

FOREIGN TECH COMPANIES IN VIETNAM

CHALLENGES AND FAILURES IN
UPHOLDING HUMAN RIGHTS

TRINH HỮU LONG

FOREIGN TECH COMPANIES IN VIETNAM: CHALLENGES AND FAILURES IN UPHOLDING HUMAN RIGHTS

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Trịnh Hữu Long

Editor-in-Chief

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US Office: 1520 E. Covell Suite B5 - 426, Davis, California, United States 95616

Taiwan Office: 3rd Floor, RIIC Building, National Chengchi University, No. 64, Sec. 2, Zhinan Rd., Wenshan Dist., Taipei City, Taiwan (ROC) 116

Email address: info@liv.ngo

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Correction: An earlier version of this report incorrectly referred to "Article 33" instead of "Article 331" on page 38.

Update: This version includes a new design on the back cover.

EXECUTIVE SUMMARY

In this report, Legal Initiatives for Vietnam (LIV) investigates the operations of major foreign tech companies in Vietnam to assess their human rights policies and practices regarding freedom of expression and the right to privacy. The report aims to contribute to the broader discussion on the tech sector's human rights responsibilities in authoritarian contexts, identifying challenges and recommending policies and practices aligned with international human rights law.

The report begins by introducing the political and legal context of Vietnam, a market-Leninist regime where the authoritarian government, led by the Vietnamese Communist Party, embraces an open and competitive market economy. While this political regime, governing a population of 100 million, offers attractive business opportunities, it also poses significant risks to businesses, including the tech sector.

Readers will find a detailed account of the laws and regulations impacting foreign tech companies, including the Law on Information Technology, the Law on Cybersecurity, Decree 72/2013/ND-CP, Decree 15/2020/ND-CP, Decree 53/2022/ND-CP, and Decree 13/2023/ND-CP. These laws not only heavily restrict Vietnamese citizens from exercising free speech online by criminalizing online speech but also compel tech companies to cooperate extensively with the government in moderating content and providing access to users' data. As the report demonstrates, Vietnam's Internet governance is based on a legal system intentionally designed to be vague and overbroad, allowing for arbitrary interpretation and actions by the state. Often, these regulations and actions do not meet the Three-Part Test under the United Nations' International Covenant on Civil and Political Rights (ICCPR).

Additionally, the report examines a draft decree on Internet governance expected to be issued in 2024, which will play a central role in controlling the Internet in Vietnam. The drafters explicitly aim to force social networks, regardless of the platforms' nationality, to verify users' identities if they wish to continue operating in Vietnam. Combined with

other regulations, this draft decree puts Vietnamese users at risk of having their real identities exposed to the authorities.

The core part of the report provides a detailed account of how major foreign tech companies such as Meta/Facebook, Google, Netflix, TikTok, and Apple handle legal requirements and government requests on online speech and users' data.

Our findings show a concerning situation where these companies almost always comply with an increasing number of content moderation requests from the Vietnamese government, with the compliance rate consistently above 90% over the years, including geographical restrictions and content removals. At the same time, the government and some tech companies acknowledge that a significant portion of the restricted or removed content is government criticism, which is protected speech under international human rights law. Notably, Meta even maintains a secret list of Vietnamese Communist Party's officials who are immune from criticism on their platform, Facebook.

Regarding users' data, our findings demonstrate a positive practice by the companies, with a very low number of government requests being complied with. Additionally, these companies—with the exception of TikTok, for which we lack evidence on the location of Vietnamese users' data—consistently store users' sensitive data outside the country while maintaining cache servers in Vietnam where non-sensitive users' data is processed.

The report also highlights an alarming trend of the Vietnamese government deploying cyber troops and trolls to manipulate online discussions, spread disinformation, and make false reports on platforms such as Facebook and YouTube. The government-backed Force 47's and Task Force 35's operations have been overwhelmingly effective in manipulating Facebook and YouTube, targeting government critics, including human rights defenders and marginalized communities, while these platforms have taken almost no concrete actions to prevent them.

However, the report also shows instances of foreign tech companies clashing with the government, indicating both a significant resistance to the government's illegitimate requests and their inability to fully comply with these requests. Facebook notably suffered a severe traffic slowdown in

early 2020 due to government intervention and could only restore normal operations after agreeing to censor more political content. Other tech companies have faced major pressure from the government to open local offices and allow government inspectors access.

Although the report focuses on foreign tech companies' operations, it also provides examples of how Vietnamese users are punished criminally and administratively by the government. These examples should inform the companies about the costs their users must pay to exercise basic human rights.

Finally, the report offers a list of recommendations for both foreign tech companies and governments to improve human rights policies and practices in the tech sector. Recommendations for tech companies include resisting the government's illegitimate requests for content moderation and user data, implementing end-to-end encryption to protect user data, removing government-backed forces that manipulate platforms, being more transparent in handling government requests, and supporting nonprofits and human rights defenders. For governments, the recommendations include enforcing existing treaties with the Vietnamese government to ensure a free and open Internet, introducing more human rights-friendly legislation, and holding tech companies accountable for their overseas human rights practices.

TABLE OF CONTENTS

ACKNOWLEDGEMENT	2
EXECUTIVE SUMMARY	3
CHAPTER I: INTRODUCTION	7
CHAPTER II: VIETNAM’S INTERNET IN A GLANCE	9
CHAPTER III: VIETNAM’S INTERNET REGULATIONS	14
1. The authoritarian nature of the state and the legal system	14
2. Laws and regulations on censorship	15
a) The Penal Code	15
b) The Law on Information Technology	16
c) Decree 72/2013/ND-CP	18
d) The Cybersecurity Law	19
e) Decree 15/2020/ND-CP	20
f) Decree 53/2022/ND-CP	21
3. Regulations on personal data protection	22
4. What’s next for Internet regulations?	25
CHAPTER IV: FOREIGN TECH COMPANIES’ OPERATIONS IN VIETNAM.....	27
1. How user data is stored and handled	27
2. How content is moderated	29
3. Foreign platforms’ dealings with government-run cyber troops that manipulate online discussions: The cases of Force 47 and Task Force 35.	32
4. Meta’s assistance to the government’s propaganda	35
5. Tech companies’ tension with the government	38
6. Criminal cases against users	40
7. Administrative fines cases against users	44
CHAPTER V: RECOMMENDATIONS	46

CHAPTER I: INTRODUCTION

This report aims to understand the operations of international tech companies in Vietnam concerning freedom of speech and the right to privacy, viewed through the lens of international human rights law, including the United Nations' Guiding Principles on Business and Human Rights (UNGP). Throughout the report, we examine (1) the political, legal, and economic context in which these companies operate and (2) their human rights practices in the areas of free speech and privacy. Finally, we aim to recommend ways to improve their human rights practices, balancing their commitments to both business and human rights protection.

Internet freedom is under threat globally. Major tech companies such as Meta (formerly Facebook), Alphabet (formerly Google), Apple, TikTok, and Netflix play a pivotal role in how free speech and privacy are upheld in the digital realm. Despite being recognized as universal values, the implementation of free speech and privacy is influenced by two main factors: the profit-driven goals of businesses and the control-driven aims of governments. While businesses generally maintain consistent profit motives across different markets, governmental intervention varies widely, ranging from full democracies to totalitarian regimes.

Vietnam exemplifies a resilient form of authoritarianism, characterized by its market-Leninist regime.¹ This regime combines a market economy with strict societal control, maintained through a massive Leninist system where power is centralized in the vanguard role of a communist party. Foreign companies, including international tech platforms, have significant access to these market economies but must navigate a challenging political and legal system deeply rooted in authoritarianism. Alongside China, Vietnam represents this unique authoritarian model. Both countries are categorized as “Not Free” countries by Freedom House’s Freedom on the Net Annual Reports, although Vietnam (22/100) is significantly scored higher than China (9/100).²

¹ London, J. D. (2020). China and Vietnam as Instances of Consolidated Market-Leninism. In A. Hansen, J. I. Bekkevold, & K. Nordhaug (Eds.), *The Socialist Market Economy in Asia: Development in China, Vietnam and Laos* (pp. 69–114). Springer. https://doi.org/10.1007/978-981-15-6248-8_3

² Explore the Map. (2019). Freedom House. <https://freedomhouse.org/explore-the-map?type=fotn&year=2023>

Examining the human rights practices of international tech companies operating in such a market can contribute to the broader discussion on business and human rights.

CHAPTER II: VIETNAM'S INTERNET IN A GLANCE

Vietnam today embodies both a burgeoning Internet market and a restrictive digital landscape. The country has made substantial investments in its digital economy while simultaneously imprisoning prominent figures like Trần Huỳnh Duy Thức for their online expressions.

Vietnam first connected to the Internet on 19 November 1997, when access was costly and quality limited. By 2002, only 1.9 million people were online, but the introduction of ADSL in 2003 sparked rapid growth to 3.1 million users. As of 2020, nearly 70 million Vietnamese, roughly 70% of the population, had Internet access.³

Internet speeds have surged with advancements like fiber broadband (2009), 3G (2009), and 4G (2016), with 5G slated for widespread adoption by 2024-2025.⁴

This connectivity has empowered Vietnamese to engage in political discourse, challenging government policies and promoting human rights and democracy. Since the early 2000s, online platforms have played a crucial role as avenues for dissent, despite efforts by the state to suppress free speech. Notable instances of government crackdown on online speech date back to 2002-2003, with the arrests or convictions of Nguyễn Khắc Toàn (2002), Phạm Quế Dương (2002), Trần Văn Khuê (2002), Lê Chí Quang (2002), Nguyễn Đan Quế (2003), Phạm Hồng Sơn (2003), and Nguyễn Vũ Bình (2003).^{5 6} Since then, the Internet has become the primary medium through which most human rights defenders, dissidents, and political activists who have been jailed communicate with their audience.

Both overseas and domestic Vietnamese have utilized the Internet to spark a new wave of non-state media through various forms such as blogging and journalism. One of the earliest and most influential platforms

³ VnExpress. (2022, November 18). 25 năm phát triển Internet Việt Nam. Vnexpress.net; VnExpress. <https://vnexpress.net/25-nam-phat-trien-Internet-viet-nam-4536367.html>

⁴ Diệp Ninh (TTXVN/Vietnam. (2022, November 19). Internet Việt Nam: 25 năm phát triển và những bước tiến vượt bậc | Công nghệ | Vietnam+ (VietnamPlus). VietnamPlus; VietnamPlus. <https://www.vietnamplus.vn/Internet-viet-nam-25-nam-phat-trien-va-nhung-buoc-tien-vuot-bac/829947.vnp>

⁵ Vietnam's Crackdown on Cyber-dissidents. (2003, June 18). Human Rights Watch. <https://www.hrw.org/news/2003/06/17/vietnams-crackdown-cyber-dissidents>

⁶ Vietnam urged to free cyber-dissidents. (2005, September). The Sydney Morning Herald; The Sydney Morning Herald. <https://www.smh.com.au/national/vietnam-urged-to-free-cyber-dissidents-20050902-gdlzji.html>

was *Talawas* (2001-2010), founded by intellectuals abroad and led by renowned writer Phạm Thị Hoài.⁷ The late 2000s witnessed a wave of domestic non-state media entities with the establishments of blogs such as *Change Vietnam* (Trần Đông Chấn – 2006-2009),⁸ *Ba Sàm* (2007-2017)⁹ and *Boxitvn* (2009-present).¹⁰ The movement continued in the 2010s with other websites such as *Việt Nam thời báo* (Vietnam Times), *Luật Khoa tạp chí* (Luật Khoa Magazine), and *The Vietnamese Magazine*. These websites played a crucial role in educating the Vietnamese public about politics, directly challenging the Vietnamese Communist Party's propaganda and media monopoly.

