

VIETNAM

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2024 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Vietnam should be elevated to the Priority Watch List in 2024.¹

Executive Summary: Vietnam is an important emerging market in Southeast Asia for the creative industries, but its market for creative works remains severely stunted due to worsening piracy and debilitating market access barriers. Vietnam has become a leading global exporter of piracy services and Vietnamese operators have been associated with some of the world’s most pervasive piracy websites, causing significant damage to both the local and international marketplaces. The Government of Vietnam should recognize that securing the country’s “first” criminal copyright conviction would provide significant reassurance to companies that are considering investing in local content and provide rights holders with a better understanding and assurance regarding the required criminal process. Deterrence against infringement in Vietnam is lacking due to the unwillingness of Vietnamese authorities to follow through and implement the Criminal Law and the Criminal Procedure Code to mete out deterrent penalties against blatant piracy operators located in the country. Greater deterrent penalties are also needed for administrative copyright offenses. Amendments to the Intellectual Property (IP) Law, which entered into force on January 1, 2023, contain some improvements, including certain measures that may allow rights holders to seek civil or criminal relief against online infringers. The implementing regulations, published in April 2023, also include some positive provisions that could improve protection and enforcement. In 2022, the Government of Vietnam acceded to both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties). Vietnam still needs to extend the term of copyright protection in line with evolving global norms and its obligations under the Bilateral Trade Agreement (BTA) with the United States, as well as further improve its enforcement framework to address online piracy including, for example, bringing the definition of “commercial scale” into line with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and evolving global norms. The government should also address deficiencies with the Copyright Office of Vietnam (COV), which has not taken any action to reform the dysfunctional collective management organization (CMO) for the music industry. Finally, Vietnam’s piracy problems would also be mitigated if its restrictive market access barriers were removed.

PRIORITY ACTIONS REQUESTED IN 2024

Enforcement

- Establish a robust enforcement framework and ensure enforcement officials—including the Ministry of Public Security (MPS), the Ministry of Information and Communication (MIC), and the Ministry of Culture, Sports, and Tourism (MOCST)—investigate and criminally prosecute commercial-scale piracy sites and services as well as bring administrative actions.

Legal Reforms

- Make necessary changes to laws and implement Resolutions, Decrees, and Circulars to address several critical issues (e.g., term of protection, broadcasting and communication rights, “communication to the public” definition, Internet service provider (ISP) liability, denial of protections, exceptions and limitations, hierarchy of rights, seizure of infringing goods) to improve copyright protection and enforcement and ensure Vietnam is in full compliance with the WIPO Internet Treaties, the BTA, the WTO TRIPS Agreement, and other international obligations and evolving global norms.

¹ For 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://www.iipa.org/files/uploads/2024/01/Appendix-B-2024.pdf>.

- Adopt a Supreme People’s Court Resolution that clearly defines and interprets “commercial scale” consistent with Vietnam’s international obligations and enables more effective criminal referrals by providing essential guidance on the evidence required in cases of copyright infringement.
- Introduce mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders’ applications to appropriate authorities.
- Reform the CMO function of 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 rights that are subject to collective management in Vietnam.
- Ensure that certain shortcomings on collective rights management regarding governance, tariff setting, and distribution of collected monies are addressed to bring them in line with international best practices.

Market Access

- Remove severe market access restrictions that continue to negatively impact the U.S. creative industries.

ENFORCEMENT

- **Establish a robust enforcement framework and ensure enforcement officials—including the Ministry of Public Security (MPS), the Ministry of Information and Communication (MIC), and the Ministry of Culture, Sports, and Tourism (MOCST)—investigate and criminally prosecute commercial-scale piracy sites and services as well as bring administrative actions.**

Vietnam currently hosts some of the most egregious and popular piracy sites and services in the world that target a global and English-speaking audience.² These piracy sites and services, including *Fmovies*, *AniWave*, *123movies*, *BestBuyIPTV*, piracy-as-a-service (PaaS) site *2embed*,³ and *Chiasenhac*, cause significant damage to the local and international marketplaces and make Vietnam a piracy haven.⁴ The criminal enforcement path available against these sites and their operators remains excessively long and lacks transparency and, despite amendments to the Criminal Code in 2017, there has yet to be a single criminal conviction for a copyright offense. Illegal content generally can be accessed via online and mobile network piracy, such as streaming sites, linking sites, apps, video hosting sites, download sites, peer-to-peer (P2P) networks, stream-ripping sites, search engines, and social media platforms. The video game industry reports that in 2023, Vietnam ranked sixth in the world for the number of connections by peers participating in the unauthorized file-sharing of ESA member mobile video game titles on public P2P networks. Piracy service operators often take advantage of free platform file hosting resources, including those from Facebook and Google, to store and share pirated content and stream the infringing content via piracy sites and apps.

