

VIETNAM

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2019 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Vietnam should be elevated to the Priority Watch List in 2019.¹

Executive Summary: Vietnam is an important emerging market in Southeast Asia for the creative industries, which has investments planned to tap into Vietnam's booming economy. But the market for creative works in Vietnam remains severely stunted due to worsening piracy and persistent and debilitating market access barriers. Vietnam is now host to many of the world's most popular piracy websites, and other problems are growing, including Piracy Devices and apps used to access illegal content. While rights holders have implored Vietnam's government to take action, the government has done very little to address the growing problem. For example, while the highly popular online piracy site *123movies* was shut down due to considerable pressure from the U.S. Government and from industry, the Government of Vietnam did not take any effective actions against those responsible for the site. Thus, the site appears to have simply sold its main architecture, which has led to a proliferation of copycat sites around the world. One exception is the government's support for national broadcasters to protect their investment in the World Cup broadcast by disabling access to hundreds of infringing websites. Unfortunately, the government has not been as amenable to working with foreign rights holders to take action against similarly harmful websites hosting or distributing other types of infringing content.

Rights holders face unreasonable hurdles in enforcing their rights, including requirements for evidence collection that are impossible to meet. Exacerbating the situation is that foreigners remain restricted from investigating, placing the onus on the Government of Vietnam to fill in any evidentiary gaps, which it has been reluctant to do without significant political pressure. Vietnam must take more affirmative enforcement actions against piracy, such as issuing deterrent administrative penalties against infringers, taking additional measures in cases of repeat infringement (e.g., the *chiasenhac.com* service), and undertaking criminal prosecutions, beginning with major online piracy operations that are based in Vietnam. To this end, Vietnam must properly implement its revised Criminal Code consistent with its international obligations to ensure that criminal procedures are applicable to flagrant piracy sites. Vietnam has committed to ratifying the WIPO Internet Treaties, and, without delay, the government should take the necessary steps to ratify and implement them and to bring its standards for copyright protection and enforcement into alignment with its international obligations, including the Bilateral Trade Agreement with the United States (BTA) and the WTO TRIPS Agreement, and evolving global norms. The government should also address deficiencies with the Copyright Office of Vietnam (COV), which is grossly understaffed, and has not taken any action to reform the dysfunctional collective management organization for music producers. Vietnam's piracy problems can be mitigated if the country removed its highly restrictive market access barriers, which, by limiting Vietnamese consumers' access to legitimate content, pushes them towards illegal alternatives. It is long past time for Vietnam to make good on its political commitments and international obligations to improve copyright protection in the digital environment, confront its enormous piracy challenges, and remove the remaining barriers to its creative marketplace.

¹For more details on Vietnam's Special 301 history, see previous years' reports at <https://iipa.org/reports/reports-by-country/>. For the history of Vietnam's Special 301 placement, see <https://iipa.org/files/uploads/2019/02/2019SPEC301HISTORICALCHART.pdf>.



PRIORITY ACTIONS REQUESTED IN 2019

Enforcement:

- Ensure enforcement officials, including the Ministry of Information and Communication (MIC), Ministry of Culture, Sports, and Tourism's (MCST) Inspectorate, and Ministry of Public Security (MPS) IPR/High-Tech Police and related police units, increase the number and the effectiveness of operations focused on online infringement, including against websites identified in this report and operators of such sites; issue administrative penalties for infringement sufficient to deter; ensure administrative orders are properly enforced; and bring criminal prosecutions against commercial scale piracy, including flagrant piracy websites (i.e., globally popular websites that brazenly infringe).
- Encourage educational institutions to implement appropriate use and copyright policies to ensure that students and faculty use legitimate textbooks, other course materials, and copyrighted software.
- Provide the COV with adequate resources, including additional staff, to develop and implement effective enforcement policies.

Legislation:

- Make necessary changes to laws and implementing Resolutions, Decrees and Circulars, including the IP Code and the new Criminal Code, to ensure Vietnam is in full compliance with its BTA, TRIPS, and other international obligations, including, in particular, adopting a Resolution that (1) interprets "commercial scale" consistent with Vietnam's international obligations (including under the recently concluded Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)) to cover infringement that has a significant impact even absent a profit motive and (2) takes into account peer-reviewed studies to ensure that the monetary thresholds can be met by applying an appropriate substitution rate to effectively criminalize the main piracy sites operating in Vietnam.
- Strengthen the legal framework to take effective action against digital infringement, including by:
 - ensuring phonogram producers are provided a full, unrestricted public performance right and exclusive rights for the digital uses of their sound recordings, consistent with Vietnam's international obligations;
 - eliminating the legal and procedural impediments, and easing the evidentiary requirements that interfere with the ability to take effective action against piracy websites, illegal camcording, live streaming piracy, and Piracy Devices and apps that facilitate access to infringing works;
 - closing gaps in substantive copyright protection, especially overbroad exceptions and limitations, and affording adequate levels of protection to enable Vietnam to accede to the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT);
 - encouraging meaningful cooperation between rights holders and ISPs by providing for clear primary and secondary liability provisions; making clear that ISPs must take action against infringing content even without governmental intervention; and ensuring ISPs comply with requests to remove infringing materials and take other measures that have been demonstrated effective in preventing or restraining infringement;
 - increasing administrative penalties for copyright infringement to achieve deterrence and ensuring enforcement authorities are able to take action to enforce administrative orders, including shutting down or disabling access to infringing sites that do not comply; and
 - developing an effective procedure to promptly respond to rights holders' requests for administrative enforcement.
- Extend the term of copyright protection for all copyrighted works, including sound recordings, in line with the international trend of 70 years after the death of the author or, when term is calculated based on publication, at least 75 years (or 100 years from fixation) as provided in the BTA.

Market Access:

- Eliminate foreign investment restrictions, quotas, and other entry barriers with respect to the production, importation and distribution of copyrighted materials, whether in the physical, online, or mobile marketplaces.
- To encourage the development of “over-the-top” (OTT) services, adopt a light-touch self-regulatory approach in Decree 06, and do not impose unreasonable compliance obligations in implementing the new cybersecurity law.
- Deregister the Recording Industry Association of Vietnam (RIAV) and engage with local and foreign music producers to set up a new collecting society to enable all music producers to effectively manage the rights that are subject to collective management in Vietnam.

