

Legal Issues Involving Generative AI Under Vietnamese law: Copyright and Personal Data Protection

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1. Introduction

Like many other countries around the globe, artificial intelligence (“AI”), and particularly generative artificial intelligence (“GenAI”)¹ like ChatGPT, has been a hot topic of discussion in Vietnam recently, because of its undeniable benefits and opportunities for humanity, including shaping new ways of living, studying, and working in the modern world. The Government of Vietnam considers AI technology and related products to be bold motivation for directing economic and social development in the Fourth Industrial Revolution and as breakthrough technology for Vietnam during the next ten years.

The other side of the coin is that GenAI also creates many legal issues, which relate to its development and utility, that might be difficult to resolve due to the novelty of AI and the delay in updating applicable legal frameworks. In this article, we will focus on copyright and personal data protection issues that GenAI might cause, and briefly update recent developments in the legal framework relating to AI in Vietnam. Due to technological complexity, in this article, we simplify GenAI and related concepts as follows, and limit our analysis to the following two main actors:

“GenAI”	means a type of AI technology used to generate or create Generated Data that has characteristics or regularities similar to the Training Data.
“Users”	means those who use GenAI services and, if necessary, customize those services to improve the Generated Data for their own business purposes. Normally, non-AI companies (including law firms) fall into this category.
“Service Providers”	means those who develop GenAI Services to be provided to their customers, either based on GenAI (e.g., ChatGPT and DALL-E) or using API to connect to GenAI developed by a third party. These exclude AI model developers that create the AI language model itself (e.g., OpenAI LP for GPT).
“GenAI Services”	means services developed by Service Providers based on GenAI. An Application Programming Interface (API) may be used to develop and provide GenAI Services

¹ Simply put, GenAI is based on artificial neural network technology, comprised of numerous parameters (e.g., internal values). Two types of GenAI have been attracting attention in recent years: “large language” models (such as those used in services like ChatGPT, Bing AI, Bard, etc.) and “image generation” models (such as those used in services like Midjourney, Stable Diffusion, Firefly, etc.), but in principle the legal concerns are the same. GenAI that imitates a specific person’s voice also raises potential legal issues regarding the rights of performers (e.g., voice actors).

	if the GenAI is developed by a third party.
“Data”	includes any text, images, materials, photos, audio, video, and all other forms of data or communication.
“Generated Data”	means the new data (output) that Users obtain through GenAI Services provided by Service Providers.
“Training Data”	means the data (input) that is entered when developing GenAI, to which Users normally do not have access.

Finally, we will examine the legal issues involved in the three stages of AI development and utility that Users and Service Providers should be aware of, including (i) creation and training of a machine learning model with a large Training Data set and continuing to train the model using Data in a specific field (i.e., fine turning), (ii) User prompts (e.g., chat input or images); and (iii) AI output based on prompts in the form of Generated Data.

2. Copyright Issues

(1) Overview of copyright and related laws regulating GenAI in Vietnam

The intellectual property laws of Vietnam, and copyright laws in particular, do not contain specific regulations governing AI and related products. Thus, there is a high level of uncertainty when dealing with copyright and related issues involving GenAI in Vietnam. Given the lack of specific legal regulations, provision of GenAI Services and the use of GenAI will be subject to the general regulations governing intellectual property and copyright (i.e., the IP Law² and its guiding legislation.³)

In general, unless a use falls within the Copyright Exceptions (as discussed below), use of copyrighted works, such as copying or distribution, without permission from the owners of the works constitutes infringement of copyright, i.e., a violation of economic rights.⁴ The IP Law contains several exceptions, in which (i) protected works may be used without the permission of the copyright owners, and without payment of royalties, *provided that* information about the author and origin of the relevant work must be presented, and (ii) protected works may be used without permission from the copyright owners, *provided that* royalties must be paid and information about the author and origin of the relevant works must be presented (collectively, “**Copyright Exceptions**”).⁵ Some examples of Copyright Exceptions are:

- Making one copy of a copyrighted work for purpose of scientific research or study by an individual on a non-commercial basis. This regulation does not apply to copies made by copying devices.⁶

² Law on Intellectual Property No. 50/2005/QH11 dated 29 November 2005, as amended in 2009, 2019 and 2022 (“**IP Law**”).

³ Decree No. 17/2023/ND-CP issued by the Government of Vietnam on 26 April 2023 (“**Decree 17**”).