² Media Partners Asia 2022 study on creative industry losses in Vietnam caused by online piracy is summarized here: https://nhandan.vn/hop-tac-ngan-chan-vi-pham-ban-guyen-truc-tuyen-tai-viet-nam-post706584.html?zarsrc=31&utm_source=zalo&utm_medium=zalo&utm_campaign=zalo.

³ “Piracy as a service” (PaaS) offerings constitute a suite of off-the-shelf services that make it easy for would-be pirates to create, operate, and monetize a fully functioning pirate operation. PaaS providers lower the barriers to entry into commercial piracy. They include: (i) website templates that facilitate setup of streaming websites; (ii) content management systems (CMS), which are databases providing access to tens of thousands of infringing movies and TV series, in exchange for the payment of a fee or a cut of the advertising revenue; (iii) dashboards that allow an illegal Internet protocol television (IPTV) operator to oversee the infrastructure of their service (including monetization, content-hosting servers, and user interactions); (iv) hosting providers that provide a safe haven for pirates because they do not respond to DMCA notices of copyright infringement; (v) video hosting services that obscure links to infringing content (i.e., instead of providing a single weblink for each piece of content, a PaaS video host may break up the content and host it across dozens of random links to inhibit its takedown, without inhibiting its access via a streaming site that pieces the content back together); and (vi) decentralized streaming software that acts as a third-party tool between a streaming site and a cyberlocker or video host, allowing for quicker upload of content with a large variety of cyberlockers and video hosting services. PaaS is a subset of the larger threat of Cybercrime-as-a-Service identified by Europol and shows the scale, sophistication, and profitability of modern online commercial copyright infringement.

⁴ In addition, several globally popular stream-ripping sites are operated from Vietnam, including *Y2mate.com*. Enforcement efforts in Vietnam by the music industry against *Y2mate* proved futile.

According to data from the International Federation of the Phonographic Industry's (IFPI) Music Consumer Study 2023 (MCS), Vietnam has one of the highest levels of music piracy in the world.⁵ The study found that two-thirds (66%) of respondents aged 16-44 regularly pirated music, compared to a global average of 29%. Stream ripping—unlicensed downloads of music from video sites like YouTube—was the major music piracy threat in the country: 63% said they used web sites like *Y2Mate* or unlicensed mobile apps like *SnapTube* to illegally download music through stream ripping. In addition, 35% used cyberlockers like *Mega* or *Rapidgator* for music piracy (often to obtain pre-release leaks). Twenty-nine percent used BitTorrent sites like *ThePirateBay* for music piracy. The MCS found that more than 17% of Vietnamese respondents used the stream-ripping site *Y2Mate*. This level of popularity is supported by independent data from SimilarWeb that recorded over 53 million visits from Vietnam to *Y2Mate* during 2023.

Importantly, *Y2Mate* is one of a network of seven globally popular stream-ripping sites believed to be operating from Vietnam. Although the operator of *Y2mate.com* voluntarily geo-blocked access from the United States, United Kingdom, France, and Germany, the site is once again accessible from these countries, and while the site was geo-blocked the operator set up alternative stream-ripping sites.

Streaming and Internet protocol television (IPTV) piracy remain the most common types of online piracy in Vietnam. *Fmovies*, with a global SimilarWeb ranking of 291 and average monthly visits of 161 million, is domiciled in Vietnam and has over 60 associated domains, many of which are known pirate brands such as *Bmovies*, *AniWave*, *Putlocker*, and *Solarmovies*, providing unauthorized access to popular movies and TV series.⁶ Vietnam is also home to notorious markets IPTV piracy service *BestBuyIPTV*, which has over 10,000 live TV channels from 38 countries and an estimated 20,000 video-on-demand (VOD) titles in multiple languages. *BestBuyIPTV* is particularly popular in Europe.⁷ Separate criminal complaints against *Fmovies* and *BestBuyIPTV* were officially referred to the MPS and despite the requisite evidential documentation being provided and high-level meetings being convened with the government, these cases have yet to be referred to the procuracy.

