

Market Summary – Vietnam

Contents

Title of Regulation	Mentions
Draft Decree on Penalties for Administrative Violations in Cybersecurity	P2 ; P9
Cinema Law	P2 ; P2 ; P3 ; P4 ; P7 ; P9 ; P12 ; P15
Telecoms Law	P2 ; P2
Decree 6 on the Management, Provision and Use of Radio & Television Services	P3 ; P7 ; P8
Decree 71 – amending & supplementing of Decree 6	P11 ; P15 ; P18 ; P19
Decree 72 on the Management, Provision and Use of Internet Services and Online Information	P2 ; P4 ; P5 ; P7 ; P19
Tax Portal	P1 ; P5
U.S. – Vietnam Digital Partnership	P4 ; P5
Personal Data Protection Law /Personal Data Protection Decree	P5 ; P19 ; P20
E-Transactions Law	P6 ; P9
Advertising Regulatory Regime	P6
Intellectual Property Law	P14
Advertising Law	P20
➤ Issue regarding Advertisement of Gambling in Live broadcasts	

06/10/2021

[Draft Decree on Penalties for Administrative Violations in Cybersecurity](#)

This draft decree was issued on 20 September 2021. The penalties cover both domestic and foreign companies which provide content online and extend to both cybersecurity violations and more importantly, for our purposes, infringements of the Draft Decree on Personal Data Protection (as yet unpassed) with pecuniary sanctions of up to VND200 million. The Decree is expected to take effect on 1 December 2021 and public comment has been invited although no deadline has been set for this.

03/11/2021

[Cinema Law \(Part 1\)](#)

A new draft has been published. In this latest version, pre-censorship is no longer required for SVOD services. Our consultant in Vietnam has however alerted us to the fact that, during the debate on the bill in the National Assembly, some lawmakers were still advocating to retain pre-censorship as a requirement. We will therefore need to ensure that we continue our advocacy efforts with the National Assembly prior to the vote next Spring.

[Telecoms law \(Part 1\)](#)

There has been much speculation in the press that proposed amendments to the Law on Telecommunications may include mandated network use fees. We have spoken with our Vietnam consultant who has confirmed that the MIC document which has been submitted to the government and which includes proposals to amend the Law on Telecommunications, does NOT include any actual draft amendments to the law – all it does is to provide an outline of the issues MIC would like to address in the amendments which are only likely to be published by December 2021. While the document does suggest an intention on the part of MIC (i) to review and manage telcos' use of cyber resources when co-operating with content providers and (ii) to manage the collaboration between ISP's and content providers, there is no express mention of mandated network use fees. We will of course keep you updated should we receive any further information/clarity on the proposals.

06/12/2021

[Cinema Law \(Part 2\)](#)

We understand that film-friendly policies are being formulated and will be incorporated as amendments to the Cinema law although no clarity on timing. The recent public uproar about inclusion of certain scenes in Vietnamese film, "Vi" has set in motion a demand for greater clarity on content regulatory requirements. Will monitor.

[Decree 72 on the Management, Provision and Use of Internet Services and Online Information \(Part 1\)](#)

We now have a formal translated version of the latest draft of the Proposed Amendments to the Draft Decree 72 on Management, Provision and use of internet services (copy attached). While Decree 72 does not apply to SVOD, which is covered by Decree 6 and the Cinema Law, the 200-page document contains some provisions which could impact the video content industry such as takedown procedures to be followed for removal of unlawful content, express extra-territorial application to cover foreign providers and limitations on cross border data transfers. Reviewing to ensure no additional concerns.

Telecoms Law (Part 2)

You may recall that, while not being directly relevant, this was the one where we were concerned about a rumour regarding possible implementation of mandated network use fees. Still no clarity on what the government intended with its broad reference to facilitating relationships between telcos and content providers but industry feedback thus far would support voluntary arrangements that permit maximum flexibility to adapt within changing market conditions.

20/04/2022

Cinema Law (Part 3)

A new draft is doing the rounds within the market. No stakeholder consultation is invited at this stage of the process but when the Standing National Assembly Committee met last week to discuss the laws which are tabled for adoption when the National Assembly formally convenes in May/June, a few changes were made to the Cinema Law. Most of these changes will not have any direct impact on our members' day-to-day operations (e.g. the debate around state-funded film projects) but the following should be noted:

- The new draft bill officially drops the pre-censorship requirement for “films disseminated on cyberspace” and instead requires service providers to conduct content ratings on their own according to age rating criteria specified by the Ministry of Culture, Sports and Tourism (MCST). (Art. 21.2.b).
- The bill also requires service providers (i) to **notify** MCST of their plans to provide films on SVOD **and** (ii) confirm their commitment to comply with the law **before** they provide the service to users (Art. 21.2.d). This could potentially mean that foreign service providers, as long as their platform only offers films (and none of the other content set out in Decree 6 e.g. political or general entertainment content), will **no longer** have to apply for a service license or register with MIC as proposed by the draft Decree 6.

We are in the process of acquiring an official English translation of the draft in its entirety and will reach out again should there be less patently obvious issues within the draft which impact our members.

Decree 6 on the Management, Provision and Use of Radio & Television Services (Part 1)

The licensing requirement in Decree 6 remains, albeit much less cumbersome in its application (general consensus is that it will be sufficient, for compliance purposes, to set up a shelf company through which to apply for the license, which we understand will be granted as a formality). Until now and to the best of our knowledge, there has been no attempt to bring Decree 6 into line with the new Cinema Law draft, which advocates for notification, not licensing. This all of course begs the question of whether a foreign service provider, which offers a range of diverse content on its service, will need to apply for a Decree 6 license in respect of the entire service or only that portion of the content which is classified as non-film content. There is still of course the possibility that MIC may adopt the view that whatever has been decided in the Cinema Law, should not be taken into account within Decree 6 given that the latter is all about internet distribution regulation whereas the Cinema Law is much more focused on content regulation. What does offer us some comfort is the well-established principle of Vietnamese law that two different legal instruments cannot claim authority over the same subject so, for now, films are very much in the clear in terms of pre-censorship. If the Cinema Law is passed in May/June, we anticipate it taking effect on 1 Jan 2023 in accordance with the 6-month operational rule in Vietnam.