Moreover, the Internet, particularly platforms like Yahoo! 360 and Facebook, has played a crucial role in catalyzing challenges to the Vietnamese Communist Party (VCP) through protests. Communities formed on the blogosphere and social media have swiftly translated into collective actions in the physical realm. The first notable protests erupted in late 2007 and early 2008 against China's actions in the South China Sea, followed by anti-China demonstrations in 2011 and 2014 addressing the same issue.¹¹

Beginning in 2015 and 2016, Vietnamese citizens increasingly utilized platforms like Facebook to organize protests focused on environmental concerns.¹² ¹³ Most significantly, in June 2018, widespread demonstrations unfolded across major Vietnamese cities in opposition to the draft Cybersecurity Bill and the draft Special Economic Zone Bill. These protests resulted in the VCP withdrawing the draft Special Economic Zone Bill from the legislative agenda, marking a significant victory for digital activism in Vietnam.¹⁴

⁷ talawas – Thông báo cuối cùng : talawas blog. (2023). Talawas.org. <https://www.talawas.org/26951>

⁸ Trần Đông Chấn Blog. (2013, April 3). Trần Huỳnh Duy Thức; Trần Huỳnh Duy Thức. <https://tranhuynhduythuofficial.wordpress.com/tran-dong-chan-blog>

⁹ Tháng Chín 2007 – BA SÂM. (2017). BA SÂM; BA SÂM. <https://anhbasam.wordpress.com/2007/09>

¹⁰ Kiến Nghị 2009 | Bauxite Việt Nam. (2023). Boxitvn.online. https://boxitvn.online/?page_id=61

¹¹ Hoang, P. (2019). Domestic Protests and Foreign Policy: An Examination of Anti-China Protests in Vietnam and Vietnamese Policy Towards China Regarding the South China Sea - Phuong Hoang, 2019. Journal of Asian Security and International Affairs. <https://journals.sagepub.com/doi/full/10.1177/2347797019826747>

¹² Brown, M. (2015, March 22). Hundreds of Hanoians Protest Tree-chopping Plan. VOA; Voice of America (VOA News). <https://www.voanews.com/a/hundreds-of-hanoians-hug-trees-to-protest-chopping-sprees/2690180.html>

¹³ 台北時報. (2016, May 8). Vietnam breaks up rally against Formosa Plastics. Taipei Times.com; 台北時報. <https://www.taipeitimes.com/News/front/archives/2016/05/09/2003645836>

¹⁴ Writer, S. (2018, September 3). Vietnam's economic zones derailed by anti-China protests. Nikkei Asia; Nikkei Asia. <https://asia.nikkei.com/Politics/International-relations/Vietnam-s-economic-zones-derailed-by-anti-China-protests>

The Internet has also served as a pivotal tool for political activists, enabling the organization of an unprecedented election campaign for 30 independent candidates in 2016.¹⁵ The rise of social platforms like Facebook and YouTube since the late 2000s has empowered ordinary citizens to report instances of corruption and abuses of power, particularly confrontations with traffic police, amplifying transparency and accountability efforts in Vietnam.

The Vietnamese government, operating under a one-party regime, has adopted a nuanced strategy to manage threats posed by Internet users in order to maintain political stability. While it occasionally tolerates and even incorporates certain forms of online public opinion, responding affirmatively to criticism and concerns voiced by Internet users, it simultaneously seeks to exert control over the Internet, gradually developing a robust system of digital authoritarianism. This approach includes persecuting and sanctioning citizens for online speech, deploying Internet trolls and cyber troops to manipulate online discussions, and aggressively pressuring foreign platforms to remove or restrict content. Moreover, the government's implementation of laws and regulations has raised concerns about Internet users' privacy, granting authorities access to user data. Since Freedom House began publishing its "Freedom on the Net" report in 2011, Vietnam has consistently been categorized in the "Not Free" zone, reflecting ongoing challenges to online freedom within the country.

¹⁶

Vietnam is widely recognized as the fastest-growing digital market in Southeast Asia, attracting a rapidly increasing number of investors.¹⁷ Unlike China, Vietnam maintains relatively open access to foreign Internet services. Apart from occasional blocks, major international platforms such as Google, Facebook, LinkedIn, Twitter, Instagram, and TikTok are widely accessible within the country, each boasting millions of users. This

¹⁵ Nguyen, S. (2021, May 22). An Authoritarian Nightmare: The Self-Nomination Movement In 2016 – The Vietnamese. The Vietnamese Magazine; The Vietnamese Magazine. <https://www.thevietnamese.org/2021/05/an-authoritarian-nightmare-the-self-nomination-movement-in-2016>

¹⁶ See, e.g. Freedom House, [Vietnam: Freedom on the Net 2022 Country Report](#), 2019, Google, Temasek, Bain & Company, [E-Conomy SEA 2022 Report](#) - Vietnam, 2022; or [information issued by the Vietnam Ministry of Information and Communication](#) (MIC), 2019).

¹⁷ MIC. (2019). Viet Nam has over 72 million Internet users. Mic.gov.vn. <http://english.mic.gov.vn>

accessibility has contributed significantly to Vietnam's vibrant digital economy and its integration into the global digital landscape.¹⁸

Among messaging apps, the domestic Zalo is proven to be the most popular with 74 million users by the end of 2022, equivalent to 87% of total Internet users, while Meta's Facebook and Messenger is the second and the third with 72% and 58%, respectively.¹⁹

Among search engines, Google overwhelmingly dominates the market with over 95%, followed by the domestic Cốc Cốc with only 2.9%.²⁰ Alphabet – Google's parent company – also leads the browsers market with Chrome browser being used by 78% of users in early 2022 while Cốc Cốc follows with 41%.²¹

Vietnam's digital advertising spend in 2022 surpassed US\$1.00 billion and was estimated to reach US\$1.18 billion in 2023.²² Although there is no public data on market shares of different players, most reports agree that the majority of the market value belongs to foreign companies such as Meta, Alphabet, and TikTok.²³ According to Amnesty International, Meta earned approximately US\$1 billion from Vietnam in 2018, although it is not clear what makes the revenue and how much online advertising contributes to the total revenue.²⁴

While China has effectively restricted foreign digital services, establishing a robust domestic digital environment, Vietnam's Internet mainly relies on international platforms. The government's and domestic companies' initiatives to develop its own technology ecosystem have seen mixed results. Early attempts, like the state-owned Go.VN, aimed to compete with international social networks but ultimately did not

¹⁸ Digital 2023: Vietnam — DataReportal – Global Digital Insights. (2023, February 13). DataReportal – Global Digital Insights. DataReportal – Global Digital Insights. <https://datareportal.com/reports/digital-2023-vietnam>

¹⁹ TRUNG, P. (2023, March 3). Zalo tiếp tục là ứng dụng nhắn tin phổ biến nhất Việt Nam. Báo Nhân Dân Điện Tử; Báo Nhân Dân điện tử. <https://nhandan.vn/zalo-tiep-tuc-la-ung-dung-nhan-tin-pho-bien-nhat-viet-nam-post741283.html>

²⁰ Vietnam: search engines market share 2022 | Statista. (2022). Statista; Statista. <https://www.statista.com/statistics/954433/vietnam-market-share-of-search-engines>

²¹ Alpuerto, A. (2022, June 17). Homegrown Web Browser Coc Coc Surpasses Firefox, Safari In Usage And Preference. Vietcetera; Vietcetera. <https://vietcetera.com/en/homegrown-web-browser-coc-coc-surpasses-firefox-safari-in-usage-and-preference>

²² Vietnam Briefing. (2023, February 15). Digital/Cross-Border Advertising for Foreign Firms, Vietnam. Vietnam Briefing News. <https://www.vietnam-briefing.com/news/digital-advertising-vietnam.html/>

²³ Duy Vu. (2022). Miếng bánh quảng cáo trực tuyến 2,5 tỷ USD nằm trong tay Facebook, Google, TikTok. VietNamNet News. <https://vietnamnet.vn/mieng-banh-quang-cao-truc-tuyen-2-5-ty-usd-nam-trong-tay-facebook-google-tiktok-15004154.html>

²⁴ The Facebook Papers: What do they mean from a human rights perspective? (2021, November 4). Amnesty International. <https://www.amnesty.org/en/latest/campaigns/2021/11/the-facebook-papers-what-do-they-mean-from-a-human-rights-perspective>

succeed.²⁵ Other various private domestic services failed to sustain long-term competition against giants like Facebook and Google.²⁶

However, the government, particularly under the leadership of officials like Nguyễn Mạnh Hùng from the Ministry of Information and Communications, has continued to push for "make in Vietnam" digital products and social networks, aiming to create a domestic digital ecosystem and enforce compliance with local laws among foreign platforms. Despite the launch of new social networks like Hahalolo, Gapo, and Lotus in 2019, which received significant investment and were marketed as potential rivals to Facebook, these platforms have not achieved the desired impact or user base.²⁷ ²⁸ Yet, the Vietnamese government remains committed to developing the digital economy and society, as evidenced by the "National strategy for development of digital economy and digital society by 2025, orientation towards 2030," which emphasizes support for digital enterprises and platforms across industries.²⁹

While it's premature to assess the success of Vietnam's strategy to create a comprehensive domestic digital ecosystem, the persistence of platforms like Zalo suggests that domestic alternatives to international services can find a foothold in the market, indicating potential for future growth and competition.

²⁵ Chung, M. (2010, May 19). VTC ra mắt bản thử nghiệm mạng xã hội Go.vn. Nhịp Sống Kinh Tế Việt Nam & Thế Giới. <https://vneconomy.vn/vtc-ra-mat-ban-thu-nghiem-mang-xa-hoi-govn.htm>

²⁶ THÔNG CHÍ - ĐỨC THẢNH. (2017, November 17). Làm gì để mạng xã hội "made in Việt Nam" cạnh tranh được với Facebook, Youtube! Laodong.vn; Báo Lao Động. <https://laodong.vn/thoi-su/lam-gi-de-mang-xa-hoi-made-in-viet-nam-cananh-tranh-duoc-voi-facebook-youtube-576616.ldo>

²⁷ Trước khi Gapo ra mắt, nhiều mạng xã hội Việt dính cảnh mới khai sinh đã khai tử. (2023). Baodautu. <https://baodautu.vn/truoc-khi-gapo-ra-mat-nhieu-mang-xa-hoi-viet-dinh-canah-moi-khai-sinh-da-khai-tu-d104565.html>

²⁸ Mạng xã hội Việt sống mòn. (2023). Baodautu. <https://baodautu.vn/mang-xa-hoi-viet-song-mon-d177624.html>

²⁹ Quyết định 411/QĐ-TTg 2022 phê duyệt Chiến lược quốc gia phát triển kinh tế số và xã hội số. Thuvienphapluat.vn. <https://thuvienphapluat.vn/van-ban/Thuong-mai/Quyết-dinh-411-QĐ-TTg-2022-phe-duyet-Chien-luoc-quoc-gia-phat-trien-kinh-te-so-va-xa-hoi-so-508672.aspx>

CHAPTER III: VIETNAM'S INTERNET REGULATIONS

1. The authoritarian nature of the state and the legal system

Censorship runs deeply into Vietnam's legal system, including Internet regulations. Although freedom of speech and the right to privacy are guaranteed by the Constitution,³⁰ the very same legal document also constitutionalized the Vietnamese Communist Party's power as the "leading force of the state and society" (Article 4). This provision provides the constitutional ground for the Vietnamese Communist Party (VCP) to outlaw other political parties and to assert its power over the entire state structure, making it the centre of the authoritarian regime.

The top national legislature body, which is called National Assembly, has been solely controlled by the VCP for decades, with VCP members occupying over 95% of the seats. With rare exceptions, cabinet's members, local authorities' leadership and managerial positions, as well as prosecutors and judges at all governmental levels have also been consistently VCP members. The Leninist system that the VCP runs makes Vietnam a party-state in which the party's decisions guide the state's ones, with party cells planted in all governmental bodies.³¹

The Leninist system is designed to politicize the state, leading to a complete lack of separation of powers, congressional oversight, an independent judiciary, and the independence of judges and lawyers. As a result, the creation and implementation of laws and regulations face minimal scrutiny or checks and balances, often resulting in abuse of power and arbitrary actions. This nature of the state and legal system should be considered as the context for the legislation and governmental actions discussed in this report.