Vietnam also hosts infamous PaaS businesses such as *2embed.to*, a versatile PaaS that provided a library of over 300,000 movies and TV shows and was being used by more than 520 globally popular illicit streaming sites, which had a combined traffic of over 1.2 billion visits in Q4 2022. Vietnam also hosted *zoro.to*, described in some media publications as the largest piracy website in the world and which had an average of over 200 million visits per month. Both *2embed* and *zoro.to* were being operated by the same network of identified operators. In a Knock-and-Talk operation in July 2023 undertaken by the Alliance for Creativity and Entertainment (ACE) the operators of these sites handed over administrative control of the primary and associated domains. However, in a matter of weeks a new domain (*aniwatch.to*) replaced *zoro.to* and thereafter a new domain (*2mbed.me*) replaced *2embed.to*. Criminal enforcement action by the MPS is needed to close such expansive piracy networks.

Ineffective copyright enforcement in Vietnam is a serious concern, particularly in the face of this growing piracy problem. Without significant changes and closer engagement with both the local and international copyright industries, Vietnam's current criminal enforcement system and legislative framework will remain ineffective and unable to deter online piracy. Regardless of extensive evidence of commercial-scale copyright piracy provided by both foreign governments and rights holders, there has traditionally been a lack of coordination and transparency among related ministries and agencies and a lack of demonstrated government commitment to ensure effective copyright enforcement, including criminal prosecutions. It is critical for responsible enforcement authorities, including the relevant provincial police units, the MPS, the Supreme People's Procuracy (SPP), and the Supreme People's Court to follow through on infringement complaints, take meaningful and effective enforcement actions, and impose deterrent sanctions against infringing websites.

⁵ See International Federation of the Phonographic Industry (IFPI), *Engaging With Music 2023*, available at https://www.ifpi.org/wp-content/uploads/2023/12/IFPI-Engaging-With-Music-2023_full-report.pdf.

⁶ According to SimilarWeb, in November 2023 *Fmovies* had a global ranking of 291 and had 167.9 million global visits. The site has been blocked in several countries such as Ireland, UK and Denmark. Its former domain, *Fmovies.to*, was blocked in 15 countries. *Fmovies.se*, was blocked in nine countries.

⁷ *BestBuyIPTV* is available on several platforms and operating systems, including iOS, Kodi, and Roku. It uses resellers, which leads to pricing variations, but the main site charges USD\$70 per year for the service. *BestBuyIPTV* advertises that it provides services to over 900,000 users, 12,000 resellers, and 2,000 re-streamers worldwide.

Vietnam has yet to criminally prosecute a single commercial-scale copyright infringing site or piracy service, even though the current Criminal Code, which explicitly provides for criminal copyright offenses, has been in effect since 2018. As IIPA previously reported, in 2021 the alleged founder and two employees of the notorious piracy site *Phimmoi* were identified and called in for questioning by the Vietnamese police.⁸ Unfortunately, the MPS has not filed criminal charges nor provided rights holders with any transparency regarding this action. While the *Phimmoi* domains were taken offline, copycat sites soon appeared, some of which have become very popular in a short period of time, illustrating the need for more effective deterrence.⁹ ACE has submitted criminal referrals against *Fmovies* and *BestbuyIPTV* to the MPS, but the referrals continue to undergo internal processing with the relevant MPS law enforcement unit (these are the same units whose failure to cooperate with U.S. law enforcement to address key targets like *Fmovies* has allowed those sites to continue to operate). Despite defined procedures for handling criminal cases written into the Penal Code and the Criminal Procedure Code, there remains a lack of transparency and clarity with the MPS continuing to request additional evidence without explanation or reasoning, potentially using the opaque process as a pretext to delay the investigation or not pursue a prosecution. Vietnam should pursue these cases and use the precedent to establish a robust criminal enforcement framework, including clear evidentiary processes and other criminal procedures and appropriate deterrent penalties.¹⁰

Administrative and criminal processes in Vietnam are cumbersome and eventual penalties provided for in the current legislation lack any deterrence. On a positive note, Article 198a of the new IP Law is expected to help reduce some of the burden of proof for rights holders, as long as it is properly applied. Regarding civil enforcement, the difficulty in identifying infringers (because infringers provide false identity and contact information to domain registrars and web hosting companies) makes civil actions in the online environment nearly impossible because rights holders have been advised by enforcement officials that actions against an unknown infringer (i.e., *John Doe* civil action) will not prevail, even where the domain name, Internet protocol (IP) address, and related email addresses are known. It is critical for responsible enforcement authorities, including the relevant police units, the MPS, and the Authority of Broadcasting and Electronic Information (ABEI) under the MIC, to follow through on infringement complaints, take meaningful and effective enforcement actions, and impose deterrent sanctions against infringing websites.