[Tax portal \(Part 1\)](#)

For those SVOD companies, who do not have a local presence or agent in Vietnam, please note that the [tax portal](#), through which offshore companies need to register to pay tax, is now available. This portal provides offshore companies without a local permanent establishment (PE) an option to register, declare and pay taxes under Circular 80 which was issued on 29 September 2021 with an effective date of 1 January 2022. Prior to the issuance of Circular 80, these companies were paying foreign contractor's tax (FCT) as a withholding tax under Circular 103 of 2014 issued by the Ministry of Finance. The FCT, which includes value-added tax (VAT) and corporate income tax (CIT), is withheld by customers in Vietnam which are businesses with a Vietnamese tax code (B2B transactions). Circular 80 aims to collect tax on transactions with individual customers in Vietnam who would typically not withhold FCT from foreign suppliers (B2C).

The General Department of Taxation (GDT) has confirmed the following for those foreign suppliers that choose to register, declare and pay taxes under Circular 80:

- Start date of tax declaration and collection is January 1, 2022, regardless of when the portal is operational (Before January 1, 2022, foreign companies could pay FCT under Circular 103).
- Declaration and payment cycle is by quarter.
- Foreign suppliers have to declare total revenue from Vietnam, which includes both B2B and B2C transactions, regardless of whether they have paid the withholding FCT under Circular 103. This is not double taxation, but just for the purpose of cross-checking what the suppliers declare with what their B2B customers in Vietnam pay as FCT. In other words, any transactions over which FCT has been collected under Circular 103 will not be subjected to tax under Circular 80.
- For services offered by digital platforms (SVOD, social networks, e-commerce, cloud services, digital advertising, etc.), the rate for VAT is 5% of total revenue. The rate for CIT is 5% of (total revenue – VAT).

[Decree 72 Management, Provision and Use of Internet Services and Online Information \(Part 2\)](#)

Decree 72 is being shelved for now. It is understood that Decree 72 should serve to implement the Digital society and Digital Economy Strategy document drafted by MIC however it appears this document competes with the Data Management Plan previously submitted by the Ministry of Public Security. The latter plan, while stressing the importance of digital transformation, places an inordinate amount of emphasis on the importance of data sovereignty in cyberspace.

[U.S. – Vietnam Digital Partnership \(Part 1\)](#)

We understand that while the US has already set up its first regional digital partnership with Singapore, there are moves afoot in Vietnam to encourage a digital partnership agreement with the US so as to harmonise standards within the digital space especially around digital infrastructure and data protection in the hope that the terms of such a partnership will facilitate more rapid innovation and investment. "Trade resilience" is already a pillar of the Indo-Pacific Trade Agreement but a proper digital partnership agreement between the US and Vietnam would be considered as a much greater win.

07/06/2022

[Cinema Law \(Part 4\)](#)

Cinema Law having been under the impression that some major gains were made on the removal of pre-censorship, we were slightly alarmed last week to hear about some unhelpful changes proposed during the Parliamentary hearing. In short, the newly proposed language would require OTT providers to *“Inform the film dissemination plan, film content summary and film classification level to the Ministry of Culture, Sports and Tourism before disseminating the film on cyberspace.”* This clearly looks like some form of pre-censorship although we understand operators will not require pre-approval - they can continue to broadcast the content until and unless the regulator steps in. In line with a number of other organisations, AVIA drafted the attached letter to voice our concerns in an effort to roll this language back, or at the very least, endeavour to ensure we are able to shape it more helpfully. We'll obviously monitor developments closely and stand ready to take further action. Equally, please do not hesitate to get in touch with us if you hear anything further.

[Decree 72 on the Management, Provision and Use of Internet Services and Online Information \(Part 3\)](#)

This has been partially revived but still on hold. The 2-hour takedown is still within the draft and the rationale for its retention seems to be based on the fact that the requirement is already prescribed by the Cybersecurity law of 2018. The expectation on the ground seems to be that actual enforcement of the provision is unlikely and that it will be more of a process given the regulators' acknowledgement that most services are already good at complying with takedown requests of illegal content.

[Personal Data Protection Decree \(Part 1\)](#)

In Vietnam, the right to privacy and personal secrets is guaranteed under the Constitution. Vietnam does not currently have a specific piece of legislation that deals with the protection of personal data and instead relies on provisions within the Civil Code and laws such as the Cyberinformation Security law and the Law on Electronic Transactions. In February of 2021, the Ministry of Public Security proposed a draft decree on personal data protection. That draft decree has not received approval from the National Assembly and has been referred on to the Political Bureau for comment. Please do keep in mind that Vietnam is one of the countries working with the US and other countries on the Global Cross Border Privacy Rules Forum which is trying to create a framework in which individuals' personal information like search queries can flow seamlessly across borders. It also remains to be seen how the data protection decree will sit alongside the new draft law on E-transactions which has been released for public consultation and which mostly focuses on regulations relating to digital signatures and e-contracts but which also sets out data protection provisions, including the mandatory grant to users to access data held in their names. In terms of data localisation, Freshfields recently compiled an updated data protection paper which confirmed that *“in response to recommendations by the Vietnamese Business Forum in February 2022 on recasting data localisation requirements, the MPS advised that businesses are free to transfer user data using data security measures according to Vietnam's international standards and regulations. Only when enterprises do not cooperate or refuse to cooperate with Vietnamese functional authorities in providing information for investigation and handling of crimes will Vietnam consider appropriate measures, discuss with enterprises and allow a reasonable period of time in order to fulfil data storage requirements”*.

[Tax portal \(Part 2\)](#)

You will recall that we shared the details about registration for offshore companies in our last policy update email. Since then, workshops have been conducted with regulators to answer any questions that remained outstanding. We are trying to put together a paper which collates the questions and answers that have been discussed and will share this with you all shortly.