PIRACY AND ENFORCEMENT UPDATES IN VIETNAM

Prior IIPA reports on Vietnam contain detailed discussion of piracy and enforcement issues. This report serves only as an update to those and is not to be considered an exhaustive review of issues.²

The Vietnamese Government has long recognized that piracy in the country is increasingly “sophisticated” and involves violations of “[m]ost of the objects of the rights.”³ Yet Vietnam’s actions to combat piracy (including actions taken pursuant to the 2012 MIC and MCST Joint Circular 07⁴) have not adequately addressed its piracy challenges, including those identified below. Vietnam must take more affirmative enforcement actions against piracy, such as issuing deterrent administrative penalties against infringing operations, and spearheading criminal prosecutions, beginning with major online piracy operations based in Vietnam.

Growing Online Marketplace Presents Challenges: A significant and growing percentage of the Vietnamese population is online, with most of that increased access stemming from mobile broadband subscriptions.⁵ Vietnam’s large population of young people and rapidly growing online and mobile user-base offer enormous new opportunities for legitimate services for creative content.⁶ Indeed, a growing number of licensed Internet music content providers are trying to take advantage of these opportunities, including *Zing.vn*, NCT (*nhaccuatui.com*), Viettel Media (*keeng.vn*), Vega Corporation (*nhac.vn*), Spotify, iTunes, and Deezer. Mobile applications like *Pops TV* are also pioneering the availability of music and audiovisual content, using iTunes, Amazon MP3, Android, Windows Phone, and Samsung Smart TV as vehicles for the distribution of content, including local Vietnamese content. Two video-on-demand (VOD) services were launched in Vietnam in 2016: Film+ (“film plus”) and Dannet. Netflix and Iflix are also available. These channels for digital distribution offer huge potential for the creative industries; however, as discussed below, Vietnam must significantly improve its legal framework and enforcement efforts, and dramatically reduce market access barriers for this potential to be realized.

Vietnam faces the rising challenge of combating increasing online and mobile network piracy from download sites, peer-to-peer (P2P) networks, linking sites, streaming sites, search engines, cyberlockers, and on social media networks. A wide variety of movies are available online for free, making it impossible for legitimate businesses to compete. Vietnam is also now home to some of the worst piracy sites in the world, sites with global reach and extremely high popularity (such as *phimmoi.net*, *bilutv.com*, *phimbathu.com*, *xemphimso.com*, *bomtan.net*, *vtv16.com*, and *hdonline.vn*). Streaming of unlicensed music through websites and mobile apps is rising, and stream-ripping is also a problem. There are a vast array of these piracy services operating in the market, offering massive

²See, e.g., IIPA, *Vietnam*, 2018 Special 301 Report, (February 8, 2018), available at <https://iipa.org/files/uploads/2018/02/2018SPEC301VIETNAM.pdf>.

³Copyright Office of Vietnam, *Overview of Copyright in 2008*, January 19, 2009 (on file with IIPA).

⁴*Joint Circular No. 07/2012/TTLT-BTTTT-BVHTTDL on Stipulations on the Responsibilities for Intermediary Service Providers in the Protection of Copyright and Related Rights on the Internet and Telecommunications Networks* (in force August 2012) (“Joint Circular 07”).

⁵According to the International Telecommunications Union, the percentage of individuals using the Internet in Vietnam increased from 43.5% in 2015 to 46.5% in 2016, and active mobile broadband subscriptions were almost 47 per 100 inhabitants in 2016. See *Measuring the Information Society Report 2017*, International Telecommunications Union, at 145, available at https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2017/MISR2017_Volume1.pdf.

⁶One recent report found that “Vietnam has seen a very rapid increase in mobile broadband penetration over the past five years” and “strong growth is expected to continue in the fixed broadband market.” See *Vietnam - Telecoms, Mobile and Broadband - Statistics and Analyses*, BuddeComm, Executive Summary available at <https://www.budde.com.au/Research/Vietnam-Telecoms-Mobile-and-Broadband-Statistics-and-Analyses>.

amounts copyrighted content. Most of these websites generate revenue through advertisements or through paid subscriptions for premium service. The harm caused from online piracy is significant, making it nearly impossible for legitimate online platforms to develop sustainable and properly-monetized content distribution services because they must compete with pirated websites. For the motion picture industry, piracy also implicates the life cycle of filmed entertainment, as new movies are frequently available online while they are still in their theatrical run. Some major piracy sites are listed below:

- *Chiasenhac.com* (Alexa ranking 161) is the most popular pirate music site. It allows users to stream unlicensed Vietnamese and international music,⁷ attracting 84% of its traffic locally and the remainder from territories including the U.S., Mexico, and India.
- Sites such as *phimmoi.net*, *bilutv.com*, *phimbathu.com*, *xemphimso.com*, *bomtan.net*, *viv16.com*, and *hdonline.vn* and related sites are of deep concern to the motion picture and television industry.
- *Y2mate.com* is one of the most popular stream-ripping sites in the world, and the site owner is located in Vietnam.
- Other sites that provide unlicensed music and music video content for download and streaming include *nhac.pro.vn* (also *nhacpro.net*), *trangtainhac.net*, *trangtainhac.com*, and *tainhacvemay.mobi*.

As noted, one major global piracy site, *123movies*, was shut down in 2018, but appears to have sold its main architecture, leading to a proliferation of popular lookalike and copycat sites with locations all over the world, many with names like *123movies* or *gomovies*. This is in part due to the government's unwillingness or inability to take effective action against those responsible for the site, which is a longstanding barrier to effective enforcement, as discussed below. Even licensed music websites may inadvertently contribute to global piracy because most music sites do not have efficient geo-blocking systems and, therefore, the content becomes available elsewhere.⁸ Some third party sites (especially open source sites) circumvent licensed sites' technological protection measures (TPMs), including geo-blocking systems, to obtain music recordings for users to download or stream online without authorization both in and outside of Vietnam. This "deeplinking" problem appears to be under control through coordinated efforts of rights holders and the licensed sites. In 2018, licensed music services in Vietnam took measures to prevent at least 97 local and foreign third party websites, including now-defunct sites *nghenhacvui.com* and *fullsongs.net*, from deeplinking to their contents. But some new websites have appeared, such as *trangtainhac.com*, that deeplink to other services, such as *chiasenhac.vn*. It is important that Vietnamese sites build their capacity to employ TPMs to prevent such unlicensed deeplinking, and there should be an effective legal remedy against these deeplinking sites. Unfortunately, Vietnam's copyright law does not provide adequate protections against circumventing TPMs.