IIPA understands that, in addition to the Supreme People's Court working on a Resolution related to criminal liability (as discussed below), it was also drafting an "IP Manual for Vietnamese Judges." Unfortunately, it appears that this effort has stalled. These extensively drafted documents should be promptly updated to encompass the recent changes outlined in the newly issued regulations, specifically the IP Law and its accompanying regulations. Failure to expedite the finalization of these document has contributed significantly to the deceleration of the prosecution process of numerous criminal referrals in Vietnam. Once re-commenced, the U.S. government should, and IIPA members would hope to, weigh in on that process, which would presumably include procedural and evidentiary guidance as well as sentencing guidelines to create an appropriate level of deterrence in copyright cases. In addition, building IP expertise should be part of the overall judicial reform effort. The U.S. government has remained involved in training not only for the judges, but also for police and prosecutors, who will ultimately play an important role in bringing criminal cases before the courts.¹¹

⁸ The *Phimmoi* website, which offered thousands of unauthorized feature films and television series from the United States and all over the world, was one of the most popular pirate websites in Vietnam. At its peak of popularity between June 2019 and June 2020, *Phimmoi* was the 22nd most popular website in Vietnam and averaged over 69 million visitors per month from 10.69 million unique visitors, according to SimilarWeb.

⁹ Copycat domains, including *Phimmoiplus.net*, *Phimmoi.online*, *Phimmoi247.com*, *Phimmoi.be*, and *iphimmoi.net* were identified by local media and used similar domain names, website designs, and a logo to appear to be associated with the original *Phimmoi* and thus attracted users unable to find the original *Phimmoi* site. In October 2021, *iphimmoi.net* was ranked as the 453rd most popular site in Vietnam, according to SimilarWeb data.

¹⁰ On January 9, 2024, local police from Quang Binh province arrested three persons suspected of operating three small piracy streaming sites: *Bilutvt.net*, *Tvhayh.org*, and *Animefull.net* (the largest of the three sites, *Tvhayh.org*, only had 722,000 visits between January and December 2023). This was an *ex officio* action in which three identified operators were arrested. This is the first case known to IIPA in which persons were arrested for intellectual property (IP) offenses. Despite this positive development much more work needs to be done on languishing criminal complaints (including regarding the globally infamous *Fmovies* which commands average monthly visits of over 160 million) to ensure that the known operators of piracy services are arrested and prosecuted.

¹¹ In July 2022 the Ministry of Information and Communication (MIC), in collaboration with the Alliance for Creativity and Entertainment (ACE) and local rights holder K+, organized a symposium focused on addressing online content issues related to copyright infringement. This conference brought together Vietnamese officials from relevant authorities and representatives of the local and international content industry to consider effective strategies to prevent and reduce online copyright infringement, while evaluating the efficiency of technological solutions (including site blocking processes).

LEGAL REFORMS

- **Make necessary changes to laws and implement Resolutions, Decrees, and Circulars to address several critical issues (e.g., term of protection, broadcasting and communication rights, “communication to the public” definition, Internet service provider (ISP) liability, denial of protections, exceptions and limitations, hierarchy of rights, seizure of infringing goods) to improve copyright protection and enforcement and ensure Vietnam is in full compliance with the WIPO Internet Treaties, the Bilateral Trade Agreement (BTA), the WTO TRIPS Agreement, and other international obligations and evolving global norms.**

Copyright protection and enforcement in Vietnam is governed by the IP Law (as amended in 2022), the Criminal Code (as amended in 2017), the Joint Circular (2012), and the Administrative Violations Decree (No. 131) (as amended in 2017). The copyright-related provisions in the IP Law entered into force on January 1, 2023. The 2022 amendments made several changes to the IP Law, including adding important protections required by the WIPO Internet Treaties. The implementing regulations to the IP Law were passed on April 26, 2023 (Decree 17). Decree 17 includes some positive provisions that improve protection and enforcement, but several concerns remain, as detailed below. IIPA is very pleased that the government acceded to the WCT on November 17, 2021, effective February 17, 2022, and acceded to the WPPT on April 1, 2022, effective July 1, 2022, as required under the CPTPP and Vietnam’s Free Trade Agreement with the European Union (EU).¹² IIPA encourages Vietnam to take the necessary steps to fully implement these treaties.