[U.S. – Vietnam Digital Partnership \(Part 2\)](#)

We understand that while the US has already set up its first regional digital partnership with Singapore, there are moves afoot in Vietnam to encourage a digital partnership agreement with the US so as to harmonise standards within the digital space especially around digital infrastructure and data protection in the hope that the terms of such a partnership will facilitate more rapid innovation and investment. “Trade resilience” is already a pillar of the Indo-Pacific Trade Agreement but a proper digital partnership agreement between the US and Vietnam would be considered as a much greater win. Some progress on this front was made recently at the US-Asean summit where, we understand, a digital MOU was signed between Vietnam’s MIC and the US.

23/06/2022

[The new draft law on E-Transactions \(Part 1\)](#)

Comment from stakeholders is due on 4 July 2022. A summary of some of the key issues is set out below:-

- A. MIC shall be the Ministry tasked with oversight of electronic transactions.
- B. The law is intended to apply to individuals and organisations participating in “electronic transactions”, which is defined as “a transaction carried out by electronic means”. The scope of transactions caught within this definition is therefore extraordinarily wide yet every electronic transaction system provider will be required to register its system with MIC. The purpose for such registration is not provided.
- C. The apparent purpose of the draft law is to ensure the safety of electronic transactions and to offer the same validity to transactions, which take the form of data messages, as that which is currently offered to transactions created through the use of tangible documents.
- D. The draft law addresses in detail what constitutes a legally binding offer within the electronic space and what requirements would need to be put into place for an effective agreement to be concluded – we would suggest that the principles of contract law are already embedded within existing legislation and any specific electronic contract provisions are best included within that body of law.
- E. All digital platform service providers will be required to:
 - i) Publish their terms of service and privacy policies
 - ii) Provide tools for users to report any issues
 - iii) Remove any information which violates Vietnamese law
 - iv) Protect users’ privacy
 - v) Provide data to competent authorities on request
- F. While we appreciate that the Decree on Personal Data Protection is still a work in progress, we would suggest that any data protection provisions should instead be captured within a cohesive data protection regime such as the upcoming decree.
- G. Included within the draft is a requirement that, in those cross – border data transfers, where the data is classified as “of level 3 importance”, a security assessment will have to be conducted. No definition of “level 3 importance” is provided so some clarity will need to be sought from the regulators.
- H. Additional obligations are imposed on certain “large” digital platforms, which are those that have extensive market power and play an important role in connecting users with service- and goods providers. These “large” service providers will be required to (i) notify users if the platform employs algorithms and explain to users the purpose of such algorithms and (ii) provide a mechanism whereby the consumer is able, at his/her discretion, to de-activate these algorithms. It is unclear what harm the regulator is seeking to prevent or whether indeed an assessment has been made of how this could affect the benefit of discoverability for the consumer and the revenue potential of small businesses which only exist within the online space.

Advertising regulatory regime

The Ministry of Culture, Sports and Travel is organizing a workshop on Friday, 24 June 2022, to seek comments on the current advertising law and regulations. Several Ministries have been asked to attend and provide input e.g. MIC has been asked to comment on the practical implementation of advertising law in the field of information and communication. Our consultant will be attending that meeting so if you have any specific comments/concerns you would like us to raise on your behalf, kindly share those with us as soon as possible.

28/03/2022

Cinema Law (Part 5)

For those of you who attended the R-AP meeting last Thursday, you would have heard our consultant, Thanh, very clearly and comprehensively explain the impact of the recent amendments to the newly passed Cinema Law, which takes effect on 1 January 2023. For those of you unable to attend, a few key points to note:-

- Licensing is NOT required but pre-notification is. What this means is that content providers who only offer “film” on their service, will need to :
 - a. Demonstrate their capacity to rate films; and
 - b. Notify the Ministry of Culture of the list of films to be disseminated on their service and the rating for each title. (Please note- contrary to speculation, a synopsis of the film is NOT required.)
- “Film” is very widely defined as a succession of moving images and includes cartoons and documentaries. Notably, after a discussion between our consultant and the regulators, it also includes TV series, which will no longer be treated as content under the ambit of Decree 6.
- Any content that does not within the scope of the “film” definition, will still be subject to the provisions of Decree 6. SVOD is still classified under this decree as Pay television and Pay television operators still require a license. So, we still may have a rather odd scenario where service providers, who offer both film and content which falls under the ambit of the Decree, are both exempted from having to apply for a license under the Cinema Law and required to apply for a license in terms of the content on their platform which falls under Decree 6. We understand that the regulators may decide to revisit this type of incongruous outcome but no definitive timing on that as yet, other than an expression by the regulators that they would want Decree 6 to come into operation at roughly the same time as the Cinema Law. In Vietnam, passed legislation only comes into effect 6 months post such passing so we would expect that Decree 6 may be pushed through sooner rather than later.
- A copy of the English translation of the key terms within the Cinema law, are attached.

Decree 72 Management, Provision and Use of Internet Services and Online Information (Part 4)

With the Ministry of Public Security increasingly asserting their power, the 24-hour takedown provision is still contained with the decree. Data localization and licensing requirements have been dropped. The decree is pending government approval.

18/07/2022

[Decree 6 on the Management, Provision and Use of Radio & Television Services \(Part 2\)](#)

Questions surrounding broadcasting in Vietnam

1. How long does it take a local affiliate to apply and obtain a landing license? Our current understanding is between three to six months. Would be great if we can verify this estimated timeframe.

According to Decree 6/2016, MIC has 30 business days to respond to an application from a local agent for a landing license. So if the local affiliate knows how to do the right paperwork, they can get the landing license issued in a month. In reality, it can take up to 6 months as ABEI (the licensing agency) keeps asking for further clarifications or additional information on the application. Paperwork requirements are truly daunting.

2. How long does it take a local affiliate to apply and obtain an editing license? Our current understanding is between six to nine months. Would be great if we can verify this estimated timeframe.