Furthermore, the laws and regulations discussed below should be seen through the lens of Article 19 of the International Covenant on Civil

³⁰ Vietnam's 2013 Constitution: <https://faolex.fao.org/docs/pdf/vie127527.pdf>

³¹ Schuler, P. (2022). Political Representation in Contemporary Vietnam. In Routledge Handbook of Contemporary Vietnam. Routledge.

and Political Rights (ICCPR) which guarantees freedom of speech and provides the Three-Part Test to speech restrictions.³² According to ICCPR, the state may limit freedom of speech but only under the conditions of the limitations to be (1) prescribed by law and not overbroad, (2) in pursuit of a legitimate aim, and (3) necessary and proportionate in a democratic society.

2. Laws and regulations on censorship

a) The Penal Code

The current Penal Code was adopted in 2015, amended in 2017 and took effect on 01 January 2018.³³ Criminalization of online speech is in the Vietnamese government's central agenda in controlling society in general and the Internet in particular. The country's Penal Codes (1985, 1999, 2015) have consistently maintained several problematic provisions that are often used to silence critics, including the following provisions:

- **Article 109. Activities against the people's government:** “Any person who establishes or joins an organization that acts against the people's government shall face” sentences ranging from 01 year of imprisonment to death.
- **Article 117. Making, possessing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam:** “Any person who, for the purpose of opposing the State of Socialist Republic of Vietnam” commits the crime shall face sentences ranging from 01-20 years of imprisonment.
- **Article 331. Abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens:** “Any person who abuses the freedom of speech, freedom of the press, freedom of religion,

³² ARTICLE 19. (2023). Content moderation and freedom of expression handbook. ARTICLE 19. <https://www.article19.org/wp-content/uploads/2023/08/SM4P-Content-moderation-handbook-9-Aug-final.pdf>

³³ Vietnam's Penal Code 2015, amended 2017. See: <https://www.wipo.int/wipolex/en/legislation/details/17225;https://www.wipo.int/wipolex/en/text/585383>

freedom of association and other democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens” shall receive a warning or face a penalty of up to 03 years' community sentence or 06 months to 07 years of imprisonment.

Often scrutinized by international legal experts and human rights groups, the above articles are contradictory to international human rights standards. Examining the articles under the Three-Part Test, the Penal Code's articles fail to meet basic requirements to be justified limitations of freedom of speech: (1) they are overbroad restrictions that provide no sufficient precision for individuals to follow, (2) they are not in pursuit of a legitimate aim because they impose criminal penalties for speech that do not align with the government's interest, and (3) they are not necessary and proportionate in a democracy society as they impose criminal sanctions over matters that can be addressed by civil law remedies.³⁴

b) The Law on Information Technology

The 2006 Law on Information Technology,³⁵ currently in effect in Vietnam, stands as one of the earliest and significant pieces of legislation regulating the Internet. Unlike the more notorious 2018 Cybersecurity Law, which garnered extensive scrutiny and criticism, this long-standing law has been in effect for over 17 years with relatively little attention. Nevertheless, it contains provisions that form a substantial part of Vietnam's legal framework for online censorship and data protection. These provisions have played a foundational role in shaping how Internet activities are governed and monitored within the country.

Article 12.- Prohibited acts

1. Obstructing lawful activities or supporting illegal activities in information technology application and development; illegally obstructing the operation of the system of national domain-name

³⁴ ARTICLE 19. (2023). Content moderation and freedom of expression handbook. ARTICLE 19. <https://www.article19.org/wp-content/uploads/2023/08/SM4P-Content-moderation-handbook-9-Aug-final.pdf>

³⁵ Vietnam's 2006 Law on Information Technology. See: <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/vn/vn134en.html>

servers; destroying the information infrastructure or destroying information in the network environment.

2. Supplying, exchanging, transmitting, storing or using digital information for the following purposes:

a) Opposing the State of the Socialist Republic of Vietnam or undermining the all-people unity bloc;

b) Exciting violence, propagating wars of aggression; sowing hatred among nations and peoples, exciting obscene, depravation, crime, social evils or superstition; undermining the nation's fine traditions and customs;

c) Revealing state secrets, military, security, economic, external relation or other secrets provided for by law;

d) Distorting, slandering, or offending the prestige of organizations or the honour, dignity or prestige of citizens;

e) Advertising for or propagating goods or services banned by law.

3. Infringing upon intellectual property rights in information technology activities; illegally producing or circulating information technology products; forging websites of other organizations or individuals; creating illegal links to domain names lawfully used by organizations or individuals.

The Article 12 mentioned above details the type of online information and speech that are prohibited under the law, although it doesn't provide any specific and clear definition of these restrictions. This is arguably the first time Vietnam adopted such a detailed - although still vague - interpretation of illegal speech that the following documents - Decree 72/2013/ND-CP and the 2018 Cybersecurity Law - largely inherited from.

In addition to banning a wide array of online speech, the 2006 Law on Information Technology also compels civilian actors, primarily enterprises offering Internet-related services, to act as censors based on their own judgement or at the government's behest. The following provisions provide more details about what and how these actors should

fulfil their obligations to either delete illegal content or prevent users' access to illegal content.

- Article 16 addresses the transmission of digital information. It allows organizations and individuals to transmit digital information as per the law, absolving them of responsibility for the content if it is stored temporarily to facilitate transmission. However, they must act to prevent illegal access or deletion of information upon request from competent state agencies.
- Article 18 pertains to the leasing of digital information storage space. It defines this as a service and stipulates that stored digital information must not violate specific legal provisions. Lessors of digital storage space are required to comply with state requests for information about their clients, take action against illegal activities, cease leasing to those storing illegal content, and ensure the confidentiality of their clients' information.
- Article 19 (partial) requires entities that detect or are informed of illegal digital information by state agencies to stop providing search tools for such information.
- Article 20 focuses on the monitoring and supervision of digital information contents. State agencies are tasked with overseeing digital information and investigating legal violations. Other organizations and individuals applying information technology are not required to monitor, supervise, or investigate digital information unless directed by state agencies.

c) Decree 72/2013/ND-CP

Issued in 2013, Decree 72/2013/ND-CP,³⁶ commonly known as Decree 72, marked a pivotal moment for Internet regulations in Vietnam, capturing the attention of both national and international stakeholders. This decree has become one of the most frequently referenced legal documents in the realm of Vietnamese Internet regulations, underpinning a significant

³⁶ Decree 72/2013/ND-CP: <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/vn/vn133en.pdf>

number of administrative penalties and requests made by the Vietnamese government to global tech giants like Alphabet and Meta. Decree 72 remains active and influential, although it is anticipated to be superseded by a forthcoming decree currently under development as of this report's publication.

In addition to maintaining the vague and illegitimate restrictions on speech outlined in the 2006 Law on Information Technology, Decree 72 – for the first time ever - requires cross-border platforms to obey local laws (Article 22). Although broad and general, Article 22 makes Decree 72 the basic legal ground of content moderation requests sent to foreign platforms such as Facebook and Google.

d) The Cybersecurity Law

The 2018 Cybersecurity Law is the most important and far-reaching piece of legislation that regulates the Internet in Vietnam. Well-known domestically and internationally for its clear violation of freedom of speech and privacy rights, the law marks a major shift in the Vietnamese government's approach to dealing with online content, especially content circulated on cross-border platforms such as Facebook and Google. It is safe to say that this law was designed to target what the government considered to be the most challenging online threat: foreign platforms.

Article 26 prohibits content that constitutes "propaganda against the Socialist Republic of Vietnam," incites riots, disrupts security or public order, causes embarrassment or slander, or violates economic management order as outlined in Clauses 1 through 5 of Article 16. This prohibition applies to websites, web portals, and social media pages. However, like other speech-related laws and regulations, it lacks specific details on what speech falls into these restricted categories, rendering the provision overly broad and vague.

Furthermore, both domestic and international providers of telecommunications, Internet, and value-added services in Vietnam's cyberspace are obliged to:

(i) Block and remove the prohibited information from their platforms or systems within 24 hours following a request by the cybersecurity force of the Ministry of Public Security or a competent authority of the Ministry of Information and Communications. They must also log such incidents to aid in the investigation of cybersecurity violations for a duration determined by the Government;

(ii) Cease or deny the provision of services to organizations or individuals who disseminate the prohibited information, again upon request by the cybersecurity force of the Ministry of Public Security or a competent authority of the Ministry of Information and Communications.

To prevent and respond to “cybersecurity emergencies”, the law leaves it open for the government to invoke drastic measures such as “stop providing cyberinformation within a certain area or disconnect from the international Internet gateway” (Article 21.2.dd). This means a total Internet shutdown in a specific area, a rarely invoked measurement but has been reportedly conducted during sensitive times such as the police’s violent attack in Đồng Tâm in January 2020.³⁷

Furthermore, Article 26 requires foreign entities to (1) store user data locally and (2) open a branch/representative office in Vietnam as a way of creating more leverage for the government over foreign companies.

e) Decree 15/2020/ND-CP

Decree 15/2020/ND-CP (“Decree 15”) took effect in April 2020, during the early days of the COVID-19 pandemic, to replace another widely scrutinized decree - 174/2013/ND-CP.³⁸ This is a decree on “penalties for administrative violations against regulations on postal services, telecommunications, radio frequencies, information technology and

³⁷ Khôi Nguyễn. (2020, January 9). *Đồng Tâm chống trả “tấn công”: 3 công an và 1 người dân thiệt mạng*. Nguoi Viet Online. <https://www.nguoi-viet.com/viet-nam/dong-tam-chong-tra-tan-cong-3-cong-an-va-1-nguoi-dan-thiet-mang>

³⁸ Decree 15/2020/ND-CP: <https://thuvienphapluat.vn/van-ban/EN/Cong-nghe-thong-tin/Decree-15-2020-ND-CP-penalties-for-administrative-violations-against-regulations-on-postal-services/438738/tieng-anh.aspx>

electronic transactions”, which covers a broad range of administrative violations, including illegal online speech.

Articles 99, 100, 101, 102 of the Decree set financial penalties of up to 100 million VND (about 4,500 USD) imposed on both individuals and organisations for making, storing and spreading illegal online speech, or failing to censor illegal online speech. For example, one can be fined up to 70 million VND for their activities online involving “information/images infringing upon the national sovereignty; distorting history, denying the revolutionary achievements; offending the nation, famous persons or national heroes if not liable to criminal prosecutions.” The highest financial penalty, which is from 70 to 100 million VND, is applicable in the case of “providing, exchanging, transmitting or storing and using digital information disseminating wrong facts about the sovereignty of Vietnam.”

Decree 15/2020/ND-CP is amended by Decree 14/2022/ND-CP in which the cabinet adds temporary retention of both Vietnamese national domain name “.vn” and international domain names as a preventive measure applied to those who violate online speech regulations mentioned above.³⁹

f) Decree 53/2022/ND-CP

Decree 53/2022/ND-CP (“Decree 53”) had been a long-awaited legal document until it came into force on October 1, 2022.⁴⁰ This means it took the government more than four years since the passage of the 2018 Cybersecurity Law to issue the first decree to provide guidance on how to implement the law.

The vast majority of the decree’s provisions is to detail the government’s internal protocols and collaborating mechanisms in the cybersecurity field.

In terms of censorship, there is one significant provision (Article 26) that makes a major shift from the Cybersecurity Law in how the government deals with foreign services. While the law requires foreign companies to store users’ data in Vietnam and open local offices/branches,

³⁹ Decree 14/2022/ND-CP: <https://thuvienphapluat.vn/van-ban/Vi-pham-hanh-chinh/Nghi-dinh-14-2022-ND-CP-sua-doi-Nghi-dinh-15-2020-ND-CP-xu-phat-hanh-chinh-buu-chinh-482325.aspx>

⁴⁰ Decree 53/2022/ND-CP: <https://dulieuphapluat.vn/van-ban/buu-chinh-vien-thong/decree-no-532022nd-cp-dated-august-15-2022-on-elaborating-a-number-of-articles-of-the-law-on-cybersecurity-of-vietnam-1113267.html>

the decree creates a triggering provision that says if foreign companies do not comply with the Vietnamese government's requests of content removal and users' data, the government may order them to localise users' data and open local offices/branches. This indicates that the government only wants to control online content on foreign platforms and they use the regulations on data localization and local offices/branches as leverages to force the companies to obey their demands.