The IP Law amendments contain some improvements for rights holders, including clarifying that the illegal uploading and streaming of a cinematographic work is a violation of the communication right; and the copying of part of a work is a violation of the reproduction right (thereby creating additional opportunities for rights holders to seek civil or criminal relief against online infringers). Nevertheless, the amendments and implementing regulations (Decree 17) leave some issues and questions unresolved, including regarding Vietnam’s compliance with the WIPO Internet Treaties, the BTA, the WTO TRIPS Agreement, as well as other international obligations and evolving global norms. The following issues should be addressed in additional regulations or amendments:

- **Term of Protection:** The amended IP Law does not provide for an adequate term of protection for sound recordings, which should be updated to be in line with the international trend of a minimum of 70 years. The amended IP Law also retains an inadequate term of protection for all copyrighted works, including audiovisual works, and should be updated to be in line with the international trend of 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 4.4.¹³
- **Broadcasting and Communication Rights:** The IP Law now expressly and individually enumerates sound recording producers’ exclusive rights in a manner that meets the minimum standards in WPPT. However, despite the inclusion of the broadcasting and communication rights in the list, their scope is dramatically limited by Article 33(1), which turns them into remuneration rights. Vietnam should provide sound recording producers with exclusive rights, or, at minimum, redraft Article 33(1) of the IP Law in a manner consistent with Vietnam’s international obligations, for example along the lines of Article 15 of the WPPT. This includes making sure that implementing regulations do not limit remuneration rights by exempting certain users of music from payment, nor make interactive uses subject to a mere remuneration right.

¹² Vietnam formally ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in October 2018, and it entered into force in January 2019. Vietnam entered into a Free Trade Agreement (FTA) with the European Union (EU) in August 2020.

¹³ Article 4.4 of the Bilateral Trade Agreement (BTA) provides, “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.”

- **Definition of Communication to the Public Departs from WPPT:** The definition of “communication to the public” in the IP Law does not include the second sentence of Article 2(g) of the WPPT on public performance. To avoid confusion and ensure consistency with the WPPT, this definition should be revised.
- **ISP Liability:** Article 198b of the amended IP Law introduces an ISP liability regime, which is welcome, but IIPA is concerned that the scope of ISP liability limitations (i.e., safe harbors) may be too broad as currently provided. Decree 17 should be revised to ensure that copyright safe harbors should apply to only passive and neutral intermediaries that do not contribute to infringement, and that there are strong incentives provided for neutral ISPs to work with rights holders to address infringement on their services. In addition, eligibility requirements for ISP liability limitations should include appropriate conditions, including obligations for ISPs to remove infringing content expeditiously, and within a specific timeframe, upon obtaining knowledge or awareness of infringing activity, to implement effective repeat infringer policies, and to take other measures demonstrated effective in preventing or restraining infringement. In addition, Vietnam should require marketplaces and encourage all relevant intermediaries to implement “know your business customer” (KYBC) policies to ensure they keep up to date and accurate information about their customers and to allow rights holders to obtain accurate information to protect their rights against direct infringers.
- **Denial of Protection for Certain Works:** Articles 7(2), 7(3), and 8 of the IP Law appear to give the state power to potentially restrict rights and may conflict with Vietnam’s international commitments.
- **Hierarchy of Rights:** Article 17(4) of the IP Law creates an unacceptable hierarchy of the rights of authors versus neighboring rights owners. This is inconsistent with Vietnam’s obligations to provide certain exclusive rights to neighboring rights holders, including producers, performers, and broadcasters, under international agreements, including the WTO TRIPS Agreement. Article 17(4) should be repealed.
- **Broad Exceptions and Limitations:** Certain exceptions and limitations in the IP Law may be overly broad and call into question Vietnam’s compliance with its international obligations, including Article 13 of the WTO TRIPS Agreement and Article 4.8 of the BTA. For instance, exceptions for “public information and education purposes,” as well as importation of copies of others’ works for personal use, are overbroad. Further, a broad compulsory license (Article 26(1)(b)) applicable to all works except cinematographic works is not in line with international norms. In addition, Decree 17 should clarify that the exceptions apply only to copyrighted works and sound recordings that are lawfully acquired.
- **Overbreadth of Draft Private Copy Exception:** The amended Article 25(1)(a) (private copy exception) should be limited to one physical copy in accordance with international standards.
- **Recirculation of Seized Good/Tools into Channels of Commerce:** Articles 202(5) and 214(3) of the IP Law 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 WTO TRIPS Agreement obligations.
- **Adopt a Supreme People’s Court Resolution that clearly defines and interprets “commercial scale” consistent with Vietnam’s international obligations and enables more effective criminal referrals by providing essential guidance on the evidence required in cases of copyright infringement.**