A local affiliate cannot apply for an editing license. Only an editing agency can. While a local agent/affiliate can be a private company, an editing agency must be a press agency (which by law is government-owned). There are only a handful of editing agencies for foreign channels, but only 2 of them actually provide service: VTV (the National Broadcaster) and Vnews (The TV business of Vietnam News Agency). The local affiliate would contract an editing agency to apply for an editing license for a foreign channel. Again, MIC has 30 business days to respond to an application for an editing license. In reality, this used to take up to 9 months. Now it can take 2 – 6 months, depending on specific channels (the more sensitive/controversial the channel's programming is, the longer it takes).

3. Are there any regulations that prohibit a channel owner from appointing more than one press or editing agent in Vietnam? i.e., would it be permissible to have a channel be edited and distributed by two or more distributors/agents in Vietnam?

No. ABEI has many times confirmed that the rules do not prevent a foreign channel from having more than 1 local agent or local editing agency.

a. Related to Qn 3, are there regulations requiring notices to be sent to regulatory authorities for approval prior to appointing a new agent? If so, how far in advance should such notices be sent to the authorities?

Short answer: No.

The regulatory agency (ABEI/MIC) does not communicate directly with the foreign channel owner. They only communicate to the channel's local agent (that's the whole purpose of a local agent). The only way a foreign channel owner can communicate to ABEI is through its local agent(s). In order to do so, the foreign channel must have a contract with its local agent first. When this contracted local agent applies for a landing license with ABEI, ABEI will know that it's the agent for the foreign channel.

18/08/2022

[Decree 6 on the Management, Provision and Use of Radio & Television Services \(Part 3\)](#)

It has been brought to our attention that an imminent sign-off of Decree 06 by the PM is anticipated. AMCHAM Vietnam has written another letter to the regulators urging restraint on imposing licensing- and registration requirements on OTT's given no other Asian regulator has chosen to go down that path. We note that a further request is made for OTT to be governed by a separate section of the decree but understand that this is unlikely to be agreed given that the interpretation of the Press Law includes OTT within the remit of TV. Without a formal amendment to the Press Law, the activities of OTT providers will continue to be governed by Decree 06. AVIA has already made two submissions on Decree 6, the second re-iterating the comments made in the first. It is our consultant's opinion that nothing is to be gained by sending in yet another letter which expresses the same concerns but please do reach out if your organisation is of the opposite view or if you are aware of any additional points which need to be highlighted. I attach a copy of the second and most recent submission we made on the decree for your ease of reference.

[Cinema Law \(Part 6\)](#)

Vietnam's Cinema Department within the Ministry of Culture, Sports and Tourism, has commenced drafting a decree and circular to provide implementing guidelines for the new Cinema Law. The documents have not been published as yet but we understand from sources on the ground that there are concerns around several provisions, amongst others, the 24-hour takedown provision upon notice from MIC and the obligation for service providers to permit access by regulators to users' information during an investigation. The draft circular relating to rating is also of some concern given that all providers wishing to disseminate films, are compelled to obtain a Film Rating License. We will continue to monitor closely and share any documents that come to light if and when they are made officially available.

It is our understanding that the Minister of Culture in Vietnam will be stopping over in LA en route to Mexico in September to host a roundtable with the creative industry. We understand some of our members have been invited to attend and will share with the wider group key points of that discussion, assuming it is not a closed-door meeting.

I am seeking our consultant's input on the current status of both the [e-transactions directive](#) and the outcome of the roundtable discussion between different regulators on the current state of [advertising regulation](#) in Vietnam. I will update you all once I have further information.

06/09/2022

[Cybersecurity Decree](#)

On 15 August 2022, Decree 53 was issued - it adds implementing guidance terms to the Cybersecurity Law of 2018. It requires that data belonging to and created by users in Vietnam, including account names, credit card info, email and IP addresses, service use time, logins and phone numbers as well as data which reflects the relationship between a service user and other people in cyberspace, be stored in Vietnam. [International firms](#) doing business in Vietnam which provide telecommunication services, e-commerce services and online payment services, would be required to store user data in Vietnam for at least 24 months and set up a local office **if and only when** asked to do so by the Minister of Public Security. This decree is expected to take effect on **1 October 2022**. The scope of sectors and services that may be captured by the Decree is quite broad but the prevailing view is that content services are currently NOT caught within the Decree's remit. Domestic enterprises, on the other hand, regardless of the type of business they operate, must store regulated data in Vietnam. We will

continue to monitor to ensure that content services are not inadvertently brought within the Decree's purview.

E-Transactions Law (Part 2)

The purpose of this law, as you may recall, was to develop a unified law which enables activities in all sectors currently carried out in traditional environments, to also be carried out in a digital environment. We understand that this continues to be a work in progress so will monitor closely.

23/09/2022

Cinema Law (Part 7)

The Ministry of Culture, Sports and Tourism (**MCST**) has released draft regulations detailing a number of provisions in the new Cinema Law that was passed in June 2022. MCST is organizing an in-person workshop to introduce these draft regulations and seek comments from key stakeholders in Hanoi on September 26. They have invited AVIA to attend and our consultant, Thanh, will be attending on our behalf. Below are key takeaways from the draft regulations. Kindly read and share any concerns/comments with us as soon as possible so that we can forward these on to Thanh in preparation for the meeting:-

I. Conditions for providing service in Vietnam

The Cinema Law specifies that in order to start their operation in Vietnam, SVOD services must supply (1) Proof of capacity to rate the films according to regulations specified by the Government and (2) Notify MCST of the list of films to be disseminated and the rating for each film before disseminating those films in cyberspace (Art. 21, Cinema Law).