⁴ Article 28.2 of the IP Law. Generally speaking, determining copyright infringement involves considering the scope of protection for original works, including the originality of creation and expression. To assess infringement, it is necessary to compare the copy/work with the original, focusing on originality, creative expression, completion date, and the author’s access to existing work. Infringement occurs when the copy reproduces a copyrighted work, constitutes part or all of a copyrighted work, or includes elements from another’s copyrighted work.

⁵ Article 25 of the IP Law.

⁶ Article 25.1(a) of the IP Law. Copying devices are defined in Decree 17 as devices that can perform a copying function and have all or part of the relevant components automated, with or without payments made by persons not affiliated to organizations possessing, owning, or using the devices for commercial purposes (Article 25.2 of Decree 17).

- Reasonable copying of part of a work using a copying device for purposes of scientific research or study by an individual on a non-commercial basis.⁷
 - If a work that has been fixed in audio or video recordings by its copyright owner is published for commercial purposes, other organizations and individuals may use that recording in business operations without having to obtain permission, but the royalties have to be paid to the copyright owner under an agreement as soon as the work is used.⁸

One important note: Copyright Exceptions in Vietnam do not include the fair use doctrine or similar principles that might cover use of copyrighted works with GenAI. Therefore, in theory, it is quite clear that use of copyrighted data with or by GenAI constitutes copyright infringement in Vietnam.

(2) The risk of copyright infringement during the input phase

In providing GenAI Services and using GenAI, Service Providers need to input Data as Training Data for GenAI Services, and Users need to input Data to enable GenAI to create Generated Data. In this input phase, both Service Providers and Users might face copyright infringement risks if the Data input as Training Data and at the User prompt stage includes copyrighted works owned by others and if the intended use (copy and paste) for purposes of GenAI is not permitted by the copyright owners. As discussed in Section 2(1) above, any commercial use of copyrighted works without permission (except for certain limited business purposes) is considered copyright infringement in Vietnam. Given the current legal framework in Vietnam, and given that the use of input Data (including copyrighted works) by Service Providers as Training Data for purposes of providing GenAI Services to Users obviously is a use “for commercial purposes,” in theory Service Providers will be infringing the copyrights of others. Theoretically speaking, the same applies to Users who use the input Data (including copyrighted works) at the User prompt stage for business purposes; they will be exposed to the same risks as Service Providers if no permission is received from the copyright owner.

In the case of non-commercial purposes, individual Users might claim to enjoy Copyright Exceptions if the use of copyrighted works in the User prompt stage is for purposes of scientific research or study. However, please note that the current legislation does not clarify the meaning of “scientific research purposes” and “study purposes.” In addition, the use of a copyrighted work for a purpose that qualifies as a Copyright Exception cannot and must not be contrary to the normal use of the work, and must not cause unreasonable damage to the lawful interests of the author or copyright owner. Again, there is no clear guidance on this requirement and, as a matter of practice, it is determined on a case-by-case basis. For these reasons, the availability of Copyright Exceptions for formulation of Generated Data from GenAI, even on a non-commercial basis, needs to be approached with caution, and failure to invoke Copyright Exceptions properly will lead to copyright infringement (i.e., infringement of the rights to reproduce works: duplicating or creating copies of works without permission from the copyright holders).⁹

⁷ Article 25.1(b) of the IP Law. For works in written form, reasonable copying is defined in Decree 17 as no more than 10% of the total page count, storage unit (bytes), word count of the publication, or general length of publication in the case of works provided in the form of unpaginated electronic publications (Article 25.3 of Decree 17).

⁸ Article 26.1(b) of the IP Law. Business operations includes restaurants, cafes, hotels, stores, supermarkets, playgrounds, recreation areas, shopping malls, sports clubs, health care - beauty centers, karaoke venues, bars, discotheques, during operation of aviation sector, public transportation, similar business and commercial operations (Article 34.1 of Decree 17).

⁹ Article 28.2 of the IP Law, Articles 64 and 66.1(g) of Decree 17.

(3) The risk of copyright infringement in the output phase

In the output phase, GenAI uses User prompts to create Generated Data, using the Training Data and the Data input by the relevant User. If Generated Data is a partial or complete reproduction of a copyrighted work, or if it contains the characters, symbols, characterization, or details of a copyrighted work, the resulting works will be deemed to meet the elements of copyright infringement.¹⁰ Thus the use of Generated Data which is a copy of, or similar to, protected works for business purposes may infringe copyright.

However, as IP Law and litigation practices in Vietnam do not establish a clear test for the similarity required to constitute copyright infringement, a copyright owner may face challenges in meeting the burden of proof to establish infringement where AI-generated works are similar to the copyright holder's protected works.