Vietnam’s Criminal Code became effective in January 2018. The Criminal Code criminalizes piracy “on a commercial scale,” although the meaning of “on a commercial scale” is not defined in the Criminal Code. Vietnam should implement its Criminal Code consistent with Vietnam’s obligations under the WTO TRIPS Agreement and BTA, which require Vietnam to criminalize copyright piracy “on a commercial scale” (there are also detailed obligations on point in the CPTPP). The Supreme People’s Court has indicated it is working on a draft Resolution to provide guidelines for interpreting “commercial scale” and how to calculate the monetary thresholds, but those efforts appear to have stalled.¹⁴ A Supreme People’s Court Resolution should be issued without delay. The Resolution should also provide

¹⁴ A Resolution should: (i) clearly define and interpret “commercial scale” consistent with Vietnam’s international obligations; (ii) criminalize “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;” and (iii) take into account peer-reviewed studies to ensure that the monetary thresholds can realistically be met by applying an appropriate

essential guidance on the evidence required in cases of copyright infringement, thereby enabling rights holders to make criminal referrals more effectively. In addition, further modernization of the Criminal Code would be helpful to ensure that there is congruity between acts considered copyright infringements under the amended IP Law and the Criminal Code (in other words, acts considered infringements, when carried out on a commercial scale, should be criminalized under the Criminal Code).¹⁵ Unfortunately, as discussed above, the government has not followed through on these important changes and has not set in motion a more deterrent approach to rampant local piracy.

- **Introduce mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities.**

Over the past few years, MIC's ABEI worked with several rights holders to help combat online piracy, resulting in sanctions against infringing websites and the first-ever site blocks in Vietnam against egregious websites infringing the rights of Vietnamese television rights holders. There are now hundreds of infringing domains blocked in Vietnam, mostly under the ABEI process and by the MOCST. While this is a useful step forward, most of the sites that were "fully blocked" were live sports sites. Unfortunately, the authorities demand an unattainable evidential threshold to fully block commercial-scale sites offering unauthorized VOD and live channels, even if such sites had already been blocked in other jurisdictions. Despite continuing efforts by rights holders to engage with ABEI and MOCST and share current site blocking best practices in the Asia-Pacific region and Europe, ABEI and MOCST appear unwilling to adopt such effective site-blocking procedures. Moreover, disablement in Vietnam, without criminal investigation and prosecution of the site operators (as discussed above), does not stop these Vietnam-based services from harming overseas markets, including the U.S. market. Procedural difficulties also remain for U.S. rights holders.¹⁶ The process for submitting sites should be transparent, with documentation setting out the process and explaining the technical measures in which the sites will be blocked, timeframes for site-blocking referrals to be actioned by government and complied with by ISPs, and measures available to ensure ISP compliance. While Decree 17 includes some provisions that may be helpful, Vietnam should introduce mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites (both those hosted in Vietnam and hosted or operated in other countries but available in Vietnam) on a no-fault basis, upon rights holders' applications to appropriate authorities.

- **Reform the CMO function of 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 rights that are subject to collective management in Vietnam.**

Due to barriers against foreign music producers and distributors (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. Furthermore, the restrictions and limitations on foreign and joint venture entities and their membership in CMOs established as associations need to be removed (found in Decree No. 45/2010/ND-CP). The COV should engage with foreign music producers to enable reform of collective management to establish an 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 in line with international best practices.

substitution rate to effectively criminalize the main piracy sites operating in Vietnam. Such a resolution should take notice of the CPTPP language 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."