Vietnam has been willing to take some important steps in its enforcement against online piracy of audiovisual broadcasts over the past few years, demonstrating at least some willingness to cooperate with rights holders in enforcement actions and training and capacity building. In 2018, Vietnam broadcasters, including Vietnam TV (VTV), with support from MIC and MPS and cooperation from ISPs, successfully took action to stop unauthorized online transmissions of the World Cup soccer tournament. As reported last year, other recent positive developments include Decree No. 17/2017/ND-CP (Decree 17), issued in 2017, authorizing MIC to implement regulations in coordination with other authorities that would enable MIC to take actions against online infringement. MIC also issued Decision No. 1278/QĐ-BTTTT, which authorized a project to "strengthen MIC's capacity to fight online infringement and online crimes." Under this project, MIC and other relevant authorities will amend regulations to improve enforcement and conduct technical trainings and institutional reforms to ensure MIC's inspector and other relevant departments are fully able to address online infringement. IIPA remains hopeful that these developments will result in improved enforcement against online piracy.

⁷*Chiasenhac.com* (also *chiasenhac.vn*), which has an Alexa ranking of 161 and receives 4 million monthly visits, is owned by Yeu Ca Hat Company and hosted from Vietnam by Viettel IDC. As a result of an administrative complaint filed in 2016 with the Ministry of Information and Communications against *chiasenhac.com*, the site was fined and ordered to remove all infringing contents. Its infringing activities, however, continue.

⁸SimilarWeb estimates that visitors from the United States and Mexico are the second and third top foreign visitors to Vietnam's music sites.

Unfortunately, however, rights holders note that the process of addressing infringements is cumbersome and is done on a case-by-case basis. Enforcement actions are slow, with rights holders subject to a complicated procedure in which myriad of impossible evidence requirements are imposed, which is exacerbated by the ban against investigations by foreigners. The police and prosecutors insist that this extensive evidence must be produced before any action is taken, creating a “catch 22” because the investigation is necessary to uncover the required evidence. Even where the infringement is clear, identification of the infringing website is not enough. Vietnam’s ban on investigations by foreign entities should be eased, because it creates an impossible situation in which enforcement authorities require substantial evidence, but rights holders are unable to provide the necessary level of detail due to the ban on investigations. As a result, the onus is on Vietnam’s government to collect the evidence necessary to take effective administrative or criminal action. It is not helpful that Vietnam’s domain registrar, Vietnam Internet Network Information Center (VNNIC), is not required under national law to provide contact and registration information of website owners in any WHOIS-style lookup database, making tracing the owners of infringing websites extremely difficult and hampering enforcement. The difficulty in identifying infringers also makes civil actions nearly impossible, because such actions cannot be initiated against an unknown infringer (i.e., “John Doe” actions are impossible in Vietnam), even where the domain name, IP address, and related email addresses are known.

Many offending rogue sites remain in operation and are growing in popularity. Vietnamese authorities, including the MIC Inspectorate, MCST, and MPS, are currently being asked to take more effective measures against notorious infringing sites with business models based on providing access to infringing content, employing the remedies set out in the MIC/MCST Joint Circular 07 (JC), including bringing criminal prosecutions.⁹ The Inspector of MIC should use the authority granted under the JC and Decree No. 17 to sanction violations more effectively, particularly against those websites that are under MIC licenses. IIPA also hopes for increased criminal investigations into online piracy cases by the many police units with responsibility for investigating copyright and online crimes, including the MCST Inspectorate, MPS IPR/High-Tech Police and related police units (such as the Hanoi local High Tech Crime Police (PC50), the High Tech Crime Police (National) (C50), and the Security Police (P83)); and increased prosecutions by the Supreme People’s Procuracy. Furthermore, IIPA recommends that Vietnam’s government provide the understaffed COV with adequate resources, including additional staff, to develop effective enforcement strategies and policies to tackle online piracy. In June 2016, MIC and MCST promulgated a Joint Circular to provide guidance for changing and revoking domain names that infringe intellectual property laws; but unfortunately, IIPA understands that this Joint Circular does not apply to infringement of copyright.¹⁰ This is a major loophole in the Joint Circular and IIPA urges MIC and MCST to review it and extend its application to copyright infringement.

The level of cooperation with ISPs has improved as some of these companies have started their own licensed services. The responsiveness of some licensed services, such as *zing.vn*, to takedown notices has greatly improved, but other local hosting providers, including FPT, claim that under the JC they are unable to take action against piracy websites without government intervention. Thus, while high piracy levels continue to distort the marketplace, ISPs will only take down infringing content when instructed by government authorities. This appears to have happened when Vietnam broadcasters’ asserted their rights regarding the unauthorized World Cup transmissions, as discussed above. Because, under Vietnam’s legal framework, the government is the indispensable authority for taking action against illegal online content, it is incumbent on the government to take action. One way to

⁹Joint Circular 07 (JC) imposes high standards of performance requiring “providers of intermediary services” to: 1) take affirmative steps to “[e]stablish a system to examine, supervise and process the information that is uploaded, stored and transmitted on internet and telecommunications networks in order to prevent violations of copyrights and related rights”; 2) “[u]nilaterally refuse to provide a service that runs counter to the laws on copyright and related rights”; and 3) “[r]emove and erase the digital content that violates the copyright and related rights; terminate, stop and temporarily suspend the internet and telecommunications services upon receiving a written request of the MIC Inspectorate, MCST Inspectorate, or of other Government authorities in accordance with the law.” Additional requirements are imposed upon social network operators to “send a warning of a responsibility to compensate for civil damages and a possibility of being subject to administrative sanctions and criminal prosecution to a social media user who commits an act that violates copyright and related rights.” The JC requires providers of intermediary services to be “[s]ubject to the inspection and examination conducted by state management authorities in compliance with the regulations on copyright and related rights.” Finally, liability is possible when copyright is violated or technological protection measures (TPMs) are removed, including liability for “[h]aving operations like a secondary distributor of the digital content generated from violations of the copyright and related rights.”

¹⁰See Joint Circular 14/2016/TTLT-BTTTT-BKHCN.

better share this responsibility would be for Vietnam to amend the JC to enable greater cooperation between rights holders and ISPs.