3. Regulations on personal data protection

Before the introduction of Decree 13/2023/ND-CP in 2023, Vietnam did not have an all-encompassing legal framework for the protection of personal data. According to a study released in May 2022, although Vietnam had enacted 65 legal documents concerning the protection of personal data; these documents merely established basic principles and lacked a precise definition of personal data. They varied in terminology, using phrases like "personal information," "private information," "digital information," and "personal information on the Internet."⁴¹

The Law on Information Technology is the first - and still in effect - legal document regulating data protection. Generally speaking, the provisions concerning personal data protection are largely in line with the international standards and do not authorise the government or networks an undefined and large-scale power to collect users' data.

The concerning provision is the Article 21.3, in which personal data can be collected without consent in the following circumstances: (i) *signing, modifying or performing contracts on the use of information, products or services in the network environment*; (ii) *calculating charges for use of information, products or services in the network environment*; (iii) *performing other obligations provided for by law*. This provision leaves a large room for networks to collect and use users' data for commercial purposes and for the government to interpret. Without an effective independent oversight, this provision can be abused.

The Law on Telecommunication provides general principles in protecting personal data, largely in line with the international standards.

⁴¹ Chu, H. (2022). Legal Framework for Personal Data Protection in Vietnam. In: Phan, T., Damian, D. (eds) Smart Cities in Asia. SpringerBriefs in Geography. Springer, Singapore. https://doi.org/10.1007/978-981-19-1701-1_8

However, this is the first major legal document that gives the authorities power to access users' data by making requests to networks (Article 6.4.c).

The Law on Information Security is the first major legal document that provides details in personal data protection with a dedicated section (Section 2) stipulating the issue. Decree 72/2013/ND-CP makes a significant move towards data localization by requiring news websites and social networks to have at least one server in Vietnam to serve the authorities' requests for users' data. The effort is completed with the 2018 Cybersecurity Law, Decree 53/2022/ND-CP, and Decree 13/2023/ND-CP.

The Cybersecurity Law, for the first time, makes it mandatory for both domestic and international Internet services to store users' data in Vietnam and provide authorities access to the data upon requests (Article 26). Decree 53/2013/ND-CP lowers the requirement by a triggering provision that says if foreign companies do not comply with the Vietnamese government's requests of content removal and users' data, the government may order them to localise users' data and open local offices/branches (Article 26). Once requested by the MPS minister, the company has 12 months to comply and the data must be stored in Vietnam for at least 24 months (Article 27). The law also requires domestic and foreign service providers to verify user's information upon their registration.

Decree 13/2023/ND-CP is the first comprehensive legal document on personal data protection, which went into effect on 01 July 2023. The decree defines personal data as *"information in the form of symbols, letters, numbers, images, sounds or equivalent formats on the electronic environment associated with a specified person or helps identifying a specified person"* (Article 2.1).

It also categorised personal data into two types: (i) basic personal data such as name, address, telephone number, citizenship, sex, marriage status) and (ii) sensitive personal data such as political or religious viewpoints, health (excluding blood types), gender orientation, criminal records, bank records.⁴²

⁴² Stuchfield, E. (2023, May 19). *Decree 13/2023/ND-CP on Personal Data Protection*. WFW; Watson Farley & Williams. <https://www.wfw.com/articles/decree-13-2023-nd-cp-on-personal-data-protection/#:-:text=Decree%2013%20defines%20%E2%80%9Cprocessing%20of,%2C%20supplying%2C%20assigning%2C%20deleting%2C>

Under the decree, personal data can be processed without consent in the following cases (Article 17):

- to protect the life and health of the data subject or others in an emergency situation;
- disclosure of personal data in accordance with the law;
- processing of personal data by competent regulatory authorities in the event of a state of emergency regarding national defence, security, social order and safety, major disasters, or dangerous epidemics; when there is a threat to security and national defence but not to the extent of declaring a state of emergency; to prevent and fight riots and terrorism, crimes and law violations according to the provisions of law;
- to fulfil obligations under contracts the data subjects with relevant agencies, organizations and individuals as prescribed by law; and
- to serve operations by regulatory authorities as prescribed by relevant laws.

Moreover, personal data can be processed without the data subject's consent in instances where "the processing is carried out by a competent state agency for the purposes of its lawful activities" (Article 13.4.b). This provision, with its broad and ambiguous language, potentially allows for wide-ranging interpretation and discretionary application by the authorities.

Decree 13 further extends its reach to include foreign services, mandating that entities handling personal data must prepare and submit detailed impact assessments regarding the international transfer of personal data to the Ministry of Public Security (MPS). The MPS is empowered to halt the overseas transfer of personal data if it is determined that such transfer compromises the interests or national security of the Socialist Republic of Vietnam, leads to the leakage or loss of a Vietnamese citizen's personal data, or if the data processor fails to periodically update the impact assessments as required by the ministry (Article 25.8).

4. What's next for Internet regulations?

In July 2023, the Ministry of Information and Technology released a long-awaited draft decree to replace Decree 72/2013/ND-CP, which is one of the most important and widely used legal documents to regulate the Internet in Vietnam.⁴³ Apart from currently effective regulations mentioned above, the draft decree pushes government's control significantly further towards a more repressive legal framework.

Article 26 pertains to the storage and handling of personal information of Vietnamese users by cross-border service providers, including full name, date of birth, email, and mobile phone number in Vietnam. It mandates the verification of user accounts' identity with a mobile phone number during registration and requires the provision of personal information to state authorities upon written request for legal investigations. For domestic social networks, Article 38 states that "only users who provide complete and accurate personal information, as specified in Clause 2 of Article 30 of this decree, are allowed to post content (such as writing articles, commenting, live streaming) and share information on social media networks."

If enacted, this decree will effectively eliminate social media anonymity in Vietnam. Lê Quang Tự Do, Head of the Authority of Broadcasting and Electronic Information at the MIC, emphasized on October 11, 2023, that "the most crucial policy being proposed to the Government is the verification of social media accounts through phone numbers. Social media has long been perceived as anonymous, fostering behaviors like insults, defamation, and anti-government activities due to the belief that users cannot be identified or held accountable." It is clear that user identity verification is currently a top priority on the government's agenda.

Furthermore, foreign cross-border service providers must provide the MIC tools to scan their platforms' content upon requests.

⁴³ Dự thảo Nghị định thay thế Nghị định số 72/2013/NĐ-CP ngày 15/7/2013 của Chính phủ về quản lý, cung cấp, sử dụng dịch vụ Internet và thông tin trên mạng và Nghị định 27/2018/NĐ-CP ngày 01/3/2018 của Chính phủ sửa đổi, bổ sung Nghị định 72/2013/NĐ-CP.
https://mic.gov.vn/Pages/DuThaoVanBan/XemYKienDongGop.aspx?iDDTVB_DuThaoVanBan=2163&replyUrl=/pages/duthaovanban/danh sachduthaovanban.aspx

Article 26 also outlines stricter and more specific control measures for social media in Vietnam. If an account, group, or content channel repeatedly posts illegal content (5 times in 30 days or 10 times in 90 days), foreign platforms must temporarily block these within 24 hours of the MIC's request. The temporary block lasts 7 to 30 days, based on the violation's frequency and severity. Furthermore, accounts or channels that compromise national security or are repeatedly temporarily blocked (three or more times) must be permanently blocked following the Ministry's requests.

Additionally, the provision requires foreign app stores to restrict access to applications that violate Vietnamese law for users in Vietnam. This action must be taken within 24 hours of receiving a request from the MIC. Additionally, these entities are obligated to immediately block, remove, or take down any content, services, or applications that are illegal or threaten Vietnam's national security, again in response to directives from the Ministry.

If foreign entities do not address violations as per the MIC's request without justified reasons, the Ministry will enforce technical blocks on all non-compliant online content, services, and applications. These blocks, in line with Vietnam's cybersecurity and information security laws, will remain until the entities rectify the violations according to the Ministry's directives.

Another significant provision Article 27.7.d which says only social media networks that have obtained a Service Provision Licence from the MIC are permitted to offer live video streaming services or engage in revenue-generating activities, excluding e-commerce activities.

The MIC had initially proposed the Cabinet to finalize and issue the decree by the end of 2023. However, as of this report's release, there has been no public information or indications about the decree's issuance date.

CHAPTER IV: FOREIGN TECH COMPANIES' OPERATIONS IN VIETNAM

1. How user data is stored and handled

Since the Cybersecurity Law took effect on 01 January 2019, the Vietnamese government has repeatedly emphasised that foreign services such as Google, Meta must store Vietnam's users' data domestically. In November 2019, the Minister of Information and Technology reported to the National Assembly that cross-border services such as Facebook and Google had not stored their users' data in Vietnam as demanded by the law.⁴⁴

Previously, in September 2018, Facebook's Chief Operating Officer Sheryl Sandberg testified before the Intelligence Committee of the United States' Senate that Facebook did not have servers in Vietnam.⁴⁵ The company's website does not mention any data centres in Vietnam to date.⁴⁶ Google also reported no in-country data centre.⁴⁷

However, there is conflicting information about whether or not foreign services store users' data in Vietnam. An undated report on the Ministry of Public Security's website says that both Google and Facebook have already rented local servers, with Google having 1,781 and Facebook having 441 servers in eight domestic data storage companies in Vietnam.⁴⁸ Another report by *Tuổi Trẻ* newspaper cited anonymous sources indicating that Google, Facebook and Apple had already stored data in local data centres before the Cybersecurity Law went into effect.⁴⁹ And most famously, in April 2020, Facebook said their local servers - managed by domestic telecommunication companies - were either turned off or slowed down for the previous few months, resulting in the social network being

⁴⁴ Duy Vũ. (2019, November 8). *Facebook, Google chưa lưu trữ dữ liệu tại Việt Nam theo quy định của Luật An ninh mạng*. Cafebiz.vn; <https://cafebiz.vn/https://cafebiz.vn/facebook-google-chua-luu-tru-du-lieu-tai-viet-nam-theo-quy-dinh-cua-luat-an-ninh-mang-20191108172053718.chn>

⁴⁵ Trịnh Hữu Long. (2018, September 14). *Cuối cùng, Facebook cũng nói về Việt Nam | Luật Khoa tạp chí*. Luật Khoa Tạp Chí; Luật Khoa tạp chí. <https://www.luatkhoa.com/2018/09/cuoi-cung-facebook-cung-noi-ve-viet-nam>

⁴⁶ *Meta Data Centers*. (2023, May 12). Meta Data Centers. <https://datacenters.atmeta.com>

⁴⁷ *Discover our data center locations*. (2023). Google Data Centers. <https://www.google.com/about/datacenters/locations>

⁴⁸ *Việt Nam có phải là quốc gia duy nhất quy định lưu trữ dữ liệu trong nước hay không? Bocongan.gov.vn*. <http://mps.gov.vn>

⁴⁹ Ha, T. (2023, January 5). *Vietnam ramps up data center construction*. Tuoi Tre News; Tuoi Tre News. <https://tuoitrenews.vn/news/business/20230105/vietnam-ramps-up-data-center-construction/70777.html>

largely inaccessible across the country.⁵⁰ The slowdown took place after a high-profile violent and deadly incident happened on the outskirts of Hà Nội in January 2020, relating to a land dispute between the government and local farmers. It is widely known as a police's raid in Đồng Tâm commune in which a well-known farmer leader – Lê Đình Kinh, and three policemen were killed. In April, Facebook had to agree with the Vietnamese government to censor more political content on their platform so their service could be resumed in the country.