¹⁵ This would include, for example, criminalizing commercial scale infringements involving unauthorized making available or communication to the public of works or objects of related rights, as well as the act of circumvention of technical protection measures (TPMs) or trafficking in circumvention devices/services.

¹⁶ As previously reported, in 2019, the music industry petitioned the Authority of Broadcasting and Electronic Information (ABEI) to block two sites, *saigonocan.com* and *chiasenhac.vn*. The ABEI only agreed to consider the petition against *chiasenhac.vn*. After significant delays, the MIC finally notified the music industry that Yeu Ca Hat Entertainment Joint Stock Company, owner of *chiasenhac.vn*, had, per request by MIC, monitored the accounts of those who uploaded copyright infringing works, removed over 6,000 works from the company's system, sent warnings and blocked 41 infringing accounts, and simultaneously provided information to MIC relating to the 41 accounts that had been blocked. Despite this action by ABEI, *Chiasenhac* is a principal source of unlicensed music in Vietnam, with both local and international repertoire easily accessible via the site.

- **Ensure that certain shortcomings on collective rights management regarding governance, tariff setting, and distribution of collected monies are addressed to bring them in line with international best practices.**

Amended Article 56 of the IP Law introduces positive elements for greater transparency and more clarity regarding CMO operations. However, it lacks detail on rights holder involvement in the decision-making process, good governance, transparency for the benefit of right holders, distribution of income, and prohibiting discrimination. Unfortunately, while the new collective rights management framework included in the Decree 17 includes some positive provisions regarding good governance and transparency, Decree 17 fails to provide the needed clarity on these issues, nor does it guarantee rights holder involvement in decision making.

Additionally, the amended IP Law and Decree 17 fall short of international standards regarding distribution of monies collected by CMOs. For example, the amended IP Law provides for funds collected by CMOs to be dedicated to cultural and social activities and that undistributed monies (orphan works) be paid to the “competent state agency.” Decree 17 fails to address this problem and further imposes: (1) tariffs for the broadcasting and public performance remuneration when no agreement is reached between right holders and users, and (2) a default distribution key between rights holders, both of which will disincentivize agreements between the relevant stakeholders and would *de facto* regulate these matters by decree. The first issue is problematic because the list of uses and rates applicable if no agreement between users and rights holders is reached, included in Appendices to the Decree, may not adequately reflect the value of music in the market and may quickly be outdated. The second issue is problematic because the proposed distribution key between rights holders is skewed in favor of authors, thus not reflecting the economic contributions of the different categories of rights holders.

More importantly, the new framework may potentially result in: (a) mandatory collective management of exclusive rights, (b) the determination of rates that are not reflective of the value of the music used in the market due to excessive intervention of the Ministry of Culture in the process, (c) the introduction of rules of distribution of royalties collected between rights holders that risk being unfair, discriminatory, and not reflective of their respective economic contributions, and (d) the introduction of a decision-making process of CMOs in which non-discriminatory participation of rights holders is not guaranteed.

MARKET ACCESS

- **Remove severe market access restrictions that continue to negatively impact the U.S. creative industries.**

Vietnam continues to generally restrict foreign companies from setting up subsidiaries to produce or distribute “cultural products.” Restrictions via 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 government has publicly indicated that it prioritizes preserving cultural diversity and strengthening Vietnam as a producer and provider, not just as a consumer, of creative products. Unfortunately, Vietnam’s restrictions on foreign investment in cultural production undermine this objective, severely limiting the content marketplace and discouraging investment in the creation of new Vietnamese cultural materials.

The restrictions also fuel demand for pirated products. 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 toward illegal alternatives. The restrictions instigate a vicious cycle in which fewer legitimate products are 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.

Pay-TV Regulation: Vietnam requires that foreign channels on pay-TV services be capped at 30% of the total number of channels the service carries. Vietnam also requires operators to appoint and work through a locally registered landing agent to ensure the continued provision of their services in Vietnam. Furthermore, most foreign programming is required to be edited and translated by an approved licensed press agent, and all commercial advertisements airing on such channels in Vietnam must be produced or otherwise “conducted” in Vietnam. All channels are subject to Vietnam’s censorship requirements and international channels are subject to “editing fees.” These measures are unduly restrictive and continue to severely impede the growth and development of Vietnam’s pay-TV industry.