In 2018, MIC's Authority of Broadcasting and Electronic Information (ABEI) worked with a number of rights holders to help combat online piracy, resulting in sanctions against infringing websites. ABEI has also indicated a willingness to further engage with rights holders to develop procedures to combat online piracy. Such procedures may involve asking ISPs to disable access to infringing sites. More work needs to be done, however, to prove the effectiveness of these efforts.¹¹ In addition, the local audiovisual industry, with U.S. rights holders, has established a pilot program to work with online advertisers and brand owners to ensure they do not inadvertently place ads or sell products on piracy websites in Vietnam. IIPA would welcome support of this initiative from the Government of Vietnam as well as from Vietnamese industry to begin to choke the advertising revenue streams of piracy sites.

The absence of a more effective means of encouraging responsible practices—including taking enforcement actions against sites that knowingly distribute infringing music, or those with business practices based on the distribution of infringing music and, therefore, promote infringement (e.g. *Chiasenhac*)—has continued to negatively impact the local music market and has contributed to Vietnam remaining a major source of trans-border online piracy. The situation for the motion picture industry is also difficult. While most ISPs do not openly place pirated films on their VOD services, much more needs to be done to address infringement on all the services they provide. For example, ISPs do not provide for the termination of services due to copyright infringement under the terms and conditions of the user agreements with websites they host; such a provision should be included in these agreements.

With the rapid increase in the number of mobile phone subscribers in Vietnam, mobile network piracy has significantly increased in over the past several years. Rights holders now face two major challenges in the mobile space: 1) mobile device vendors loading illegal copyright content onto devices at the point of sale; and 2) the proliferation of "apps" designed to access infringing sites from mobile networks. For example, Socbay developed a mobile app called *Socbay iMedia*, which provides users with a variety of unauthorized entertainment content, including music files. Another problem is that some licensed music services have created mobile apps that do not sufficiently support geo-blocking, allowing their contents to be played in other territories that are not licensed. For example, *Thegioinhac* (owned by Mobifone) and *Xmusic Station* (owned by NCT) both lack effective geo-blocking mechanisms.

Piracy Devices and Apps: Piracy Devices are media boxes, set-top boxes, or other devices that allow users, through the use of piracy apps, to stream, download, or otherwise access unauthorized content from the Internet. These devices have emerged as a significant means through which pirated motion picture and television content is accessed on televisions in homes around the world. China is a hub for the manufacture of these devices. The devices, gaining popularity in Vietnam, may be promoted and/or advertised to enable infringement of copyright or other illegal activities. Chief among these activities is enabling users through apps, to access remote online sources of unauthorized motion pictures or television programming. Often camcording in cinemas is the source of the pirated material. The apps may be pre-loaded prior to shipment, loaded by vendors upon import and prior to sale, as an "after sale" service, or by the users themselves, often utilizing easy to follow instructions provided by the vendor. Piracy Devices are part of a sophisticated and integrated online ecosystem facilitating access to pirated audiovisual materials. Research indicates that e-commerce websites, such as *Lazada.vn*, are the most common pathway to market for the promotion and sale of Piracy Devices in Vietnam. The Vietnamese Government, including MCST and MIC, must increase enforcement efforts, including cracking down on piracy apps and on vendors who preload the

¹¹In 2017, with the support of MIC's Authority of Broadcasting and Electronic Information (ABEI), movie rights holders in Vietnam met with key ISPs, including VNPT, Viettel, FPT, and VCCorp, to discuss enhanced cooperation against online piracy. Although the meeting did not result in a Memorandum of Understanding, some ISPs agreed to improve coordination with movie rights holders to address online piracy of audiovisual content, including considering a procedure that ensures pirated content that has been taken down does not reappear. IIPA hopes that ABEI will officially endorse the procedure, encourage rights holders and ISPs to test the procedure, and take necessary steps to ensure the procedure is implemented effectively. ISPs should move forward on initial procedural steps to achieve concrete outcomes to combat online infringements. IIPA further hopes that this procedure will become available to other rights holders as well.

devices with apps that facilitate infringement. Moreover, Vietnam should take action against key distribution points for devices that are being used illegally.

Book and Journal Piracy Severely Harms Publishers: Book and journal publishers report continuing problems in Vietnam with unauthorized photocopying and illegal print piracy, mostly of English language teaching (ELT) materials. The proliferation of small, private ELT schools makes enforcement against widespread use of unauthorized reproductions of ELT materials at such institutions extremely difficult. Unfortunately, the enforcement environment in Vietnam remains challenging for publishers and little progress has been achieved to combat infringing uses of ELT materials. It remains the case that the agency tasked with administrative IPR enforcement has little experience or expertise, and there is presently no accredited authority to issue expert opinions on copyright infringement. Publishers have identified a number of online sites that provide access to infringing copies of medical, dental, and pharmaceutical text books, and referred them to the MCST for administrative action; but, unfortunately, MCST has not taken action.

Court Reform Needed: Certain industry sectors and the U.S. Government were working with the Supreme People's Court in drafting an "IP Manual for Vietnamese Judges," but that effort stalled. All copyright sectors should be involved in this effort and the manual should be completed as soon as possible, and should include procedural and evidentiary guidance as well as sentencing guidelines to create a level of deterrence in copyright cases. In addition, building IP expertise should be part of the overall judicial reform effort, and training should also be provided to police and prosecutors, as they play a very important role in bringing a criminal case to the courts.

Increase Efforts Against Camcording: A vast number of movies are stolen right off the screen by professional camcorders, who use video cameras to illicitly copy a movie during its exhibition in a movie theatre—usually very early in its theatrical release or even before the film's release (e.g., at a promotional screening). These illicit copies are then distributed to pirate "dealers" throughout the world and over the Internet. Illegal camcording destroys entire windows for distribution of audiovisual works, and damages not only the U.S. film industry, but also local cinema businesses. A camcording of a major motion picture was found on YouTube with Vietnamese subtitles. In addition, the rise of live streaming content over the Internet has contributed to the growing camcording problem. While Vietnam's Ho Chi Minh City Police initiated its first enforcement action against camcording in 2015, more needs to be done to address this insidious problem, including adopting a measure providing for criminal procedures to deter unauthorized camcording in movie theaters.

Collective Management: Due to market access barriers, as discussed below, the local music industry is very small. As a result, the collective management entity accredited for representing record producers, RIAV, is made up of just a handful of local producers and is not able to function effectively and professionally. Locally, its membership has fallen from 69 to 10. COV should engage with foreign music producers to enable reform of collective management to put in place a more inclusive entity that represents all producers, foreign and local, and has the relevant expertise and technical capability to effectively perform collective management functions to the benefit of right holders and users alike. This would best be achieved by deregistering RIAV and facilitating renewal by setting up a new collecting society for producers in cooperation with both local and foreign rights holders.