Does the information suggest that these foreign companies store Vietnam's users' data locally? There are no clear and definite answers, but highly likely no. A technical analysis dated 2018 by *VnExpress* indicates that Google and Facebook did not operate their data centres in Vietnam but stored some data in local cache servers to fasten access to their platforms. The data stored in Vietnam is mostly pictures, video clips, while users' data is still stored and managed by the foreign companies themselves overseas.

According to Facebook Transparency Report, from 2015 to 2022, the Vietnamese government made 61 requests for users' data in total. Facebook complied with 18 of them where “some data produced”.⁵¹ Google's data shows that from 2014 to 2021, they received 6 requests for data from 7 accounts in which 3 requests involving 4 accounts were accepted, meaning “some data produced”. Similarly, Apple received 4 requests for customer data in 2020 and 2021 and 2 of them were accepted “where data provided”.⁵² In all three cases, it is unclear what kind of data was produced or provided. Meanwhile, Microsoft's transparency reports from 2013 to 2021 provide no information about any request for customer data from the Vietnamese government.⁵³

⁵⁰ Pearson, J. (2020, April 21). *Exclusive: Facebook agreed to censor posts after Vietnam slowed traffic - sources*. U.S. <https://www.reuters.com/article/us-vietnam-facebook-exclusive-idUSKCN2232JX>

⁵¹ *Government Requests for User Data | Transparency Center*. (2017). Fb.com. <https://transparency.fb.com/data/government-data-requests/country/VN>

⁵² *Privacy - Government Information Requests - Apple (VN)*. (2021). Apple Legal. <https://www.apple.com/legal/transparency/vn.html>

⁵³ *Law Enforcement Request Report | Microsoft CSR*. (2018). Microsoft. <https://www.microsoft.com/en-us/corporate-responsibility/law-enforcement-requests-report>

2. How content is moderated

Similar to other countries, there are two methods of moderating content on foreign platforms: (i) platforms' community rules enforcement and (ii) platforms' responses to the Vietnamese government's requests. This report focuses on the latter to shed light on the Vietnamese government's efforts to control the flow of information on the Internet.

While the 2018 Cybersecurity Law drew much attention about content moderation on foreign platforms, the Vietnamese government, in fact, started to send requests for content restrictions or removals since at least 2014, according to Google's Transparency Report.⁵⁴ In some request examples, Google mentioned some specific government agencies that sent the requests, including the MIC, the MPS, the Ministry of National Defence. However, little efforts were made from 2014 to 2016, with only 4 requests sent to Google. Facebook does not provide data before 2017. The year 2017's data shows a major shift when the government sent 67 requests to Google and 22 requests to Facebook.⁵⁵ This shift in the VCP's strategy happened after their national convention in January 2016, followed by the general election in May 2016 and the formation of a new cabinet in July 2016. It is significant to note that in 2016, there were two unprecedented political phenomenons taking place across the country: the self-nomination movement that attracted approximately 30 independent candidates running for election⁵⁶ and the May nation-wide protest against the Formosa Company following a historic environmental disaster.⁵⁷ Both events share two common characteristics: a direct threat to the regime's monopoly and the use of Facebook as the main tool for social mobilization. The phenomena might have triggered the alarm bell for the party, making them take a more aggressive approach to control content on the Internet.

⁵⁴ Google Transparency Report. (2023). Google.com. https://transparencyreport.google.com/government-removals/government-requests/VN?hl=en&lu=country_request_explore&country_request_amount=period:2011H1&removal_compliance_rate=period:2011H1&country_breakdown=period:2011H1&country_request_explore=period:2011H1

⁵⁵ Content Restrictions Based on Local Law | Transparency Center. (2017). Fb.com. <https://transparency.fb.com/data/content-restrictions/country/VN/>

⁵⁶ Nguyen, S. (2021, May 22). *An Authoritarian Nightmare: The Self-Nomination Movement In 2016 – The Vietnamese*. The Vietnamese Magazine; The Vietnamese Magazine. <https://www.thevietnamese.org/2021/05/an-authoritarian-nightmare-the-self-nomination-movement-in-2016/>

⁵⁷ Trang, D. (2017, November 8). *Timeline: The Formosa Environmental Disaster – The Vietnamese*. The Vietnamese Magazine; The Vietnamese Magazine. <https://www.thevietnamese.org/2017/11/timeline-the-formosa-environmental-disaster>

Since 2017, the number of requests made to Google and Facebook has increased significantly. The Vietnamese government has repeatedly claimed that the rate of requests being accepted by Google and Facebook has been high, for example, the rate was 90-95% in 2020.⁵⁸

The Minister of Information and Technology reported in October 2020 that Facebook's content removals increased 500% to date in 2020 compared to 2019. Facebook's data also shows that in 2020, the content restrictions were over 3,000, an increase of 15 times compared to 2019. In the later half of 2023, they also restricted over 2,500 posts, which is the highest number since 2018.

Similarly, Google faced a comparable trend with its YouTube platform, widely popular in Vietnam. In 2020, the Vietnamese government submitted 305 requests to Google to remove 13,123 content items, marking a significant increase from 178 requests and 7,156 items in 2019. From June to December 2021, Vietnam made 255 requests to Google, demanding removal of a record high of 14,615 content items. In the latter half of 2023, the number of requests peaked at 417, though the number of content items requested for removal decreased significantly to 5,330.⁵⁹

The nature of the content restricted is specified by Facebook as “allegedly violating local laws on providing information which distorts, slanders, or insults the reputation of an organization or the honour and dignity of an individual under Article 5.1(d) Decree No. 72/2013/ND-CP” (January - June 2022), “spreading COVID-19 misinformation” (July - Dec 2021), and “opposing the Communist Party and the Government of Vietnam” (January - June 2021). Since 2017, according to Google's Transparency Report, the majority of the government requests for content removals they received is “government criticism”, often accounting for 60-80%, and 93% for the duration of July - December 2023.

In a major report on Meta's operations in Vietnam released in June 2023, *The Washington Post* reveals that Meta keeps an internal list of the VCP officials that should not be criticised on Facebook.⁶⁰ The list is kept

⁵⁸ Vietnam: Freedom on the Net 2021 Country Report | Freedom House. (2019). Freedom House. <https://freedomhouse.org/country/vietnam/freedom-net/2021>

⁵⁹ Google Transparency Report. (2024). Google.com. <https://transparencyreport.google.com/government-removals/government-requests/VN?hl=en>

⁶⁰ Tan, R. (2023, June 19). Facebook helped bring free speech to Vietnam. Now it's helping stifle it. Washington Post; The Washington Post. <https://www.washingtonpost.com/world/2023/06/19/facebook-meta-vietnam-government-censorship>

private even within the company and used to moderate content. Citing two former Meta employees, *The Washington Post's* piece says the list is unique to Vietnam in the East Asia region.

Netflix has also removed content from their platform under the Vietnamese government pressure several times. The first known removal was in September 2020, after the MIC twice requested the company to remove films that are deemed to be violating Vietnam's sovereignty and laws.⁶¹ As a result, Netflix cut some scenes from the Chinese series titled "Put your head on my shoulder" that contains a map with the U-shape line. The U-shape line is the Chinese government's effort in claiming most of the South China Sea and was ruled illegal under international law by an international tribunal.⁶² Similar removals were made concerning the American series "Madam Secretary" and "Pine gap" in 2021 due to the same reason.⁶³ In October 2022, the streaming service restricted the South Korean drama titled "Little women" from its Vietnam's coverage because of what the state media described as twisting Vietnamese history, denying Vietnamese revolutionary achievements, and insulting national heroes.⁶⁴ Most recently, they took down the first episode of the docuseries "MH370: The Plan that Disappeared" from its Vietnam router under the request by the MIC. The episode was accused by the government of inaccurately claiming that Vietnam did not cooperate with the international community in searching for the missing plane.⁶⁵

Content restriction/removal is not only a result of the government's requests, but also the government-operated cyber troops who often conduct mass reporting on foreign platforms, triggering the platforms to take immediate actions to take the content down, often globally.⁶⁶ There is

⁶¹ News, V. (2020). Netflix removes content violating Vietnam's sovereignty. VietNamNet News. <https://vietnamnet.vn/en/netflix-removes-content-violating-vietnams-sovereignty-671370.html>

⁶² TUOI TRE ONLINE. (2020, September 12). Netflix cắt cảnh "đường lưỡi bò" trong phim "Gửi thời thanh xuân ấm áp của chúng ta." TUOI TRE ONLINE. <https://tuoitre.vn/netflix-cat-can-h-duong-luoi-bo-trong-phim-gui-thoi-thanh-xuan-am-ap-cua-chung-ta-20200912090431716.htm>

⁶³ VNA. (2021, July 2). Netflix removes TV series with images violating Vietnam's sovereignty | Society | Vietnam+ (VietnamPlus). VietnamPlus; VietnamPlus. <https://en.vietnamplus.vn/netflix-removes-tv-series-with-images-violating-vietnams-sovereignty/203991.vnp>

⁶⁴ Netflix removes "Little Women" due to its alleged distortions of Vietnamese history. (2022, October 7). Nhan Dan Online; Nhan Dan Online. <https://en.nhandan.vn/netflix-removes-little-women-due-to-its-alleged-distortions-of-vietnamese-history-post118626.html>

⁶⁵ Ha, T. (2023, April 14). Netflix removes 1st episode of docuseries about missing MH370 plane following Vietnam government's requirement. Tuoi Tre News; Tuoi Tre News. <https://tuoitrenews.vn/news/ttnewsstyle/20230414/netflix-removes-1st-episode-of-docuseries-about-missing-mh370-plane-following-vietnam-government-s-requirement/72630.html>

⁶⁶ Keeton-Olsen, D. (2023, May 8). *The Vietnamese military has a troll army and Facebook is its weapon*. Rest of World. <https://restofworld.org/2023/force-47-vietnam-military-group-facebook>

very little evidence about the cyber troops' operations, but critics in Vietnam are often faced with the risks of having their content being removed from Facebook, forcing them to make appeals and going through a slow process to restore the content or even their accounts.

3. Foreign platforms' dealings with government-run cyber troops that manipulate online discussions: The cases of Force 47 and Task Force 35.

Foreign platforms, apart from dealing with the government's requests for content moderation and user data, also face challenges from government-run cyber troops which aim to manipulate online discussions on their platforms.

The first public acknowledgment of such a force, referred to as "public opinion shapers" or "*đur luận viên*" in Vietnamese, occurred in 2013. Hà Nội City's chief propagandist, Hồ Quang Lợi, disclosed that they had mobilized 900 "public opinion shapers" to conduct "online combats" against "anti-state forces."⁶⁷ It is widely believed that public opinion shapers are organized in all provincial propaganda departments.

In December 2017, the Ministry of Defence stated that there were 10,000 members of Force 47 ("*Lực lượng 47*") which operated under the military to combat the so-called "reactionary forces" on the Internet.⁶⁸ No public information indicates the timing of Force 47's formation. Since then, Force 47 has been well-known internationally as Internet trolls who overwhelmingly attack the government's critics on Facebook, YouTube and other platforms.⁶⁹ ⁷⁰ Their effectiveness is widely recognized.⁷¹

In July 2021, Facebook announced that they had removed a group called "e47" which was a group of military and civilian accounts who

⁶⁷ Đào Tuấn. (2013, January 9). *Tổ chức nhóm chuyên gia bút chiến trên Internet*. Laodong.vn; Báo Lao Động. <https://laodong.vn/archived/to-chuc-nhom-chuyen-gia-but-chien-tren-Internet-698587.ldo>

⁶⁸ TUOI TRE ONLINE. (2017, December 25). *Hơn 10.000 người trong "Lực lượng 47" đấu tranh trên mạng*. TUOI TRE ONLINE. <https://tuoitre.vn/hon-10-000-nguoi-trong-luc-luong-47-dau-tranh-tren-mang-20171225150602912.htm>

⁶⁹ 2021/22 "How The Vietnamese State Uses Cyber Troops to Shape Online Discourse" by Dien Nguyen An Luong - ISEAS-Yusof Ishak Institute. (2021). Iseas.edu.sg. <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2021-22-how-the-vietnamese-state-uses-cyber-troops-to-shape-online-discourse-by-dien-nguyen-an-luong>

⁷⁰ Biddle, S. (2020, December 21). *Facebook Lets Vietnam's Cyberarmy Target Dissidents, Rejecting a Celebrity's Plea*. The Intercept; The Intercept. <https://theintercept.com/2020/12/21/facebook-vietnam-censorship>

⁷¹ Keeton-Olsen, D. (2023, May 8). *The Vietnamese military has a troll army and Facebook is its weapon*. Rest of World. <https://restofworld.org/2023/force-47-vietnam-military-group-facebook>

conduct mass reports on critics' content, resulting in the content being taken down. However, the individual accounts reportedly remain active.⁷² Despite this effort by Facebook, public opinion shapers and Force 47 are still widely operating on their platform.