Assuming that copyright infringement has been established, both Users and Service Providers may be liable for the damages suffered by the copyright owner. According to Article 587 of the Civil Code, where several persons jointly cause damage, they must jointly compensate the aggrieved person. In this case, liability is determined based on the extent of each person's fault, and if the extent of the fault cannot be determined, the tortfeasors are held equally liable.¹¹ In addition, both Users and Service Providers may be subject to an administrative fine of up to VND 70 million and the removal of the infringing copies.¹² If copyright infringement is committed on a commercial scale¹³, or results in illegal profits of VND 50 million or more, or causes a loss of VND 100 million or more to the copyright owner, or where the violating goods are assessed at VND 100 million or more, the relevant Users and/or Service Providers may be subject to criminal liability (e.g., monetary fines or imprisonment).¹⁴

(4) The degree of risk

As mentioned above, theoretically speaking, the use of copyrighted works with GenAI is likely to infringe copyright in Vietnam. However, given that there is no clear legal framework regulating GenAI in Vietnam, due to its novelty, and as it appears to us that copyrights are not enforced seriously in Vietnam due to the inconvenience of judicial procedures, the degree of substantive risk might be low, depending on the situation. If you would like to use GenAI and take the risk, you should consider and assess the degree of risk carefully, taking into account the specific situation and circumstances.

(5) The protectability of GenAI and Generated Data

As discussed in Section 2(1) above and Section 4 below, Vietnam does not have particular legislation dealing with AI and products created using AI. Therefore, whether or not Generated Data and GenAI can be protected

¹⁰ Article 66.3 of Decree 17.

¹¹ Article 585.2 of the Civil Code also provides that the compensation payable by a person who is liable for compensation may be reduced if the relevant damage was caused unintentionally.

¹² Article 18 of Decree No. 131/2013/ND-CP issued by the Government of Vietnam on 16 October 2013.

¹³ There is currently no official guidance as to the definition of the term "commercial scale" under the laws of Vietnam.

¹⁴ Article 225 of the Penal Code.

based on current regulations might be controversial and complex.

Under current law in Vietnam, a copyrightable work is protected if:

- it is created and fixed in a certain material form, whether or not the work has been published or registered.¹⁵
- it is created personally by authors through their intellectual labor, without copying the works of others,¹⁶ where “authors” is defined as the persons that directly create the work.¹⁷

GenAI, as a computer program, generally is eligible to be protected as a copyrighted work or, more specifically, as a computer program/literary work.¹⁸ If that is the case, Service Providers (if the Service Providers are individuals), or the personnel of the Service Providers (if the Service Providers are organizations), might be deemed “authors” of GenAI. The Users for whom GenAI is customized, and the persons whose data is used as Training Data, even if participating in the development of GenAI by supporting or providing opinions or data, will not be deemed “authors” of GenAI.¹⁹

Generated Data, on the other hand, is far more legally complex than GenAI. GenAI, as a computer program, does not function on its own without a human being; therefore, it is only a tool or a medium that comes in handy for Users to create Generated Data. Generated Data that is created by Users and satisfies the statutory conditions explained above might also be eligible for protection as a copyrighted work. In that case, the Users (if the Users are individuals), or the personnel of the Users (if the Users are organizations) might be deemed the authors of the Generated Data. Current copyright regulations in Vietnam imply that the creator of a protected copyright work must be a human being; therefore, GenAI cannot be considered an “author” of Generated Data.

3. Issues relating to protection of personal data

(1) Overview of personal data protection law in Vietnam

In Vietnam, the concept of “personal data” was not used until the enactment of Decree No. 13/2023/ND-CP of the Government of Vietnam dated 17 April 2023 on personal data protection (“**Decree 13**”),²⁰ which is the most

¹⁵ Article 6.1 of the IP Law.

¹⁶ Article 14.3 of the IP Law.

¹⁷ Article 12a of the IP Law.

¹⁸ Articles 14.1.(m) and 22.1 of the IP Law.

¹⁹ Article 12a.2 of the IP Law.