COPYRIGHT LAW AND RELATED ISSUES

Copyright protection and enforcement in Vietnam is governed by the Intellectual Property Code (as last amended in 2009), the Criminal Code (as amended in 2017), the Joint Circular (2012), and the Administrative Violations Decree (No. 131) (as amended in 2017).¹² The Civil Code of 2015 remains as a vestigial parallel law. Vietnam is obligated to accede to the WCT and WPPT (collectively, the WIPO Digital Treaties) through the CPTPP

¹²Decree No. 131/2013/ND-CP on Sanctioning Administrative Violations of Copyright and Related Rights, entry into force December 15, 2013 (replacing Ordinances Nos. 47 and 109).

and the EU-Vietnam Free Trade Agreement, and IIPA encourages Vietnam to take the necessary actions to join and implement these treaties.

Vietnam has taken some recent strides, but it still must close the gaps between its current legal framework and its unmet international obligations, including those it committed to in the TRIPS Agreement and the BTA with the United States.¹³ Unfortunately, some recent changes noted below may have moved Vietnam further from those standards. We are hopeful that Vietnam will raise its standards for copyright protection and enforcement to, at least, meet its BTA obligations as quickly as possible.

Implementation of New Criminal Code is Critical and Should Be Consistent with International Commitments: Vietnam's newly enacted Criminal Code became effective in January 2018. The new Criminal Code criminalizes piracy "on a commercial scale," although the meaning of "on a commercial scale" is not defined. Pursuant to its obligations under the TRIPS Agreement, the BTA, and the CPTPP, Vietnam is required to criminalize copyright piracy "on a commercial scale."¹⁴ CPTPP Article 18.77 expressly defines "commercial scale" to include not only "acts carried out for commercial advantage or financial gain," but also "significant acts not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace." Footnote 127 of the CPTPP states that the "volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace." Vietnam should implement its new Criminal Code consistent with these provisions.¹⁵ In 2009, Vietnam established criminal procedures for copyright infringement, but left application of those procedures to the discretion of the People's Procuratorate. Soon thereafter, Vietnam adopted monetary thresholds, but the thresholds have proven difficult, if not impossible, to apply in practice, without further guidance. The Supreme People's Court is currently working on a draft Resolution to provide guidelines for interpreting "commercial scale" and how to calculate the monetary thresholds. The Resolution, which is expected to issue in 2019, should ensure that all infringement on a commercial scale is subject to criminal liability, consistent with Vietnam's international obligations, including TRIPS, the BTA, and the CPTPP. Specifically, "commercial scale" infringement should be defined consistent with the CPTPP definitions cited above. Furthermore, consistent with Vietnam's international obligations, it is critical that the thresholds are not set too high and that they effectively criminalize the main piracy sites operating in Vietnam. The government should take into account peer-reviewed studies to ensure that the monetary thresholds can be met by applying an appropriate substitution rate (i.e., the percentage of piracy that is substituting for legal consumption).¹⁶ By employing an appropriate substitution rate analysis, any of the top 10 movie piracy sites, including those noted above (*phimmoi.net*, *bilutv.com*, *vtv16.com*, and *hdonline.vn*) are engaged in "commercial scale" piracy.

IP Code as Amended Remains Incompatible with Global Norms and with Vietnam's International Obligations: The IP Code and amendments have made a number of improvements in the overall protection of copyright in Vietnam. Yet, they leave questions regarding Vietnam's compliance with the BTA and other international obligations. Among the issues that should be resolved in the current Code are the following:

- The IP Code does not provide for a term of protection for all copyrighted works, including sound recordings, in line with the international trend to 70 years after the death of the author, or, when the term is calculated based on publication, at least 75 years (or 100 years from fixation) as required by BTA Article 4.4.¹⁷

¹³Agreement Between The United States of America and The Socialist Republic of Vietnam on Trade Relations, July 13, 2000 (BTA), Chapter II on Intellectual Property Rights.

¹⁴See TRIPS Article 61; BTA Article 14; and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) Article 18.77.

¹⁵The new Criminal Code is intended to implement Vietnam's obligations under the CPTPP.

¹⁶Some research has estimated that the substitution rate is equal to the portion of piracy that would have been consumed legally. Research shows that substitution rates vary, but that a 30-40% substitution rate is generally reasonable. See, e.g., Herz and Kiljanski, "Movie Piracy and Displaced Sales in Europe: Evidence from Six Countries", https://mpr.ub.uni-muenchen.de/80817/1/MPRA_paper_80817.pdf (estimating an overall 37% rate of cannibalization of paid consumption from first unpaid viewings).

¹⁷Article 4.4: "Each Party shall provide that, where the term of protection of a work is to be calculated on a basis other than the life of a natural person, the term shall be not less than 75 years from the end of the calendar year of the first authorized publication of the work or, failing such authorized publication within 25 years from the creation of the work, not less than 100 years from the end of the calendar year of the creation of the work."

- The right of producers of sound recordings “to distribute to the public the original or copies of the phonograms by sale, rental or distribution or any other technical means accessible by the public” under Article 30(1)(b) of the IP Code is vague and is not in line with the right of “making available” under the WPPT.¹⁸
- Enactment of the IP Code created an apparent inadvertent gap; namely, the prohibition on trafficking in circumvention devices (codified in Article 28(14) as to “works”) was not made applicable to related rights.
- Articles 7(2), 7(3), and 8 of the IP Code appear to give the State power to restrict the ability of rights holders to exercise lawful rights in broad circumstances, and remove copyright protection in ways similar to provisions in China’s Copyright Law that were found by a WTO panel to violate China’s WTO obligations.¹⁹
- Article 17(4) creates an unacceptable hierarchy of the rights of authors over related rights owners, undermining the rights of the latter, which is inconsistent with Vietnam’s obligations to provide certain exclusive rights to related rights holders, including producers, performers, and broadcasters, under international agreements, including the TRIPS Agreement and the Rome Convention. Article 17(4) should be repealed.
- Certain exceptions and limitations in the IP Code may be overly broad and call into question Vietnam’s compliance with its international obligations, including TRIPS Article 13 and Article 4.8 of the BTA.²⁰
- Articles 202(5) and 214(3) of the IP Code permit seized infringing goods and the means of producing them to be distributed or used for “non-commercial purposes,” rather than destroyed. These provisions fall short of Vietnam’s BTA (Article 12.4) and TRIPS Agreement obligations.
- Article 203 fails to provide an adequate presumption of copyright ownership, potentially running afoul of Vietnam’s commitments in the BTA (Article 3.2), as well as under TRIPS (Article 9(1) incorporating Articles 1-21 of the Berne Convention) and the Berne Convention (Article 5, establishing that copyright exists in the absence of formalities, and Article 15, providing for a presumption of ownership for an author whose name appears on the work in the usual manner).