The draft implementing decree specifies the requirements and procedures for (1) and (2). The SVOD service must send MCST a report with the following information:

- a. Proof that it pays tax in Vietnam (Payment through the Vietnam Tax Portal is accepted)
- b. Contact information
- c. Film rating board and proof that each board member is qualified to carry out the film classification according to Vietnam's regulations on film classification.
- d. Confirmation of a mechanism or procedures for revising or updating the film rating results at the request of MCST
- e. Confirmation of a mechanism or procedures for removal of violating films at the request of the competent State agency
- f. Parental controls with tutorials; User report tool for violating films.
- g. User support and law enforcement support service

The report can be filed via email. Upon receipt of this report the Cinema Department will verify the report and publish the name of the qualified SVOD service on the MCST portal and provide them with information to set up an account with the ministry's Film rating data system. Through this account, the SVOD service provider will also publish or update the list of to-be-disseminated films and film rating results.

II. Local content quota

Vietnamese films must account for least 30% of total film airtime on a TV broadcaster's/operator's service and at least 25% of a cinema theater's total number of screenings for a year. Vietnamese films shall be aired during prime time (6pm – 10 pm).

III. Deadline for service complaint response

Service provider must respond within 48 hours of receipt of complaint or report by user and remove the violating title within 24 hours of receipt of request from regulators.

The 24-hour takedown deadline also applies to any digital platform through which SVOD service is provided.

The ISP has only 3 hours to block access to violating titles at the request of MIC.

IV. Cinema Development Support Fund (CDSF)

The draft regulations propose to introduce new fees to foreign films (3% of ticket sale) and foreign SVOD service (1% of subscription revenue) to fund the CDSF.

(Art. 21.3).

3% retention from the ticket revenues from imported films screened in the Vietnamese box office system; 3% retention from the film appraisal and rating fees; 1% retention from the subscription fees for the films disseminated cross border; 0.05% retention of subscription fees for on-demand TV; 0.5% of advertisement revenues from film screening programs on TV; and 5% of post-check fees.)

03/10/2022

[Decree 71 - amending & supplementing of Decree 6 \(Part 1\)](#)

Update on Vietnam SVOD regulations

The government issued Decree 71/2002 on October 1 amending Decree 6/2016. Decree 71 takes effect on January 1, 2023. Below are the key provisions:

1. Licensing requirement

This DOES NOT apply to SVOD services that only provide films in their offering. Definition of film by the new Cinema Law is broad.

***Art. 3.2 of the Cinema Law:** Film is a cinematographic work, the content of which is expressed by consecutive moving images or images created by technical and technological devices; with or without sound and other effects according to the principles of cinematic language; recorded on digital or other digital media and made available to viewers, including feature films, documentaries, science films, cartoons, and combinations of any two or more of these.*

Films do not include video recording products for the purpose of disseminating news on radio or television services and cyberspace; artistic shows, video games; a video production of the activity of one or more people, depicting actual events, situations or programmes.

Films and TV series are treated as films.

Under the existing Decree 6/2016 and Decree 71/2022 amending it, **licensing requirement still applies** to all SVOD services providing video titles beyond films AND TV channels, including channels that only contain films.

According to MIC, TV channels, regardless of their content and method of distribution, are regulated by the Press Law and thus required to have a license for the channel (landing license) and another license for their distribution service (service license). For all types of contents other than films, the Press Law will prevail and require a license for any service providing them.

If an SVOD service provides both films and non-film contents, it is subject to licensing requirement.

2. Local establishment requirement

Foreign SVOD services providing films only are NOT subject to local permanent establishment (PE) requirement.

If the services include non-film contents in their offering, they are subject to licensing requirement, which in turns requires them to set up a local PE under the Press Law (Art. 51.3).

MIC says a local PE can be wholly owned by a foreign investor. But the local entity still needs to apply for the prime minister's approval in order to get a service license from MIC. MIC confirmed they will help foreign services get this approval at the soonest so they can issue the license to the latter. MIC also confirmed that pending issuance of a service license, existing cross-border service will not be stopped.

3. Requirements for SVOD services before providing services in Vietnam

- Proof of capacity to rate the films according to regulations specified by the Government
- Notify MCST of the list of films to be disseminated and the rating for each film before disseminating those films in cyberspace

4. Pre-censorship requirement

Pre-censorship requirement only applies to TV channels and contents about news, politics, law and order, national security and national defense.

This requirement DOES NOT apply to other types of contents, including films, general entertainment, sports, live events.

Cinema Law (Part 8)

I. Excerpts from 2022 Vietnam Cinema Law

Article 20. Film dissemination on the television system

1. A press agency must meet the following requirements in order to be licensed to disseminate films on the television system.
 - a. Hold license for television operation according to laws and regulations on press;
 - b. Hold broadcasting decisions to disseminate films on the Vietnamese television system or in on-demand television packages or on-demand television services in cyberspace;
2. The press agency in Clause 1 of this Article while disseminating films on the television system must ensure the fulfilment of obligations prescribed in Article 18.2 of this Law and that the ratio of the broadcasting duration of Vietnamese films to foreign films, the time for Vietnamese films to be broadcast, the duration and time of broadcasting children's films on domestic channels according to the Government's regulations.
3. The issuance and revocation of the Broadcasting Decision shall be decided by the head of the press agency licensed for television operation according to the law.
4. Encourage the dissemination of Vietnamese films produced using the state budget, films sponsored or donated by organizations and individuals.