While Force 47 attracts most domestic and international attention, another cyber troops force was quietly created and has been highly effective, Task Force 35, also known as Steering Committee 35 or “*Ban chỉ đạo 35*” in Vietnamese.⁷³ There is no comprehensive report thus far on this force. Judging from publicly available data, our researchers indicate that Task Force 35 units have been created in every administrative level and mobilizing all types of government agencies as well as party-affiliated political arms since 2018, following the issuance of the CPV's Resolution No. 35 in the same year. This means they are operating in a massive scale which overwhelmingly is larger than any other cyber troops forces. They are tasked with “protecting the Party's ideological foundation”, to “propagandize and fight against erroneous and hostile viewpoints, as well as false and harmful information on social networks”, and to “orient public opinion, especially in response to misleading, distorted, and anti-Party and anti-State information from hostile forces, as well as biased, inaccurate, and unverified information.”^{74 75}

In terms of tactics, they are tasked with: (i) spreading the CPV's propaganda using Facebook pages and other social media accounts; (ii) attacking critics on the Internet, and (iii) reporting what they consider “false, toxic information.” The following examples from different Task Force 35 units demonstrate that these tactics are common across the entire system.

Task Force 35 in Phù Ninh district, Phú Thọ: “Maintain the effective operation of groups on social media platforms such as Mocha,

⁷² VOA Learning English. (2021, July 15). *How Vietnam Fights Information War on Facebook*. VOA; VOA - Voice of America English News. <https://learningenglish.voanews.com/a/how-vietnam-fights-information-war-on-facebook/5964287.html>

⁷³ Minh. (2018). *UBND Quận Tân Phú thành phố Hồ Chí Minh*. Hochiminhcity.gov.vn. <http://laodongthuongbinhxahoi.tanphu.hochiminhcity.gov.vn/gioi-thieu/ngghi-quyet-so-35-nqtw-ngay-22102018-cua-bo-chinh-tri-ve-tang-cuong-bao-ve-nen-t-c540-10460.aspx>

⁷⁴ Báo Thanh Hóa. (2024, January 11). Tiếp tục đẩy mạnh công tác bảo vệ nền tảng tư tưởng của Đảng, đấu tranh phản bác các quan điểm sai trái, thù địch. Báo Thanh Hóa; Baotanhhoa.vn. <https://baotanhhoa.vn/tiep-tuc-day-manh-cong-tac-bao-ve-nen-tang-tu-tuong-cua-dang-dau-tranh-phan-bac-cac-quan-diem-sai-trai-thu-dich-204086.htm>

⁷⁵ PHÙ NINH: HỘI NGHỊ TỔNG KẾT HOẠT ĐỘNG BAN CHỈ ĐẠO 35, TỔ CỘNG TÁC VIÊN DƯ LUẬN XÃ HỘI HUYỆN NĂM 2023, TRIỂN KHAI NHIỆM VỤ NĂM 2024. (2023, December 21). Phutho.gov.vn. <https://phuninh.phutho.gov.vn/phu-ninh-hoi-ngghi-tong-ket-hoat-dong-ban-chi-dao-35-to-cong-tac-vien-du-luan-xa-hoi-huyen-nam-2023-trien-khai-nhiem-vu-nam-2024>

Zalo, and especially the Facebook page ‘Sông Lô Xanh’ and the fanpage ‘Người Trung Du’ to organize propaganda, fight against, and refute erroneous and hostile viewpoints, as well as false and harmful information on the Internet and social networks. In 2023, the Facebook page ‘Sông Lô Xanh’ and the fanpage ‘Người Trung Du’ posted and shared over 3,000 articles, receiving nearly 30,000 likes and over 5,000 shares and comments.”⁷⁶

Task Force 35 in Phủ Lý city, Hà Nam: “[...] control, handle, fight against, prevent, remove, and dismantle fake news, false, and malicious information on the Internet and social networks from accounts within the area. Regularly inspect, review, and compile reports on websites, blogs, fanpages, and social media accounts of individuals and organizations in the city that post and spread false information to report and propose to the City’s Task Force 35 and the Provincial Task Force 35 for timely and effective measures to handle and resolve these issues.”⁷⁷

Task Force 35 in Thanh Hóa province: “The management and use of the Internet and social networks, as well as the prevention, removal, and dismantling of false, malicious information, and the struggle against and refutation of erroneous and hostile views to protect the ideological foundation of the Party in cyberspace, are increasingly timely and effective, achieving many significant results.”⁷⁸

In 2021, Task Force 35 in Hà Nội city potentially ran a smear campaign against an independent candidate, Lương Thế Huy, before the general election which took place in May.⁷⁹ Some high schools in his district sent text messages to students, compelling them to spread false information about him on Facebook. These messages accused him of committing tax evasion and being an anti-state actor funded by the U.S. government. One

⁷⁶ See [73]

⁷⁷ Ban Chỉ đạo 35 thành phố Phủ Lý triển khai nhiệm vụ công tác năm 2024. (2024). Hanam.gov.vn. <https://hanam.gov.vn/Pages/ban-chi-dao-35-thanh-pho-phu-ly-trien-khai-nhiem-vu-cong-tac-nam-2024.aspx>

⁷⁸ See [72].

⁷⁹ The Vietnamese Magazine. (2021, May 31). Vietnam Briefing: The Elections Results Have Started To Be Released – The Vietnamese. The Vietnamese Magazine; The Vietnamese Magazine. <https://www.thevietnamese.org/2021/05/vietnam-briefing-the-elections-results-have-started-to-be-released>

such text message instructed, “class leaders will instruct the students to share this content on their personal pages, then take a screenshot and report to the school.”⁸⁰ Students were allegedly promised higher grades as a reward for participating in this campaign. Based on Task Force 35’s usual tactics, we suspect this campaign was part of their operations. Nevertheless, this incident exemplifies how the Vietnamese government mobilizes high school students to defame individuals on Facebook.

4. Meta’s assistance to the government’s propaganda

Meta, which is Facebook’s parent company, not only censors politically sensitive content per the government’s requests, but also actively amplifies the government’s narratives.

During a meeting between Meta’s Vice President Joel Kaplan with Vietnam’s Prime Minister Phạm Minh Chính on 18 September 2023 in California (USA), Kaplan reportedly said the Vietnamese Government’s Information Portal had been their strategic partner since before the COVID-19 pandemic, and its Facebook fanpage – *Thông tin Chính phủ* - was the most successful among governmental fan pages in the region.⁸¹ During the pandemic, Meta provided free advertising packages for *Thông tin Chính phủ* and the Ministry of Health page *Sức khỏe Việt Nam* to boost COVID-19-related information on Facebook.⁸² As a result, *Thông tin Chính phủ* page’s followers increased 2.7 million after over a year and reached 3.3 millions as of May 2022. At the time of this report’s release, *Thông tin Chính phủ* page has 4.5 million followers. Our observation suggests that this is one of the most popular Facebook pages in Vietnam. The Government’s Information Portal’s Director Nguyễn Hồng Sâm said on 15 March 2024 that “during the COVID-19 pandemic, the Government Information Fanpage operated very effectively. Important information could be immediately

⁸⁰ Luật Khoa tạp chí. (2021, July 27). Phóng sự đặc biệt: Chúng tôi phỏng vấn cử tri về gian lận bầu cử. Đây là những gì họ nói. Luật Khoa Tạp Chí; Luật Khoa tạp chí. <https://www.luatkhoa.com/2021/07/chung-toi-phong-van-cu-tri-ve-gian-lan-bau-cu-day-la-nhung-gi-ho-noi/>

⁸¹ baochinhphu.vn. (2023, September 19). Thủ tướng Phạm Minh Chính làm việc với Tập đoàn công nghệ sở hữu Facebook. Baochinhphu.vn; baochinhphu.vn. <https://baochinhphu.vn/thu-tuong-pham-minh-chinh-lam-viec-voi-tap-doan-cong-nghe-so-huu-facebook-102230910104704303.htm>

⁸² Trọng Đạt. (2022). Facebook sẽ đăng ký, kê khai và nộp Thuế nhà thầu nước ngoài ở Việt Nam. VietNamNet News; Vietnamnet.vn. <https://vietnamnet.vn/facebook-se-dang-ky-ke-khai-va-nop-thue-nha-thau-nuoc-ngoai-o-viet-nam-2021301.html>

conveyed to 80% of Vietnamese Facebook users”, and that the page currently could reach 15-17 million people immediately.⁸³

The public information we have gathered suggests that Meta's support for *Thông tin Chính phủ* goes beyond boosting COVID-19-related information. During a meeting with *Thông tin Chính phủ* in Vietnam on 09 March 2022, Meta's representative, Rafael Frankel, expressed their desire to "continue collaborating with the Government's Information Portal in enhancing official information about the Government's and the Prime Minister's directives on COVID-19 prevention and control on Meta's social network, in compliance with Vietnamese laws, reaching a wide audience including citizens and businesses; to better communicate the policies of the Party and the laws of the State of Vietnam to various segments of the population and businesses according to Vietnamese regulations, contributing to the socio-economic development of Vietnam," as quoted from the government's report.⁸⁴ In fact, *Thông tin Chính phủ* acts as a major propaganda outlet to promote the government's agenda, including not only routine governmental activities but also combating dissent and anti-regime information. The following post published by *Thông tin Chính phủ* on 19 June 2024 supports this assertion.⁸⁵

“Recently, it was discovered that in the Cồn Xanh area (Nghĩa Hưng, Nam Định), certain individuals have been using the social network Facebook to connect and collude with each other to incite, direct, and guide residents in the Cồn Xanh area to file complaints to higher authorities to obstruct the government's land acquisition efforts.

The Nam Định Provincial Police initially identified that some of the content in videos posted and spread on Facebook by certain individuals showed signs of legal violations.

⁸³ Quốc Trần. (2024, March 15). Nâng cao tính Đảng, tính định hướng trong hoạt động báo chí. Diendanbaochi.net; diendanbaochi.net. <https://diendanbaochi.net/nang-cao-tinh-dang-tinh-dinh-huong-trong-hoat-dong-bao-chi-1057.html>

⁸⁴ Hoàng Giang. (2022, March 10). Thúc đẩy phối hợp cung cấp thông tin chính thống trên mạng xã hội. Baochinhpvu.vn; baochinhpvu.vn. <https://baochinhpvu.vn/thuc-day-phoi-hop-cung-cap-thong-tin-chinh-thong-tren-mang-xa-hoi-102220310093658171.htm>

⁸⁵ Thông tin Chính phủ. (2024, June 19.) <https://www.facebook.com/thongtinchinhpvu/posts/pfbidoiAGxWW6gbTkjm5dFuE7te8Rjahhr77VVsaPiGKq3hXUf5VLnFLZ5qgyAgWvZUNzLl>

These videos have been commented on, shared, and posted on various Facebook pages, attracting many interactions, negatively affecting security and order in cyberspace, and impacting the progress of land acquisition and clearance in the Cồn Xanh area.

After receiving the case, the Security Investigation Agency promptly conducted investigation activities, verified the information, applied professional measures comprehensively, and closely coordinated with the professional units of the Provincial Police and relevant agencies to quickly investigate and clarify the case details and the violations of the involved individuals to establish a basis for handling according to regulations.