Decree No. 22/2018 Could Undermine Rights of Sound Recording Producers: Decree No. 22/2018, issued in April 2018, provides guidelines for implementing certain provisions of the IP Code. Article 32(3) of this Decree is problematic because it appears to provide an exhaustive list of the types of venues where sound recordings can be used for public performance pursuant to Article 33 of the IP Code. Thus, this provision could be interpreted to mean that the public performance right applies only to this list of venues, and no others, which would unacceptably limit the scope of the public performance right. Furthermore, the list of venues includes “establishments providing . . . digital environment services.” While this appears to refer to venues providing Internet services, such as an Internet cafe, it could be misinterpreted to refer to the use of phonograms online. As such, the provision is not sufficiently clear and, if misinterpreted, would raise uncertainty regarding the exclusive rights of phonogram producers for the digital uses of their sound recordings. Such a misinterpretation would also cause further problems, given that Article 33 of the IP Code appears to be limited to a remuneration right in contrast to Article 30(1)(b) of the IP Code, which provides producers with the exclusive right to “distribution to public by technical means accessible to the public.” The Government of Vietnam should amend Article 32(3) of the Decree to clarify it and ensure that it is interpreted consistent with Vietnam’s international obligations.²¹

¹⁸Article 30(1)(b) should be clarified to ensure it provides a making available right, as well as a distribution right, and that it covers any form of transmissions of sound recordings, including interactive and non-interactive digital transmissions.

¹⁹Article 7(2) potentially gives the State unchecked power to decide when a right holder may exercise rights and under what circumstances. Article 7(3) permits the State to take away copyright altogether or restrict the ability of a right holder to exercise lawful rights. Article 8 establishes impermissible content-based restrictions of protection under copyright.

²⁰The following provisions remain problematic: Article 25(1)(g) on “[d]irectly recording and reporting performances for public information and educational purposes”; Article 25(1)(f) on “dramatic works and other forms of performing arts in cultural gatherings or in promotional campaigns”; and Article 25(1)(j) allowing importation of copies of others’ works for personal use. Article 25 further codifies a broad broadcasters’ compulsory license as to all works except cinematographic works, the breadth of which cannot be remedied by the simple addition of three-step test language. As drafted, it creates a Berne- and TRIPS-incompatible compulsory remuneration scheme. Similarly, the Article 33 compulsory license for use of audiovisual recordings for commercial “broadcasting” violates international standards at least as to the works involved and cannot be remedied by the addition of three-step test language. Articles 7(2), 7(3), and 8, referenced above, are overbroad exceptions that run afoul of the three-step test.

²¹Vietnam’s obligations under the CPTPP include providing producers of sound recordings with exclusive rights for communication to the public and making available of their sound recordings. See CPTPP Article 18.62(3).

ISP Liability Should be Amended to Meet Modern Challenges: Joint Circular 07 (JC) merely requires intermediaries to take down infringing content and terminate services under certain circumstances, but this authority has been used in practice only in very narrow circumstances where online services and websites are directly infringing, and no secondary liability provision exists in the JC or elsewhere in Vietnam's legal framework. The concept of "intermediaries" in the JC is broad and should be applied broadly to improve enforcement. But the Circular itself does not establish liability rules. The law should make it clear that any ISP that engages in any act restricted by copyright cannot avoid liability for copyright infringement. The JC also does not include any requirement for neutral intermediaries to take down infringing content in response to a notice received directly from a rights holder.²² What is needed are clear legal incentives, including clear liability provisions, to ensure online platforms do not engage in infringing activities, especially regarding the making available right, and to ensure neutral intermediary service providers will cooperate with rights holders to deter unauthorized storage and transmission of copyrighted materials. For example, the "right" for ISPs to take measures "for prevention [of] infringing acts of copyright [and] related rights" under Article 4 should be included as part of the "obligations" under Article 5. And the requirements in Article 5 for ISPs to remove and erase digital content that violates copyright and suspend services should be clarified to ensure ISPs are held liable at least for infringements that ISPs control, initiate, or direct, and for infringements that ISPs fail to expeditiously remove or disable access to upon obtaining knowledge or awareness, such as (but not limited to) receiving notification from a rights holder. Furthermore, the obligation of intermediaries in Article 5 of "cutting, stopping, and suspension of the Internet line" should be clarified to expressly include the disabling of access to locations inside or outside of Vietnam that host copyright infringing content.

Administrative Enforcement Decree Must Be Implemented in Practice: As reported previously, the Administrative Violations Decree (No. 131) reduced the maximum administrative fine for an individual to VND250 million (~US\$11,000), and set the maximum fine in the amount of VND500 million (~US\$21,600) for an organization. The following fines are also set forth: 1) VND3 to 5 million (~US\$130 to \$220) for transporting goods produced without permission of rights holders and VND5 to 10 million (~US\$220 to \$430) for stockpiling goods produced without permission of the rights holder; 2) VND200 to 250 million (~US\$8,600 to \$10,800) for importing an original or unauthorized copy of a work; 3) VND70 to 100 million (~US\$3,100 to \$4,320) for the act of unauthorized broadcasting or re-broadcasting; 4) VND15 to 35 million (~US\$650 to \$1,510) for reproduction of unauthorized copies of phonograms or video recordings; and 5) VND10 to 30 million (~US\$430 to \$1,300) for distribution of originals or copies of phonograms or video recordings without permission of the rights holder. In addition to these fines, infringers may face remedial measures, such as confiscation of infringing goods and any false registration certificates, as well as the forced suspension of business, consultancy, or service activities. Notwithstanding the reduction in the general maximum, the government should raise and employ these maximum fines to full and deterrent effect forthwith. Moreover, Vietnam's enforcement authorities, such as MIC, should take action to ensure administrative orders are enforced, including shutting down or disabling access to the infringing sites that do not comply.

