article 17 (June 2021) to assist Member States in ensuring a consistent interpretation, with particular emphasis on the principle of proportionality in the use of filtering measures. In addition, the EU adopted the Digital Services Act (DSA) 2022, which entered into force in 2023, establishing a general regulatory framework that requires online platforms to promptly remove all illegal content (including copyright-infringing material) once notified, while imposing severe penalties for non-compliance. The DSA is complementary in nature, reinforcing the notion that the era of “irresponsibility” for Big Tech is over; major platforms may face fines of up to 6% of global turnover or even be banned from operating within the EU in cases of repeated violations of content management rules [6]. The combination of the DSM Directive 2019 and the DSA 2022 demonstrates that the EU is building a comprehensive legal environment, in which online platforms are both required to provide fair remuneration for copyrighted content and to take effective responsibility for preventing infringements, thereby ensuring a safe and equitable digital environment for both creators and users.

3. Comparison of Legal Provisions on Copyright Protection in the Digital Environment between the United States and Vietnam

From the above analysis, it can be seen that both Vietnamese law and EU law share the common objective of protecting copyright in the online environment, but their approaches and levels of development differ significantly. The main comparisons are as follows:

Firstly, the legal framework and its level of modernization. The European Union has adopted a specialized directive, the DSM Directive 2019 to comprehensively regulate copyright issues in the digital environment, including the liability of online platforms and the rights of authors and publishers in the digital age. This directive was the result of an extended process of research and consultation and reflects management experience across Europe. By contrast, Vietnam only supplemented provisions on digital content into the Intellectual Property Law and promulgated its implementing decree in 2022–2023, lagging behind the EU by about three to four years. Nevertheless, the 2022/2023 amendments in Vietnam incorporated many progressive points in line with international trends (e.g., the notice-and-takedown mechanism and conditional liability exemptions for OSPs), demonstrating efforts to keep pace with new global standards.

Secondly, the liability exemption mechanism and its conditions. Both Vietnam and the EU establish liability exemptions for platforms in cases of user-generated infringements, provided that statutory obligations are complied with. However, Vietnam only requires OSPs to react expeditiously by removing or blocking access once they “know” of an infringement or have been notified, essentially a notice-and-takedown mechanism similar to the U.S. DMCA. By contrast, the EU requires more proactive measures: platforms must seek authorization from right holders and apply filtering or stay-down technologies to prevent infringing content from appearing in the first place. Thus, the key distinction is that EU law imposes a higher and more proactive responsibility on platforms, whereas

Vietnamese law remains reactive, focusing on responses after receiving notifications.

Thirdly, user protection and exceptions to copyright. EU law provides more detailed regulation to balance copyright protection with user rights. Article 17 of the DSM Directive obliges Member States to guarantee exceptions for legitimate uses such as quotation, criticism, and parody, and also requires platforms not to neutralize these exceptions when applying copyright enforcement measures, supported by complaint and redress mechanisms in cases of wrongful blocking. In contrast, while Vietnam's Intellectual Property Law (Article 25) also recognizes exceptions and limitations, the platform-level enforcement mechanisms do not clearly safeguard these exceptions. Decree 17/2023 allows uploaders to contest takedown requests and provide evidence, but usually to prove ownership rights or that the content is in the public domain, rather than to assert lawful use under an exception. Therefore, it can be observed that the EU framework is more advanced in ensuring a balance between copyright protection and freedom of expression, while Vietnam mainly emphasizes preventing infringements without equally highlighting user rights in specific legitimate contexts.

Some Lessons Learned For Vietnam

The above comparison shows that while the EU has developed a progressive and balanced legal framework, Vietnam although having undertaken reforms, can still draw valuable lessons to further improve its copyright law in the digital environment

Firstly, regarding proactive responsibility of platforms. Vietnamese law currently only requires OSPs to remove infringing content when they "know" of a violation or upon request from right holders/competent authorities, without imposing obligations to deploy filtering technologies or obtain licenses in advance. In the future, Vietnam could take reference from Article 17 of the DSM Directive to require large platforms to implement content recognition technologies and to promote licensing agreements, thereby reducing the burden on the "notice-and-takedown" mechanism and ensuring fairer benefits for authors. However, consideration should be given to the compliance capacity of domestic enterprises, along with a differentiated regime by platform size, similar to the temporary preferential treatment for small start-ups in their first three years under the EU framework.

Secondly, regarding the balance of user rights. The EU emphasizes copyright exceptions and freedom of expression by codifying rights to quotation, criticism, and parody, while obliging platforms to respect lawful uses. Vietnam also provides exceptions under the Intellectual Property Law, but in practice users are rarely protected once their content is removed. Hence, a more transparent mechanism for complaint and content governance should be established, for example, requiring platforms to allow users to explain before removal (except in urgent cases) or to request restoration if they can prove the use falls within an exception. Decree No. 17/2023 introduces initial procedures for contesting takedowns, but improvements in procedure, user interface, and communication channels are needed to make it more effective. At the same time, Vietnam should consider expanding and clarifying exceptions in the digital context, such as lawful user-generated content (UGC)

exceptions, in order to encourage derivative creativity while still ensuring copyright protection.

Thirdly, regarding enforcement and international cooperation. Online copyright infringement is often cross-border in nature, with servers and domains hosted abroad. The EU has responded by harmonizing copyright laws within the bloc and establishing mechanisms for cooperation among Member States in addressing large platforms. Vietnam should actively participate in international initiatives on digital copyright protection, such as alliances of collective management organizations, infringement data-sharing mechanisms, or ASEAN's site-blocking models. Domestically, a multi-stakeholder approach (regulators, content providers, ISPs, enforcement agencies) should be strengthened to ensure rapid and coordinated responses. In addition, Vietnam may take reference from the accountability mechanisms in the EU's Digital Services Act (DSA), which require platforms to ensure algorithmic transparency, risk reporting, and independent audits in order to develop similar obligations. For instance, Vietnamese law could impose periodic reporting duties on copyright complaints, the number of removed items, and filtering measures adopted, thereby enhancing transparency and enforcement effectiveness.

Conclusion

The explosive growth of digital content on online platforms poses significant challenges for copyright protection. A comparative analysis shows that while both Vietnam and the EU have made efforts to adapt, the EU has established a more comprehensive and balanced legal framework. With the 2022 amendment to the Intellectual Property Law and Decree No. 17/2023, Vietnam has taken important initial steps in building a legal foundation, clearly defining platform responsibilities, establishing takedown mechanisms for infringing content, and safeguarding authors' interests. Although there remains a gap with the EU in terms of completeness, these reforms demonstrate Vietnam's trend toward international integration and its determination to strengthen copyright protection in the digital era. In the future, Vietnam should continue to draw on international experience, particularly from the EU while tailoring policies to domestic realities. The ultimate goal is to shape a transparent digital ecosystem in which authors' rights are respected, online platforms operate responsibly, and users have access to lawful content. Striking a balance between copyright protection and the encouragement of creativity will be the key to the sustainable development of the digital content industry, as well as to affirming Vietnam's position in the field of international intellectual property.

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