Based on the collected documents and evidence, the Security Investigation Agency has now identified that some individuals in Nghĩa Hưng district have posted and disseminated videos with illegal content:

- *Calling for, persuading, inciting, and enticing large gatherings that disrupt and obstruct the operations of agencies and organizations, causing instability in security and order;*
- *Spreading fabricated and false information that infringes on the honour, reputation, and dignity of individuals or damages the legitimate rights and interests of agencies, organizations, or other individuals;*
- *Disseminating distorted, slanderous information that insults the reputation of organizations and the honour and dignity of individuals, violating the Cybersecurity Law and Decree 72/2013/ND-CP of the Government.*

Identifying the above incident as a sign of criminal activity, on June 14, 2024, the Security Investigation Agency of Nam Định Provincial Police issued a Decision to prosecute a criminal case to investigate the crime of ‘abusing democratic freedoms to infringe upon the interests of the State, the lawful rights and interests of organizations and individuals’ that occurred in cyberspace related to the Cồn Xanh area, Nghĩa Hưng district, Nam Định province, as stipulated in Article 331 of the Penal Code.”

The above post is a typical government propaganda in dealing with dissents among landowners in face of land acquisition which often creates deep tension. Disagreeing with the government's acquisition plan and compensation, landowners usually express their dissents and anger on Facebook, YouTube, and TikTok, among other online platforms. They also use social media as a way of mobilizing public support and of organizing protests. In this case, landowners use Facebook to provide guidance on how to file complaints to the government, yet, their posts are deemed to be illegal and have been under criminal investigation. The criminal provision that is used to prosecute them, Article 331 of the Penal Code - is also a problematic one which has been widely condemned by legal experts and human rights groups as being vague and abused to criminalize speech that is protected under the international human rights law.

This report does not conclude whether Meta's assistance to the government includes boosting such content. Regardless, the company has helped amplify the government's propaganda in general while restricting independent news and legitimate political content. Their cooperation with the government has further imbalanced the information environment in favour of the government, to the detriment of independent journalists, activists, and dissidents.

5. Tech companies' tension with the government

There are rare occasions in which foreign technology companies clash with the Vietnamese government.

In December 2018, days before the Cybersecurity Law took effect, Google, Facebook and some other tech companies called on the Vietnamese government - via a letter - to scrap the data localisation requirement. Speaking through their regional lobby group, they warned the Vietnamese government of economic harm.⁸⁶ The letter was sent after the first draft of a decree guiding the Cybersecurity Law's implementation was released by the Ministry of Public Security. The letter says "we urge the Ministry of Public Security and the government of Vietnam to consider the

⁸⁶ Reed, J. (2018, December 13). *Google and Facebook push back on Vietnam's sweeping cyber law.* @FinancialTimes; Financial Times. <https://www.ft.com/content/2c1e4640-fe78-11e8-aebf-99e208d3e521>

potential consequences of the draft decree in order to prevent unexpected negative impact on the Vietnamese economy.” The draft decree then quickly disappeared from the public space, making the entire drafting process out of public oversight, until its release in August 2022 and is called Decree 53/2022/ND-CP.

The companies’ lobbying efforts seem to be a success since Decree 53 does remove the hard requirement for data localisation for foreign services, lowering the bar to only having store users’ data in Vietnam upon request by the MPS minister. The triggering condition is that the company refuses to cooperate with the government.

Another clash is the case of Facebook being slowed down across Vietnam for a few months in early 2020. The incident took place after a violent attack conducted by Hà Nội City’s police on 09 January 2020 that killed Lê Đình Kinh, a very popular farmer leader that had been in a land conflict with the government for years. The news quickly spread on the Internet, triggering waves of condemnation and criticism against the government. More than a month later, Facebook’s local cache servers were reportedly shut down, resulting in the service being significantly slowed down and unstable. The official reason given to Facebook was technical errors concerning Internet sea cables. The incident happened for about seven weeks, until Facebook agreed to censor more political content in April 2020.⁸⁷

In an unusually aggressive move, the MIC threatened to block Netflix and other cross-border streaming services in Vietnam should the companies not establish local offices. An MIC official, Nguyễn Hà Yên, publicly said that "if a cross-border OTT television service provider does not have a legal entity in Vietnam, the Ministry of Information and Communications will coordinate with telecommunications enterprises to block access to it".⁸⁸ Reuters reported that Netflix had been making moves to opening a local office by possibly late 2023.⁸⁹ If Netflix does so, they will be the first major American major services to have a physical presence in

⁸⁷ Facebook agrees to censor anti-state posts after Vietnam slowed site – report. (2020, April 22). RAPPLER. <https://www.rappler.com/technology/258720-facebook-vietnam-censorship-server-slowdown-report>

⁸⁸ Khuong Nha. (2023, February 27). Netflix will be blocked without local office: official. VnExpress International – Latest News, Business, Travel and Analysis from Vietnam; VnExpress International. <https://e.vnexpress.net/news/companies/netflix-will-be-blocked-without-local-office-official-4575516.html>

⁸⁹ Fanny Potkin,Phuong Nguyen. (2023, February 24). Exclusive: Netflix making preparations to open Vietnam office. Reuters; Reuters. <https://www.reuters.com/technology/netflix-making-preparations-open-vietnam-office-sources-2023-02-24>

Vietnam. However, as of this report's release, no further update is publicly available.

The most recent significant development was an inspection conducted by the MIC on TikTok's operations in May 2023. The MIC accused Tik Tok - and Facebook Reels and YouTube Shorts, two similar services that host short form video content - of six violations: (i) having no control of anti-state content, false information, toxic content for children; (ii) using algorithm to spread click-bait content; (iii) having no control of TikTok idols who produce “tabloid, uncultural content”; (iv) having no measure to control advertisements of counterfeiting; (v) having no measure to control content that violate intellectual property rights; and (vi) letting users use private pictures of others to spread disinformation.⁹⁰

The reason the MIC could conduct an inspection on TikTok is because the platform operates an office in Vietnam. In December 2023, the MIC reported that TikTok had accepted 4 demands from the government, including “enhance child protection measures; copyright-related issues [...]; coordinate policy communication with state management agencies, specifically with the Ministry of Information and Communications; collaborate with the Ministry of Information and Communications to implement communication campaigns to enhance online user behavior through campaigns initiated by the Ministry, calling on content creators to participate in promoting and spreading content, and urging online users to combat fake news.”⁹¹

6. Criminal cases against users

The criminal cases below demonstrate how users of foreign platforms such as Facebook and YouTube are criminalized in Vietnam for speech protected under international human rights law. While this matter is out of the platforms' hands, how the platforms handle the government's requests, especially user data requests, are highly consequential to their own users.

⁹⁰ *Quản lý chặt Facebook, Youtube, Tiktok: Việc cần làm ngay.* (2023). Abei.gov.vn. <https://abei.gov.vn/thong-tin-dien-tu/quan-ly-chat-facebook-youtube-tiktok-viec-can-lam-ngay/108047>

⁹¹ baochinhpvu.vn. (2023, December 7). TikTok thực hiện cam kết theo kết luận thanh tra của Bộ TT&TT như thế nào? Baochinhpvu.vn; baochinhpvu.vn. <https://baochinhpvu.vn/tiktok-thuc-hien-cam-ket-theo-ket-luan-thanh-tra-cua-bo-tttt-nhu-the-nao-102231207183904283.htm>

Criminal cases against users can be categorised into different groups based on their level of political sensitiveness. In this part, we present three criminal cases that represent their respective categories, including (i) highly sensitive/political cases, (ii) moderately sensitive/political cases, and (iii) nonsensitive/apolitical cases.

Highly sensitive/political case: Lê Văn Dũng⁹²

Lê Văn Dũng is a YouTuber and Facebook user who runs his own TV channel independent of the government. He has been a long-time activist who was involved in protests and the self-nomination movement during the 2016 general election. However, he is best known for his popular TV channel called *Chấn Hưng TV* that live streamed and broadcasted criticism against the VCP as well as corruption cases and disputes between ordinary citizens and the government. His channel was popular enough that victims of injustice across the country often came and asked to be on air with him to talk about their cases. As a result, his channel became a platform for reporting land grabbing and other types of abuses of power.⁹³

In January 2021, he announced his intention of running for office. Shortly after that, the police surrounded his home to arrest him, but he had escaped prior to the incident. A special arrest warrant was issued after that and on 30 June 2021, he was arrested and charged with “anti-state propaganda” under the Article 117 of the Penal Code. On 23 March 2022, he was convicted of the crime for publishing 17 video clips deemed to be defaming the VCP and sentenced to 5 years in prison and 5 years’ probation.

Moderately sensitive/political case: Báo Sạch (The Clean Newspaper)

Báo Sạch was a major non-state newspaper that operated on Facebook and YouTube only for more than a year in 2019-2020.⁹⁴ Through their Facebook page, they delivered news and commentaries that follow trending topics.

⁹² Profile: *Le Van Dung - The 88 Project*. (2019). @The88Project. <https://the88project.org/profile/335/le-van-dung>

⁹³ Đỗ, N. (2021, April 3). *Sự thật về cái gọi là “kênh truyền hình CHTV” và nhà báo Lê Dũng vô va*. <https://www.qdnd.vn>; <https://www.qdnd.vn/phong-chong-dien-bien-hoa-binh/su-that-ve-cai-goi-la-kenh-truyen-hinh-chtv-va-nha-bao-le-dung-vo-va-655814>

⁹⁴ Profile: *Nguyen Phuoc Trung Bao - The 88 Project*. (2022). @The88Project. <https://the88project.org/profile/533/nguyen-phuoc-trung-bao>

They were famous for their coverage of corruption cases taking place in local governments as well as the high-profile wrongful death penalty case of Hồ Duy Hải. Apart from running a Facebook page, they also operated a YouTube channel and had released a series of videos on the Hồ Duy Hải's case prior to their closure. Their coverage of Hồ Duy Hải's case consists of not only viral investigative reports but also sharp criticism of the corrupt criminal procedures in the case that also involves the Chief Justice of the Supreme Court Nguyễn Hòa Bình.

Compared to the case of Lê Văn Dũng, *Báo Sạch* is significantly less political. All of the group's members were not highly politically active and most of them worked for the mainstream media or operated their own businesses.

From December 2020 to April 2021, the group of five (Trương Châu Hữu Danh, Nguyễn Phước Trung Bảo, Đoàn Kiên Giang, Nguyễn Thanh Nhã, and Lê Thế Thắng) were charged with "abusing democratic freedom" under the Article 331 of the Penal Code, with four of them arrested. On 20 April 2021, they were convicted and sentenced to 2 - 4.5 years in prison. An appeal court reaffirmed the verdict on 27 January 2022.⁹⁵

Nonsensitive/apolitical case:

On 7 January 2021, Nguyễn Văn Nhanh - a Facebook user who had had no political activism background - was convicted of "insults to another person" under the Article 155 of the Penal Code and sentenced to 12 months in prison.

He was accused of live streaming his criticism of two local government officials concerning a community land dispute. He testified before the court that he was frustrated with the two officials who failed to address the community's questions during a public town hall meeting, thus, he went on Facebook to tell the public about the meeting and did use some swear words to attack the officials.⁹⁶

⁹⁵ TUOI TRE ONLINE. (2022, January 27). *Tòa tuyên y án các thành viên nhóm "Báo Sạch."* TUOI TRE ONLINE.