Decree No. 85 Questions Remain: Decree No. 85 (2011) amended certain provisions of the Civil Code.²³ While Decree No. 85 contains some helpful clarifications, it also contains provisions that are problematic in terms of Vietnam's compliance with international norms and best practices. Most notably, Decree No. 85 makes certain changes to Article 41 of Implementing Decree No. 100 governing collective management that, if applied to foreign rights holders, would be onerous.²⁴ It should also be clarified that the "Principles and methods of payment of royalty,

²²The requirements of Article 5 of JC appear to apply only where the government has intervened.

²³Civil Code, (No. 33/2005/QH11), entry into force July 1, 2006.

²⁴For example, Article 41(4) of Decree No. 100 as amended now requires the following particulars to be reported by the collective management organization to MCST, as well as the Ministry of Home Affairs and the Ministry of Finance:

"amendments or supplementations to the operation charters or regulations; changes in the leadership; participation in international organizations; other external activities; rates and modes of payment of royalty, remuneration and material benefits; long-term and annual programs and plans; operations, conclusion of authorization contracts and use licensing contracts; collection, levels, modes and methods of dividing royalty, remuneration and material benefits; and other related activities."

Such onerous provisions should be stricken from the law in order to allow right holders to freely exercise their rights in Vietnam. In the absence of immediate changes, it should be clarified that these provisions do not apply to administration of foreign rights.

remuneration, and material benefits," added to a new Article 45a of Implementing Decree No. 100, are merely guidance and not compulsory.

Decree No. 72 Ignores Piracy: Decree No. 72/2013/NĐ-CP on the Management, Provision, and Use of Internet Services and Online Information as amended and supplemented by Decree No. 27/2018/ND-CP unfortunately fails to clearly include copyright infringement on the list of prohibited acts that trigger sanctions and remedies. Vietnam should amend this Decree to ensure piracy is expressly included among the Decree No. 72's prohibited acts and, thus, eligible for a remedial action, including the remedy of disabling access to infringing websites.

Certain Enforcement Provisions Inconsistent with the BTA: A number of Vietnam's civil, administrative, and border enforcement provisions remain inconsistent with obligations in the BTA. For example, the availability of pre-established damages is limited and the amount is inadequate. BTA Articles 12.2.D and 12.3, require the availability of pre-established damages "adequate to compensate for the injury the right holder has suffered..." As noted above, Vietnam's remedies for civil and administrative enforcement allow for distribution or use for non-commercial purposes of infringing goods and the materials and means for producing them, falling short of Vietnam's obligations in BTA Article 12.4 and TRIPS Article 46. Similarly, Vietnam's remedies for infringement at the border also allows for distribution or use for non-commercial purpose of infringing goods, which does not meet its obligations in the BTA (Article 15.12) or TRIPS (Article 59).

Decree Regulating OTT Services: In 2018, ABEI drafted a Decree to amend Decree 06 (18 January 2016) regulating radio and television services in order to improve the regulation of "over-the-top" (OTT) services. The draft was posted online for comments and is expected to be passed in early 2019. Unfortunately, the draft provides stricter regulation over OTT services, without providing measures to improve copyright protection. Instead, the Decree should include measures to improve copyright protection, but should otherwise adopt a light-touch self-regulatory approach to encourage development of the sector, particularly regarding licensing, mandatory use of editing and translation services, classification, advertising, and local content quotas.

MARKET ACCESS BARRIERS IN VIETNAM

Vietnam continues to generally restrict foreign companies from setting up subsidiaries to produce or distribute "cultural products." Restrictions on foreign investment quotas, and other entry barriers regarding production, importation, and distribution of copyrighted materials (whether in the physical, online, or mobile marketplaces) persist. The Vietnamese have indicated that they prioritize preserving cultural diversity and strengthening Vietnam as a producer and provider, not just as a consumer, of creative products.²⁵ Unfortunately, their restrictions on foreign investment in cultural production undermine this objective, impoverishing the content marketplace and discouraging investment in the creation of new Vietnamese cultural materials.

The restrictions also fuel demand for pirated product. Vietnam's virulent piracy problems would be reduced if the country removed its highly restrictive market access barriers. By limiting access to legitimate content, these barriers push Vietnamese consumers towards illegal alternatives. The restrictions instigate a vicious circle in which less legitimate product is produced or available. To facilitate commercial development of Vietnam's cultural sector and the development of a potentially very significant digital content market, Vietnam should look to internationally accepted standards and practices, which recognize that constraining market access for legitimate creative content complicates efforts to effectively combat piracy. IIPA urges Vietnam to quickly discard the longstanding market access barriers identified below and open its market in the creative and cultural sectors.

²⁵See Asia-Europe Meeting (ASEM) Seminar on Cultural Diversity in Hanoi on Dec. 15, 2008, discussed in *Vietnam Prioritises Preservation of Cultural Diversity*, Nhan Dan, March 26, 2009, available at http://www.nhandan.com.vn/english/culture/171208/culture_v.htm.

Barriers Specific to the Audiovisual Sector

Laws Leave Potential Quotas In Place: The amended Cinematography Law created the potential for a film quota, with numerical benchmarks set at 20% for Vietnamese feature films shown in theaters. On November 11, 2013, the Prime Ministerial Decision of Approval of “Development Strategy for Movie Industry to 2020 and Vision to 2030” set an even more restrictive aspiration of 45% Vietnamese films (including 40% Vietnamese major films) by 2030. Although the Cinematography Law’s stated quota and the Decision appear to be hortatory in nature because Vietnam is producing more local films, which now command over 20% market share, the Vietnamese Government should nevertheless remove the quota. IIPA also notes a hortatory preference to show “valuable” foreign films, which may disproportionately impact the independent film sector in its ability to access the Vietnamese market. Rather than instituting unworkable quotas or developing preferences for films based on arbitrary or subjective criteria, the Vietnamese Government should take steps to provide more openness and flexibility in the marketplace, thereby fostering greater development and more avenues for distribution of motion picture content, whether foreign or domestic, in Vietnam. Certain articles of the Cinematography Law also endanger the television broadcast market. For example, Article 35(2) provides that broadcast of films shall ensure “the proportion of Vietnamese films broadcast as compared with foreign films, the hours for broadcasting Vietnamese films, and the duration of and hours for broadcasting films for children in accordance with regulations of the government.” Unfortunately, Article 2.4 of Decree No. 96 implementing certain provisions of the Cinematography Law requires that Vietnamese films must be at least 40% of those broadcast on TV.²⁶ Moreover, foreign content is limited to 50% of television broadcast time, and foreign programming is not allowed in prime time. These quotas should be lifted or eased significantly, because they limit exports of audiovisual content to the detriment of U.S. producers.