Article 21. Film dissemination on cyberspace

1. Subjects licensed to disseminate films in cyberspace are enterprises, non-business government-owned entities and organizations conducting film dissemination activities according to the provisions of this Law and other relevant provisions of law.
2. Subjects disseminating films in cyberspace prescribed in Clause 1 of this Article must ensure the fulfilment of obligations prescribed in Point c and Point d of Clause 2 of Article 18 of this Law, other relevant laws and regulations and the following:
 - a. Must not disseminate films that violate the provisions of Article 9 of this Law and other relevant regulations;
 - b. Before disseminating films in cyberspace, the subject must ensure they have the capacity to rate the films according to regulations specified by the Government and take full responsibilities for the content and rating of each film before the laws; in case of insufficient capacity to rate the films, the subject shall request the Ministry of Culture, Sports and Tourism (MCST) or an agency authorized by MCST to rate films that have not received Film Rating Permit or Broadcasting Decision according to the process and procedure prescribed in Clause 3 and Clause 4 of Article 27 of this Law;
 - c. Notify MCST of the list of films to be disseminated and the rating for each film before disseminating those films in cyberspace;
 - d. Adopt necessary technical measures and provide instructions for parents or child guardians to control, manage, and ensure that children watching films disseminated in cyberspace could only access films rated for their age; for service users to report on films violating provisions of this Law;
 - e. Provide contact point and contact information to receive and process requests from state regulatory agencies; reports, complaints and denunciations by service users;
 - f. Remove films that violate Article 9 of this Law and other relevant regulations when requested in writing by competent state regulatory agencies.
3. Organizations and enterprises whose digital media platforms are used for the dissemination of films in Vietnam have the following responsibilities:
 - a. Deploy technical solutions and coordinate with competent state regulatory agencies to remove and block violating films;
 - b. Ensure that they fulfil the obligations prescribed in Point a and Point d of Clause 2 of this Article.
4. Organizations and enterprises operating telecommunication networks are responsible for blocking access to violating films as requested by competent state agencies.
5. The Ministry of Culture, Sports and Tourism shall arrange for staff and technical equipment to conduct the inspection of the content, rating and display of rating of films disseminated in cyberspace; coordinate with state the Ministry of Information and Communications and the Ministry of Public Security and relevant state regulatory agencies to take measures to prevent and apprehend violations of the law.
6. The Government shall detail Points b, c, d and dd of Clause 2, Point a of Clause 3 and Clause 4 of this Article.

11/11/2022

Our consultant, Thanh, very kindly agreed to brief us on developments in Vietnam. We are hoping he will be able to share that again in our next R-AP meeting (see details below) but for those of you who are not able to attend that meeting in two weeks' time, a few key points below:-

- The implementing regulations of the Cinema Law are still in the process of being drafted. Word on the ground suggests that a Ratings license may be required. What is of concern is how that rating will be determined – with reference to the provider's own systems, a recognized international system or the Vietnamese ratings system. Will it involve a pre-check or is it purely ex post audit?
- The definition of "Film" within the Cinema law is wide and other than news, which is clearly carved out, most content could potentially fall within the scope of the Cinema Law and not within that of Decree 6 (as amended by Decree 71). Decree 6, as you may recall, requires a license and local office establishment.
- It is claimed by many that the requirement for local ad insertion (within Decree 6) for linear television providers, relates to a push on behalf of the regulator to tax the ad revenue of a provider who currently does not need to pay a licence fee. We expect that this is now a moot point given that offshore companies are able to pay tax via the newly established tax portal.
- Cybersecurity decree 73 – as you are aware, the decree mandates data localization for domestic companies. Employing a domestic company to carry out certain activities could therefore present some challenges. We understand that input is being sought from companies by the regulator's technical staff but this could potentially mean that offshore companies might need to consider setting up their own local servers in market.
- The Personal Data Protection Decree draft is still being finalized and, while we understand that it will be designed to support businesses and will be based on the GDPR model, no draft has been made publicly available for comment.
- The rumour we had heard regarding the potential imposition of network use fees, seems to be just, a rumour, with the Government clarifying that it wants to enforce net neutrality and believes use fees would constitute a barrier to entry and investment.

26/01/2023

You will all have heard about the Presidential ousting that has occurred recently. We have no additional information as yet on how this may or may not affect Vietnam content industry policies but we do anticipate this may affect the passage of any new regulations. During the past two weeks, there has been a reshuffle of the government where two deputy prime ministers resigned – one of these is the DPM in charge of video business so we anticipate again that it will take a while for the new DPM to get up to speed.

The implementing decrees for the Cinema Law have not been issued – we anticipate it will take another two months before this is done.

Intellectual Property Law

A draft decree implementing a number of provisions of the Law on Intellectual Property is also pending at the government, which makes it easier to identify violations of IP rights and quantify the damage caused by such violations. The decree also puts more pressure on intermediary services such as digital platforms and ISPs to prevent the spread of piracy and take down pirated content.

02/02/2023

[Cinema Law \(Part 9\)](#)

One of the implementing decrees of the Cinema Law, Decree 131, has in fact been published and come into operation as of January 2023. A rough translation of the decree is attached for ease of reference. Key factors are as follows:-

- a. VOD self-classification is retained – must have in place a mechanism to self-classify and update or revise rating on request from MoCST’s competent authority. An organization will lose its ability to self-rate if its classification results and film rating display are not compatible with the classification result of MoCST for 5 times during a month with regard to P, T18, T16, and T13 ratings, or twice during 6 months with regard to C rating.
- b. Providers must ensure measures in place to allow parents to control access by children to content. An explanation of the measures must be given to users and content providers will further be required to set up a multi-users account system which consists of dedicated-for-kids accounts, where all the accounts have a password. A mechanism must be put into place to report to the main account owner details about the access and activity history of the children’s accounts.
- c. “Take action” or “deal with” any consumer complaint within 48 hours.
- d. Enterprises, service entities and organizations that conduct film dissemination activities on the cyberspace must stop, block, remove, within no later than 24 hours from the time of the request, those films that are prohibited by Article 9 of the Cinema Law and other regulations of the relevant laws and must stop, block, remove, within from 3 to 5 days from the time of the requests, those films of other violations in accordance with the request of MoCST’s competent authority in charge of cinematography.
- e. Films disseminated online before December 31, 2023 will need to comply with requirements to display warnings and age ratings (Article 21.6). A one-year grace period (i.e. until January 2024) has been granted for enterprises, services entities, and organizations conducting film dissemination to meet conditions for self-classification under the Cinema Law and Decree.

01/03/2023

[Decree 71 – amending & supplementing of Decree 6 \(Part 2\)](#)

Update on Vietnam SVOD regulations (*readout from meeting with MIC*)

SVOD regulations were updated in 2022 with the issuance of Decree 71/2022 on October 1 (amending Decree 6/2016) and Decree 131/2022 on December 31 (implementing the new Cinema Law).