<https://tuoitre.vn/toa-tuyen-y-an-cac-thanh-vien-nhom-bao-sach-20220127172724669.htm>

⁹⁶ VŨ HỒI. (2021, January 7). *Nói xấu lãnh đạo huyện trên facebook, bị 1 năm tù.* Báo Pháp Luật TP. Hồ Chí Minh; Báo Pháp Luật TP. Hồ Chí Minh. <https://plo.vn/loi-xau-lanh-dao-huyen-tren-facebook-bi-1-nam-tu-post608760.html>

Other cases

Provision	Defendant		Year of trial	Sentence
Article 109 (formerly Article 79 in the 1999 Penal Code)	Trần Huỳnh Duy Thức	Blogger, activist	2010	16 years of imprisonment
	Phạm Văn Thu	Religious leader	2012	Life imprisonment
	Lê Đình Lượng	Activist	2017	20 years of imprisonment
Article 117 (formerly Article 88 of the 1999 Penal Code)	Nguyễn Ngọc Như Quỳnh	Blogger, activist	2017	10 years of imprisonment
	Phạm Thị Đoan Trang	Journalist, activist	2021	9 years of imprisonment
	Phạm Chí Dũng	Journalist, activist	2021	15 years of imprisonment
Article 331 (formerly Article 258 of the 1999 Penal Code)	Nguyễn Hữu Vinh	Journalist, activist	2016	5 years of imprisonment
	Nguyễn Hoài Nam	Journalist	2021	2 years of imprisonment
	Lê Tùng Vân	Religious leader	2022	5 years of imprisonment

Table 1: Some criminal cases of Internet users in Vietnam. Source: The 88 Project.

All of the three provisions mentioned above are often utilized to target political activists and political dissidents, while the government also invokes Article 331 to criminally punish ordinary citizens. With the exception of Phạm Văn Thu, all of the other cases listed below involve online speech.

According to the Committee to Protect Journalists (CPJ), Vietnam is the fifth worst jailer of journalists, behind China, Myanmar, Belarus and

Russia, with 19 journalists imprisoned in 2023.⁹⁷ During an annual freedom of the press ranking released on May 3, 2023, Reporters Without Borders counted 40 journalists “currently being held in Vietnam's prisons” which makes Vietnam “the world's third largest jailer of journalists”.⁹⁸ RSF, for the first time ever since they first released the ranking report in 2002, puts Vietnam in the 178/180 position, only better than North Korea and China, which indicates that the state of press freedom in Vietnam has worsened than the previous year (175/180).

One significant development in law enforcement in Vietnam over the past few years is the rise of the number of regular Internet users being criminally punished for online speech. The US-based organization The 88 Project says in their Human Rights Report 2021 that:⁹⁹

“Online commentators are increasingly becoming a target of harassment, crackdown, and arrests. Fifteen such arrests were recorded in 2021 alone, an increase from 12 in 2020. Topics of the posts ranged from the typical calls for democracy and freedom of expression, as in the past, to more topical subjects such as COVID-19 and the government's poor handling of the pandemic. As a matter of fact, we have firm evidence of at least six arrests in 2021 due to criticism of the government's health policy on COVID-19. We suspect there were many more minor incidents of harassment that were not reported or recorded. In our assessment, the discussion on social media, mainly Facebook, showed a heightened level of anger and frustration at the authorities and the state-run media.”

7. Administrative fines cases against users

In August 2022, N. T. T. L. - a famous gaming streamer on Facebook - made a joke during a livestream, saying “The President is bald because of

⁹⁷ 2023 prison census: Jailed journalist numbers near record high; Israel imprisonments spike - Committee to Protect Journalists. (2024, January 19). Committee to Protect Journalists. <https://cpi.org/reports/2024/01/2023-prison-census-jailed-journalist-numbers-near-record-high-israel-imprisonments-spike>

⁹⁸ Vietnam. (2023, April 27). Rsf.org. <https://rsf.org/en/country/vietnam>

⁹⁹ The 88 Project. (2022, May 9). Human Rights Report 2021 - The 88 Project. The 88 Project. <https://the88project.org/human-rights-report-2021>

watching porn.”¹⁰⁰ This is an innocent joke as she had had no political activism background and she was known for gaming, not any kind of advocacy. She was then fined 10 million VND (approximately US\$450) for “providing/sharing fake or false information with the aims of distorting, slandering or damaging the prestige, honour and dignity of other organisations, authorities or individuals” under the Article 101.1.a of Decree 15/2020/ND-CP.¹⁰¹

In November 2022, a group of six Facebook users were fined 40 million VND (approximately US\$1,700) for the same administrative violation, allegedly spreading misinformation on Facebook about a case of death in custody. They were also ordered to take down the content from Facebook.¹⁰²

In another case, a TikTok user was fined 5 million VND (approximately US\$210) for posting a 14-second video on the platform alleging a businessperson of backing a famous star of Vietnam's showbiz. The authorities concluded that the information was false and fined the person under the same provision of the Decree 15.¹⁰³

The table below demonstrates some other cases in which speech protected under the international human rights law is punished in Vietnam using administrative fines.

Violator	Year	Penalty	Reason
N.H.H ¹⁰⁴	2021	7.5 million VND	An online statement about Vietnam's elections on an online Zalo group: “Doesn't matter if you vote or not.”

¹⁰⁰ *Nữ streamer nói Chủ tịch nước hỏi do xem phim 18+ bị xử phạt.* (2022, September 6). Radio Free Asia. <https://www.rfa.org/vietnamese/news/vietnamnews/streamer-who-said-state-presidents-watching-porn-videos-got-admin-fine-09062022110418.html>

¹⁰¹ News, V. (2022). *Xử phạt nữ streamer phát ngôn xúc phạm lãnh đạo.* VietNamNet News. <https://vietnamnet.vn/xu-phat-nu-streamer-phat-ngon-xuc-pham-lanh-dao-2057173.html>

¹⁰² Hữu Toàn. (2022, November 3). *Xử phạt 6 người đăng hình ảnh, thông tin sai sự thật trên facebook* - Báo Công an Nhân dân điện tử. Báo Công an Nhân Dân Điện Tử; Báo Công an Nhân dân điện tử. <https://cand.com.vn/Ban-tin-113/xu-phat-6-nguoi-dang-hinh-anh-thong-tin-sai-su-that-tren-facebook-i673054>

¹⁰³ Đức, M. (2023, January 12). *Chia sẻ thông tin sai trên Tiktok, thanh niên bị phạt 7,5 triệu đồng.* Suckhoedoisong.vn; suckhoedoisong.vn. <https://suckhoedoisong.vn/chia-se-thong-tin-sai-tren-tiktok-thanh-nien-bi-phat-75-trieu-dong-1692301218093742.htm>

¹⁰⁴ Hà, M. (2021, March 29). *Hà Nội: Bình luận sai sự thật về bầu cử Quốc hội, bị phạt 7,5 triệu đồng.* Thanhnien.vn; <https://thanhnien.vn/ha-noi-binh-luan-sai-su-that-ve-bau-cu-quoc-hoi-bi-phat-75-trieu-dong-1851051090.htm>

			They have arranged everything, we will waste time if we go to vote. This is not like voting for Biden or Trump. We have known the results since last year.”
N.T.T.L. ¹⁰⁵	2022	10 million VND	An online streaming statement about Vietnam's then-President that was deemed to be insulting and inappropriate.
Thái Trác Miêu ¹⁰⁶	2021	7.5 million VND	A comment on Facebook attacking a group of volunteers from a Northern province coming to Hồ Chí Minh City (a Southern province) to aid the city during the height of the COVID-19 outbreak.

Table 2: Some cases of administrative fines imposed on Internet users.

¹⁰⁵ Đức Văn. (2022, September 6). *Xử phạt nữ streamer phát ngôn xúc phạm lãnh đạo cấp cao*. Báo Điện Tử Dân Trí; Báo Dân Trí. <https://dantri.com.vn/xa-hoi/xu-phat-nu-streamer-phat-ngon-xuc-pham-lanh-dao-cap-cao-20220906202510587.htm>

¹⁰⁶ MC Trác Thúy Miêu bị xử phạt vi phạm hành chính vì phát ngôn gây kích động trên mạng xã hội. (2023). Abei.gov.vn. <https://abei.gov.vn/thong-tin-dien-tu/mc-trac-thuy-mieu-bi-xu-phat-vi-pham-hanh-chinh-vi-phat-ngon-gay-kich-dong-tren-mang-xa-hoi/107727>

CHAPTER V: RECOMMENDATIONS

The recommendations presented in this section are based on the common understanding among the experts and stakeholders we have consulted that:

- The Vietnamese government's reluctance to engage with civil society's human rights-focused demands and petitions is evident. Governed by an authoritarian approach, both online and in broader society, the government prioritizes control and restriction of human rights over their liberation and respect. Consequently, civil society initiatives within and outside Vietnam, aiming to express positions and raise awareness, have largely been ineffective in influencing policy.
- In contrast, the Vietnamese government has shown a greater willingness to discuss Internet laws and regulations with corporations and foreign investors. This approach led to a significant amendment in Decree 53, easing requirements for data localization and local office establishment, due to foreign stakeholders' lobbying.
- Foreign tech companies in Vietnam are navigating a delicate balance between profit pursuits and human rights adherence. Facing an authoritarian regime that controls Internet infrastructure, domestic customers, and partners, these companies are vulnerable. Yet, they commit to human rights principles such as freedom of expression and privacy, answerable to their home governments. They also possess some influence over the Vietnamese government, which relies on their technology and services for economic growth. Vietnam is unlikely to shut down these services, to avoid international scrutiny and potential economic sanctions from major economies such as the United States and the European Union.
- Foreign governments currently have limited negotiating power with Vietnam regarding human rights. Unlike the 2010s, when Vietnam engaged in major trade negotiations like the Trans-Pacific Partnership and the EU-Vietnam Free Trade Agreement, there are no significant ongoing trade talks. Geopolitically, democratic states like the United States and the European Union prioritize security over

human rights in dealings with Vietnam, given the strategic need to counter China's growing influence. However, these governments still hold considerable economic and diplomatic sway over Vietnam, which heavily depends on foreign investment, exports to key markets, and development aid, primarily from the same group of countries. Additionally, Vietnam's need to diversify arms suppliers beyond Russia opens potential leverage points for democratic states like Israel, the Czech Republic, and Japan.

Considering all above understandings, we suggest the following recommendations.

To foreign technology companies:

1. *Resist the government's illegitimate requests:* Platforms should evaluate government requests for content moderation and user data based on international human rights law, particularly the Three-Part Test in the ICCPR. It is also strongly recommended that platforms consider the complete lack of checks and balances in Vietnam when assessing these requests.
2. *Address government-sanctioned cyber troops:* Acknowledge and address the activities of Vietnamese government-controlled cyber troops such as Force 47 and Task Force 35. These groups have violated community standards on platforms like Facebook through coordinated mass reporting, the use of cloned accounts, and the dissemination of disinformation and hate speech. Platforms should take proactive measures to identify and remove these accounts to prevent the model from being adopted by other authoritarian regimes.
3. *Label government-operated media:* Implement a labelling system for media outlets and fan pages operated by the Vietnamese government and its affiliates. Collaboration with Vietnamese civil society organizations can aid in identifying these pages.
4. *Protect human rights defenders:* Enhance protections for human rights defenders and civil society organizations against mass

reporting and unjust account suspensions. Establishing an effective appeal process and increasing collaboration with diverse stakeholders can address these issues.

5. *Increase transparency*: Publicize all requests made by the Vietnamese government. Prioritize transparency in account suspension and restriction processes. Clear communication and easily navigable interfaces can help maintain user trust and provide insights into the impact on various rights.
6. *Implement end-to-end encryption*: Adopt end-to-end encryption wherever possible to protect user privacy and resist government demands for message content access.
7. *Support nonprofits*: Reconsider the shadow banning of nonprofit organizations' fan pages. Platforms should not profit from nonprofits operating in oppressive environments like Vietnam and should provide clear explanations for any shadow banning.

To foreign governments:

1. *Enforce existing treaties*: Ensure the enforcement of current treaties with Vietnam, particularly trade agreements, to maintain a free and open Internet and the availability of cross-border services.
2. *Legislate for human rights compliance*: Introduce legislation that obligates tech companies to uphold human rights standards globally, not just within their home countries.
3. *Investigate tech company practices*: Initiate congressional hearings and investigations into tech companies' practices regarding user data management and content moderation, with a focus on compliance with international human rights law.
4. *Promote privacy-focused tech companies*: Support the development of tech companies that adhere to advanced personal data protection standards and integrate privacy-by-design principles.



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CHALLENGES AND FAILURES IN
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Trịnh Hữu Long

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