Decree Regulating Over-the-Top (OTT) Services: In October 2022, amendments to Decree 06 were promulgated as Decree 71, expanding the scope of existing pay-TV regulations to include over-the-top (OTT)/VOD services. Most concerning is a non-transparent licensing scheme that is understood to require a local presence or joint venture in addition to onerous censorship provisions for any VOD service that offers content not considered to be “films” (which would be regulated under the Cinema Law). While industry welcomes the self-classification of “films” content on OTT services pursuant to the amended cinema law, this licensing scheme required by Decree 71 falls short of industry expectation and is likely to indirectly contribute to online infringement due to the removal or restriction of legitimate content services from the market.

Screen Quotas: Under Cinema Law/Decree 54, Vietnam required that at least 20% of total screen time be devoted to Vietnamese feature films. In June 2022, Vietnam passed Cinema Law amendments that entered into force in January 2023, replacing Decree 54. Instead of the 20% screen quota under Decree 54, which was never implemented, the amended Cinema Law introduces a gradual phasing-in of the screen time requirement, with 15% of annual screen time to be allocated for Vietnamese feature films from January 2023 to December 2025; and 20% from January 2026 onwards. While the policy of a gradual phasing-in offers some flexibility, Vietnam should nonetheless remove all screen quotas for the long-term development of the industry.

Broadcast Quotas: In the television sector, foreign content is limited to 50% of broadcast time, and foreign programming is not allowed during prime time. Broadcast stations must also allocate 30% airtime to Vietnamese feature films, which was affirmed by an initial draft decree of the Cinema Law. These restrictions limit U.S. exports of film and television content.

Foreign Investment Restrictions: The June 2022 Cinema Law reaffirmed that foreign companies may invest in cinema construction and film production and distribution through joint ventures with local Vietnamese partners, but these undertakings are subject to government approval and a 51% ownership ceiling. Such restrictions are an unnecessary market access barrier for U.S. film producers and distributors and should be eliminated.

Recent Amendments to Decree No. 72 Restrict Video Game Rights Holders: In 2023, Vietnam adopted Decree No. 72 on the management of Internet services and online information, which mandates that companies obtain an official license and certification from the government to distribute a video game in the Vietnamese market. Article 31(4) of the Decree classifies online games as a conditional investment sector for the purposes of foreign direct investment (FDI), which means that for a company to be an authorized “online gaming services” entity in Vietnam, it must have majority Vietnamese ownership via a joint venture or a business cooperation contract. For some games, the Decree establishes the enterprise must obtain a license and approval of the contents of the game from MIC. Other restrictions are imposed, including: censorship of the content of video games in order for them to be approved; outright prohibition of certain content within video games data collection; age of users; and license duration limits. In 2023, the Vietnamese government revised the Decree, leading to increased enforcement against foreign video games that are not fully certified, removing them from the Vietnamese market. IIPA urges the Government of Vietnam to work towards globally accepted trade standards to eliminate limitations on foreign investment for the provision of online games and related services in Vietnam.

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 industries to conduct investigations in Vietnam, hinders anti-piracy efforts. These restrictions effectively mean the Vietnamese government must enforce IP rights related to U.S. content largely on its own, a task at which it has not succeeded thus far. 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. Under the applicable Decree today, circulation permits for tapes and discs are granted by provincial-level MOCST Departments. However, restrictions placed on foreign companies limiting their ability to establish subsidiaries to produce and distribute “cultural products” in Vietnam, in turn, makes it difficult for foreign companies to obtain circulation permits, as the applications must be submitted by local (Vietnamese) companies. Vietnam should consider encouraging foreign investment by allowing foreign investors to apply for business permits.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

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

- All infringements on a commercial scale may not be subject to criminal liability as required by WTO TRIPS Agreement Article 61 and BTA Article 14;
- Several copyright exceptions may be overbroad and inconsistent with the three-step test of WTO TRIPS Agreement Article 13 and BTA Article 4.9;
- 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 WTO TRIPS Agreement Articles 46 and 59 and BTA Articles 12.4 and 15.12;
- Inadequate enforcement framework including no criminal infringement cases proceeding with prosecutors or to the courts, complicated and non-transparent civil procedures, and inadequate training of enforcement officials all are inconsistent with Vietnam’s obligations under the WTO 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; and
- Term of copyright protection falls short of the requirements of BTA Article 4.4.