The Authority for Broadcast and Electronic Information (ABEI) organized a workshop on February 27, 2023 to elaborate on these updated regulations. Key take-aways follow:

1. SVOD regulatory authorities

- a. The Authority for Broadcast and Electronic Information (ABEI) under the Ministry of Information and Communications (MIC) regulates all broadcast and streaming video and radio

services, except those specialized in films only. MIC is in charge of Decree 6/2016 and Decree 71/2022.

- b. The Cinema Department under the Ministry of Culture, Sports and Tourism (MCST) regulates streaming film services. MCST is in charge of the Cinema Law and Decree 131 implementing it.

2. Licensing requirement

- a. Licensing requirement DOES NOT apply to SVOD services that only provide films in their offering. However, according to Decree 131/2022 implementing the Cinema law, before providing service in Vietnam, the foreign service provider has to submit “the list of films to be offered on the service and their corresponding ratings to the Online film classification data system” operated by the Cinema Department (Art. 13). After the submission, the service provider does not need any approval to start providing the service. Instead, as part of an ex-post audit process, MCST will monitor whether the films actually offered on the service and their ratings match what was submitted. If mismatches are found, the service will be found in violation of the rules and, depending on the frequency of the mismatches and category of films, will have to hire a government-approved rating service for 3 months before they can restart the submission for self-rating (Art. 12.5). Repeated violations may lead to blockage of service in Vietnam.
- b. Under the existing Decree 6/2016 and Decree 71/2022 amending it, **licensing requirement still applies** to all SVOD services providing video titles beyond films AND TV channels, including channels that only contain films.

According to MIC, TV channels, regardless of their content and method of distribution, are regulated by the Press Law and thus required to have a license for the channel (landing license) and another license for their distribution service (service license). For all types of contents other than films, the Press Law will prevail and require a license for any service providing them.

If an SVOD service provides both films and non-film contents, it is subject to licensing requirement.

3. Local establishment requirement

- a. Foreign SVOD services providing films only are NOT subject to local permanent establishment (PE) requirement. However, under Decree 131/2022 implementing the Cinema Law, the foreign service has to provide the contact details for a “representative in Vietnam” (Art. 15.1.b) to the Cinema Department. This local representative could be just a liaison.
- b. If the services include non-film contents in their offering, they are subject to licensing requirement, which in turns requires them to set up a local PE under the Press Law (Art. 51.3).

According to ABEI, the process for licensing works like this:

The foreign company needs to work with the provincial department of planning and investment (DPI) to set up a company in Vietnam. In the business plan, the company shall state that it wants to invest in the pay TV sector. DPI will then seek opinions from relevant ministries (MPI, MPS, MIC, MOF, MFA, MCST, etc.) on whether the latter have any objection to the company’s investment plan. When all of these ministries give their support, DPI will then make a proposal to the government to seek Prime Minister’s approval of the company’s plan. With the PM’s approval, DPI will then issue the investment certificate (IC) and the Enterprise Registration Certificate (ERC) to the new local entity. This new local company will then apply for a service license with MIC.

4. Service blocking

ABEI says they have been asked by 5 foreign SVOD services about the procedure to set up a local entity to apply for a service license under Decree 6/Decree 71. Three are Chinese and two are U.S. companies. ABEI has provided detailed instructions to these 5 companies and if they do not start the process of setting up a local entity and apply for a service license, ABEI would ask the telecom companies to block these services in Vietnam.

For all other foreign services, they can also block.

5. Content rating

Both MCST and MIC require content rating under the Cinema Law/Decree 131 and Decree 71 respectively.

Decree 131 requires the service provider to be certified by MCST as qualified for rating films in Vietnam. However, the qualifications as set out in the decree (Art. 12) are pretty standard and basically follow industry best practices.

MIC/ABEI is also drafting a circular providing detailed instructions on rating for non-film content. This circular will be issued in June.

6. Pre-censorship requirement

Pre-censorship requirement only applies to TV channels and contents about news, politics, law and order, national security and national defense.

This requirement DOES NOT apply to other types of contents, including films, general entertainment, sports, live events.

14/03/2023

For those of you who were unable to attend the RAP meeting and hear Thanh's clear and concise summary of the implications of decree 6 and the Cinema Law, below are a few bullet points of the presentation:-

- a. MIC has 2 agencies – ABEI (the Broadcasting and Information Authority) and the Cinema Law Department.
- b. The Cinema Law department does not require a license or local establishment operation in Vietnam, ABEI does.
- c. The process to set up a local office is an arduous one as an organisation has to get the PM's approval of the business plan before one can apply for the licence. The review of the business plan falls within the remit of the Department of Planning and other agencies.
- d. MIC has stated that it has no control over that part of the process overseen by the Dept of Planning but has indicated that it will provide its support to our members to the best of its ability if approached by the local provincial planning agency about the business plan.
- e. Both agencies require ratings for content. The Cinema Law and its Implementing Decree 131 accepts the existing rating system for films adopted by established SVOD services. The services merely need to complete a form via a portal established by the Cinema Law department and can then continue to run their services without waiting for a response. A response will only be forthcoming if there are any concerns/issues with the form but until such time, the service can continue uninterrupted.
- f. MIC is still working on a draft circular (to be issued in June 2023) on how to rate non-films. It has assured industry that industry principles for rating will be consistent with the Cinema law.
- g. The definition of "film" remains a grey area. Initially, MIC had indicated that "film" would include TV series. Lately, it has begun to back track on this suggestion. Our consultant has indicated that we should actively engage with both agencies to ensure that the original interpretation is adopted.

- h. MIC's requirement of a local office runs squarely in the face of the National Assembly's principle of not requiring a local office to operate. MIC has however never specifically itself required that a local office be established – all it has done is to point to the Press Law which requires that licences be issued to foreign services.