²⁰ Before the enactment of Decree 13, Vietnam used various terms equivalent to personal data, like “personal information”, “personal secret”, and “private information”, and protection for those concepts is provided in various legal documents, such as Civil Code No. 91/2015/QH13, Law No. 86/2015/QH13 on cyber-information security (as amended), Law No. 67/2006/QH11 on information technology (as amended), Law No. 24/2018/QH14 on cyber security, Law No. 59/2010/QH12 on consumer right protection, Decree No. 53/2022/ND-CP detailing some articles of the law on cybersecurity, and Decree No. 72/2013/ND-CP on the management, provision, and use of internet services and online information (as amended). As such, it can be seen that the regulations on personal data protection before 1 July 2023 are inconsistent and fragmented. Nevertheless, all PDP regulations, including new Decree 13, currently are in effect; therefore, activities relating to and involving personal data must comply with these regulations, as applicable. For purposes of this article, we mention the direct and unified regulations on personal data protection under Decree 13 only.

comprehensive legal instrument specifically providing for personal data protection (“**PDP**”) and took effect on 1 July 2023. The promulgation of Decree 13 shows that lawmakers in Vietnam are taking a serious approach to the protection of personal data, as well as keeping up with regional and international trends in PDP. Decree 13 applies to: (i) Vietnamese individuals, organizations, and agencies (including those having offshore operations), (ii) foreign individuals, organizations, and agencies in Vietnam, or (iii) foreign individuals, organizations, and agencies who/that directly participate in or otherwise are related to the processing of personal data in Vietnam.²¹ There is currently no detailed explanation or guideline on how the last governed subject in item (iii), especially the expression of “*directly participate in or otherwise are related to the processing of personal data in Vietnam*”, should be construed. This results in vagueness concerning extraterritoriality in Vietnam and might leave room for the competent authority to interpret the phrase broadly and flexibly, or even arbitrarily subject to its intent, from time to time and on a case-by-case basis. One of the possible interpretations of item (iii) is all offshore entities that process (e.g., store, process, share or transfer) Vietnamese citizens’ personal data, *regardless of their location*.

Decree 13 does establish certain fundamental definitions, including:

“*Personal data*”, which means information in the form of symbols, letters, numbers, images, sounds, or the equivalent in an electronic environment that is about a specific individual or helps to identify a specific individual, including basic personal data and sensitive personal data.²² “*Information that helps to identify a specific individual*” means information created from or based on the activities of an individual that can be used to identify that individual when combined with other data.²³

“*Personal data processing*”, which means one or more activities affecting personal data, such as: collection, recording, analysis, confirmation, storage, correction, disclosure, association, access, retrieval, revocation, encryption, decryption, copying, sharing, transmission, provision, transfer, deletion, and/or destruction of personal data, or other related actions.²⁴

In addition, obtaining the consent²⁵ of and sending privacy notices to data subjects,²⁶ i.e., individuals to whom personal data relates, are two crucial requirements for processing personal data. In Vietnam, the Department for Cybersecurity and Hi-tech Crime Prevention – a subordinate body of the Ministry of Public Security (“**A05**”) are the key authorities with responsibility for control of PDP.²⁷

For more details about Decree 13, please have a look at our PDP newsletter [here](#).

²¹ Article 1.2 of Decree 13.

²² Article 2.1 of Decree 13.

²³ Article 2.2 of Decree 13.

²⁴ Article 2.7 of Decree 13.

²⁵ Article 11 of Decree 13.

²⁶ Article 13 of Decree 13.

²⁷ Article 29 of Decree 13.

(2) The risk of violation of rules governing the protection of personal data by Users and Service Providers

As discussed in Section 1 above, to train GenAI, Service Providers must enter Training Data, which may include personal data, into GenAI. Users must enter data into GenAI in order to use GenAI and obtain Generated Data effectively. By collecting and processing the personal data of data subjects as Training Data for the provision of GenAI Services, and as input Data for purposes of obtaining Generated Data using GenAI, Service Providers and Users become data controllers²⁸ or data processor-controllers pursuant to Decree 13,²⁹ and must observe certain obligations concerning the duty to obtain the consent of, and sending privacy notices to, data subjects before processing their personal data (assuming that no Consent Exceptions (as defined below) apply), along with other relevant obligations. The risk of Users and Service Providers violating PDP regulations may be high if they cannot identify and control the personal data input into GenAI for purposes of providing GenAI Services or creating Generated Data.

Decree 13 leaves room for processing personal data without the consent of data subjects in appropriate circumstances, which include: (1) to protect the lives and health of data subjects or others in emergency situations (however, controllers, processors, processor-controllers and third parties that are allowed to process the relevant data without consent from the data subjects must prove eligibility to do so); (2) public disclosure of personal data when compelled by law to do so; (3) processing by competent authorities (i) in emergency situations involving national defense, national security, social security and order, mass disasters, or dangerous epidemics, (ii) when there is a threat to national defense and security but an announcement of a state emergency has yet to be made, (iii) to prevent and fight riots, terrorism, crimes, and legal violations; (4) to implement contractual obligations of data subjects to relevant bodies, organizations, and individuals in accordance with the law; and (5) to serve the operation of state authorities as set forth in specific laws (collectively, “**Exceptions to Consent**”).³⁰ However, it seems that those Exceptions to Consent are mainly based on the public interest or the interests of the data subjects themselves, as opposed to the interests of data controllers or data processor-controllers. Users and Service Providers input personal data into GenAI for their own purposes; therefore, they might not be exempt from obtaining the consent of data subjects pursuant to the Exceptions to Consent.