Regulatory Intervention in the Pay-TV Sector: In March 2016, Vietnam enacted pay-TV regulations (Decree No. 06/2016/ND-CP) requiring the number of foreign channels on pay-TV services be capped at 30% of the total number of channels the service carries. These regulations also require foreign channel operators to appoint and work through a locally registered landing agent to ensure the continued provision of their services in Vietnam. Most foreign programming is required to be edited and translated by an approved licensed press agent. The regulations also provide that all commercial advertisements airing on such channels in Vietnam must be produced or otherwise “conducted” in Vietnam. Further, these regulations essentially expand censorship requirements to all channels instead of “sensitive” channels as previously provided. This mandate also appears to impose new “editing” fees on international channels. These measures would unduly restrict and severely impede the growth and development of Vietnam’s pay-TV industry. Moreover, the MIC’s draft amendments to Decree No. 06, if implemented, would place additional restrictions on OTT services, which would impede the development of that sector.

Foreign Investment Restrictions: Foreign investors may only invest in cinema construction and operation through joint ventures with local Vietnamese partners, which are subject to government approval and a 51% ownership ceiling. Such restrictions are an unnecessary market access barrier for U.S. film producers and should be eliminated.

Law on Cybersecurity: In June 2018, the National Assembly passed a new cybersecurity law, which took effect in January 2019. Unfortunately, this law did not include any provisions to improve copyright enforcement, which would have assisted in the law’s goal of improving the health and security of Vietnam’s online environment. Implementation of this law should be monitored, however, because it is critical that this law does not impose unreasonable compliance obligations on OTT services, particularly regarding data localization requirements. Overly strict data localization requirements could negatively impact U.S. exports of audiovisual content.

²⁶Decree No. 96/2007/ND-CP dated June 6, 2007 Detailing and Guiding the Implementation of a Number of Articles of the Cinematography Law, Article 2.4.

Barriers Specific to the Video Game Industry

Decree No. 72 Restricts Video Game Right Holders: Decree No. 72 on the management of Internet services and online information creates some room for foreign video game companies to operate in Vietnam, but still may undermine the ability of video game companies to provide various digital or online services in Vietnam. The Decree lifts the 2010 ban on issuance of new licenses for online games and the ban on advertising of online games. However, there remains a strong risk of discriminatory treatment against foreign companies in the provision of online games in Vietnam. Article 31(4) provides, “[f]oreign organizations and individuals that provide online game services for Vietnamese users must establish enterprises in accordance with Vietnam’s law in accordance with this Decree and the laws on foreign investment.”

The Decree establishes four categories of games. In category G1 (multiplayer games in an interactive online environment) the enterprise must obtain a license and approval of the contents of the game from MIC. Other restrictions are imposed, including: restrictions that involve censorship of the content of video games in order for them to be approved; outright prohibition of content within video games (see, e.g., Article 32(3)(b) on content restrictions for multiplayer online games in category G1); restrictions on data collection; restrictions related to the age of users; and license duration limits. The implementation of this Decree must not create structures that unduly impede the ability of foreign right holders to avail themselves of the Vietnamese market or that discriminate against them. We also urge Vietnam to work towards commitments agreed to in previous trade negotiations to eliminate limitations on foreign investment for the provision of online games and related services in Vietnam.

In 2018, Vietnam issued Decree No. 27/2018/ND-CP amending Decree No. 72, but the concerns outlined above appear to remain unchanged.

Barriers Specific to the Music Sector

Onerous Market Access Restrictions on the Music Sector: Onerous and discriminatory Vietnamese restrictions prevent U.S. record companies from engaging in production, publishing, distribution and marketing of sound recordings in Vietnam. The lack of a meaningful commercial presence of U.S. record companies in Vietnam, coupled with restrictions on the ability of the industries to conduct investigations in Vietnam, hinder anti-piracy efforts. These restrictions effectively mean the Vietnamese Government must enforce intellectual property rights related to U.S. content largely on its own, a task at which it has not succeeded thus far. In order to enable lawful trading and curb copyright piracy in Vietnam, foreign record companies should be given an unrestricted right to import legitimate music products into Vietnam,²⁷ and to establish music publishing houses and websites to publish and distribute legitimate music products in Vietnam.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

As outlined above, Vietnam’s copyright protection and enforcement frameworks are inconsistent with its international obligations in many respects. These include the following:

- all infringement on a commercial scale is not subject to criminal liability as required by TRIPS Article 61 and BTA Article 14;
- a number of copyright exceptions are overbroad and inconsistent with the three-step test of TRIPS Article 13 and BTA Article 4.9;

²⁷The importation of cultural products like music is governed by *Decree No. 103/2009/ND-CP on Promulgating the Regulation on Cultural Activities and Commercial Provision of Public Cultural Services and the Regulation on Cultural Activities and Commercial Provision of Public Cultural* (promulgated together with the Government’s Decree No. 10.V200/ND-CP of November 6, 2009). *Decree No. 103* provides that circulation permits for tapes and discs produced or imported by central organizations are granted by MCST, while circulation permits for tapes and discs produced or imported by local organizations and individuals are granted by provincial-level MCST Departments. The Decree provides for application procedures. However, limitations on foreign companies’ setting up subsidiaries to produce or distribute “cultural products” in Vietnam also thereby limit foreign companies’ abilities to apply for circulation permits. The application must be done by a local company. Vietnam should consider encouraging foreign investment by allowing foreign investors to apply for permits.

- remedies for civil, administrative, and border enforcement permit “non-commercial” distribution of infringing goods and the materials and means for producing them, which is inconsistent with the obligations of TRIPS Articles 46 and 59 and BTA Articles 12.4 and 15.12;
- inadequate enforcement framework including no criminal infringement cases proceeding to the courts, complicated and non-transparent civil procedures, and inadequate training of enforcement officials which is inconsistent with Vietnam’s obligations under the TRIPS enforcement provisions, including Articles 41, 42, and 61, and under BTA Articles 11, 12, and 14;
- limited and inadequate pre-established damages do not meet the requirements of BTA Articles 12.2D and 12.3;
- term of copyright protection falls short of the requirements of BTA Article 4.4; and
- presumptions of ownership are inadequate and do not meet the requirements of BTA Article 3.2.