07/04/2023

[Decree 71 – Amending & supplementing of Decree 6 \(Part 3\)](#)

Draft Content rating guidelines for Decree 71

Article 2.1: Editing principles:

- Must remove content violating the Press Law, Cinema Law, controversial issues, issues not recognized by Vietnam law.
- Protect children and other vulnerable groups from inappropriate content or content that has negative impact.
- Remove content, dialogue intends to decry, disparage a character; satire body feature; words, symbols disparage Vietnamese history, culture, tradition; slangs and foul languages.
- Must remove program when, during editing content, detect images or activities at the location of the event or sporting, entertainment event that violate the law or contain sensitive political topics such as national territorial integrity, diplomatic relations, ethnicity and religion.
- Entertainment program must be edited accordingly to principles in Article 2 and its classification must be labeled. Sport program must be edited but do not have to be classified.
- For live events, entity must monitor and edit live at the point of livestreaming to ensure removing violating content upon detection.

Article 2.2: classification of entertainment program

- P: general audience
- K: parental guidance: program can broadcasted to people under 13 year old if they are watching with parents, guardians
- T13: program can be broadcasted to audience from 13 year old and above
- T16: from 16 and above
- T18: from 18 and above
- C: program cannot be broadcasted.

Article 2.3: principles in classifying program

- Lower classification level when include:
 - Verbal description instead of visual
 - Images and languages with low impact on audience
- Higher classification level when include:
 - More details, including close-up shots and slow-motion shots
 - Using accent techniques such as lighting, perspectives, and resolutions
 - Using special effects such as lighting, sound, noise, resolution, color, image size, characteristics and tones;
 - Realistic depiction instead of exaggeration
 - Encourage interaction
- Classification is based on the following factor: Content; Violence; Nudity and sex; Drugs, additives; Horror; Crude visuals, audio, language; Dangerous, replicable acts.

Article 2.4: warning principles

- For entertainment programs from K to T18, sports programs including extreme sports, combat spots, martial arts: must display warning
- For entertainment programs that are reality show, performance, competition or performance of extreme, dangerous act that can cause injury, reenactment: must include warning for audience not to try at home. These programs must have warning displayed at the bottom of the screen during the program.

19/05/2023

[Personal Data Protection Decree \(Part 2\)](#)

- A few weeks ago, the government of Vietnam issued its **Personal Data Protection Decree** (PDPD), now called Decree 13, which has been under discussion since 2019. I have attached an English translation of the Decree. The Decree is now known as Decree No. 13/2023/ND-CP was issued on 17 April 2023 and is set to take effect on July 1 without any transition period. The Decree retains a number of unhelpful and unclear provisions, has an extra-territorial scope of application, and has a broad definition of personal data and data processing along with onerous requirements around data flows out of Vietnam. Also of note is more onerous and active consent requirements from individuals. Whilst this Decree has now been issued and therefore the measures included are fixed, there remains a number of areas that are unclear or the process has yet to be defined.
- Although the Decree itself is no longer open for comments, AVIA has a number of concerns about the obligations and the timeline for implementation. If member's have any issues, they would like us to raise, please let me know by the end of next week.
- We would also urge members who do business in Vietnam to urgently review this Decree to ensure they understand their obligations.

04/08/2023

[Decree 71 – amending & supplementing Decree 6 \(Part 4\)](#)

Following on from the update given at the R&AP meeting in April, on 30 June MIC issued Circular 6, the implementing guidelines for Decree 71 on editing, ratings and warnings for OCC content related to sports and entertainment content. These guidelines come into effect on 15 August. This circular mostly mirrors the Cinema Law circular in terms of content rating and does not apply to news or political programming.

[Decree 72 - Management, Provision and Use of Internet Services and Online Information \(Part 5\)](#)

The decree which regulates internet services and online information including but not limited to online gaming services, social network services, and the provision of 'public information' on a cross-border basis that broadly captures any services and/or applications that may be made available to Vietnamese users. Originally MIC had proposed amending this decree but the substantial changes required have meant that a new draft decree has been issued for consultation, which will supersede Decree 72. This has a limited impact on the VOD industry but will have a wide-ranging impact on the various social network platforms who will be held liable for UGC content on their platform being in breach of local legislation.

03/07/2024

[Advertising Law & Issue regarding Advertisement of Gambling in Live broadcasts](#)

Advertising – back in April we were alerted to potential area of concern when a pay TV company inadvertently screened an international football match involving Vietnam and played outside of Vietnam which carried advertising (on a hoarding) for a Vietnamese gambling organisation, in Vietnamese. Whilst regulations preventing advertising of gambling had been in place for many years, this blatant disregard brought the attention of MIC and MPS onto the issue. Their immediate reaction (after a fine for the local carrier) was to enforce the ban on any form of advertising, regardless of source or audience. And this was the first time that MIC had issued any fine, despite the directive on advertising of gambling ([Directive 16/23](#)) being in place for over a year. Clearly this potentially causes a challenge for sports fixtures, with teams often carrying gambling sponsorship on kits or around grounds. After much engagement, with evidence supplied by AVIA in support, the local companies were able to persuade the government that a blanket ban would be unworkable and out of line with other regulators who also had similar regulations against gambling advertising but weren't enforcing it for international feeds. At least for the Euros the government has agreed that as long as the advertising is not in Vietnamese nor advertising Vietnamese companies, they will allow it to proceed. We will continue to work with local members to expand this approach. In parallel, the Ministry of Culture is revising the Advertising Law which is 12 years old. We anticipate this revision will include regulations focused on cross-border advertising which may affect OCC providers, as well as pre-approval for all advertisements which will affect linear TV. Once the draft is issued we'll share it with members.

[Personal Data Protection Law](#)

Back in Feb the government announced that a new Law on Personal Data Protection would be developed to replace the previous one (Decree 13) which was issued in 2023. This will be upgraded to deal with the current potential conflicts between Decree 13 (PDPD) and other existing regulations on personal data protection. Proposals are due in Q4 which we will share in due course.