As noted in Section 3(1) above, the extraterritorial application of Decree 13 is broad and might apply even to foreign individuals, organizations or bodies located outside Vietnam who/that directly engage in or are related to the processing of personal data in Vietnam, in particular those that process personal data of Vietnamese citizens. As a result, even offshore Service Providers or foreign Users might be obligated to comply with the compulsory requirements in Decree 13 when using Vietnamese citizens’ personal data for GenAI and GenAI Services, including obtaining consent from the relevant data subject(s), performing data processing impact assessments and overseas transfers of personal data, and submitting assessment dossiers to A05 within the statutory timeline, if the data is transferred abroad (i.e., GenAI servers are located overseas), along with other

²⁸ Article 2.9 of Decree 13.

²⁹ Article 2.11 of Decree 13.

³⁰ Article 17 of Decree 13.

obligations.³¹ To date, no regulations on handling cybersecurity violations (including those involving PDP) have been issued. In the most recent draft decree on administrative penalties for cybersecurity violations, the competent authority may levy penalties of up to five times the prescribed monetary fine or 5% of the enterprise's revenue in the Vietnamese market for certain violations relating to PDP.

As mentioned above, theoretically speaking, use of personal data with GenAI is likely to violate Decree 13 unless the consent of the data subjects is obtained and the Users or Service Providers also comply with other relevant statutory obligations. However, the degree of substantive risk may be uncertain, depending on the situation, as data protection practices in Vietnam are immature and A05 appears to have relaxed the enforcement of Decree 13, at least for now. If you would like to use GenAI and take this risk, you should consider and assess the degree of risk carefully, taking into account the specific situation and relevant circumstances.

4. Recent developments in the AI legal framework in Vietnam

Currently, Vietnam does not have a specific, direct legal framework for AI and GenAI, and Vietnam's AI regulations are at a very early stage. In fact, on 26 January 2021, the Prime Minister of Vietnam issued development strategies on artificial intelligence, specifically, Decision No. 127/2021/QĐ-TTg. One of the strategic directions of this decision is formulating and completing policies and laws to create a legal corridor to meet the requirements of promoting research, development, and application of AI in practice,³² however, there is no clarification or schedule to development of this legal corridor.

On 30 January 2022, in Resolution No. 13/NQ-CP, the Government of Vietnam approved a legislation development plan that agreed on the need to build a Law on the Digital Technology Industry that will deal directly with AI products. After that, in early 2022, the Ministry of Information and Communications (MIC) circulated the first outline of the draft law for public opinion, in which there is a chapter dealing with AI products. However, no detailed provisions have been announced or circulated yet. In addition, the MIC currently is drafting a national technical regulation for AI, but the schedule for release of the draft remains unclear. As of now, we have not heard of any updates to or on either draft.

As a result, it looks as if currently there is no legislation directly regulating AI or GenAI in Vietnam.

5. Conclusion

When developing and using GenAI and GenAI-generated works in business, Service Providers and Users must give serious consideration to the legal issues relating to intellectual property rights and PDP, to ensure compliance with applicable regulations and avoidance of significant liability, specifically, the legal ramifications of collection, formulation, storage of Training Data, prompt inputs, and the use of AI-generated works. Given the current, limited legal framework and the lack of precedents in which courts or other competent authorities have addressed these issues involving GenAI, many businesses in Vietnam have decided to take legal risks,

³¹ Of note, in addition to those obligations mandated by Decree 13, Service Providers might be subject to data localization requirements under the law of Vietnam (i.e., storing certain data relating to Users in Vietnam) upon A05 request, if applicable.

³² Section III.1 of Article 1 of Decision 127/2021/QĐ-TTg issued by the Prime Minister of Vietnam on 26 January 2021.

at least to some extent, in exchange for the advancements in business development offered by GenAI. You may choose to make the same decision; however, we recommend that you carefully consider and assess the degree of risk in each situation.

In order to respond to the business needs of our clients, we publish newsletters on a variety of timely topics. Back numbers can be found [here](#). If you would like to subscribe to the N&A Newsletter, please fill out [the N&A Newsletter subscription form](#).

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