

July 1, 2026

**VIA REGULATIONS.GOV (Docket No. USTR–2026–0364)**

Jennifer Thornton  
General Counsel  
Office of the U.S. Trade Representative  
600 17th Street, NW  
Washington, DC 20508

**Re: Initiation of Section 301 Investigation and Request for Public Comments: Vietnam’s Acts, Policies, and Practices Related to Intellectual Property Protection and Enforcement, 91 Fed. Reg. 33285 (June 3, 2026)**

Ms. Thornton:

The International Intellectual Property Alliance (IIPA),<sup>1</sup> which represents significant sectors of the copyright-based industries in the United States, appreciates the opportunity to submit these comments in response to the June 3, 2026, Federal Register Notice (FRN) requesting public comments on the acts, policies, and practices related to intellectual property (IP) protection and enforcement in Vietnam.

Since 1984, IIPA and its members have worked in partnership with the U.S. government to improve the ability of the copyright industries to compete fairly in foreign markets. This cooperation has resulted in improved copyright protection and enforcement and market access in many countries around the world, which allows the creative industries to employ more workers at higher wages. In fact, the core copyright industries employed over 11.5 million workers in 2023, accounting for 5.43% of the entire U.S. workforce and 6.10% of total private employment in the United States.<sup>2</sup> The average annual 2023 compensation paid to core copyright workers — \$141,880 — far exceeds the average annual compensation paid to all U.S. workers — \$94,363 — amounting to a 50% “compensation premium” over the average U.S. annual wage.<sup>3</sup> For the total copyright industries, the numbers are even more compelling, employing over 21.1 million workers in 2023, accounting for 9.91% of all U.S. employment, or 11.14% of all private employment in

<sup>1</sup> IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve copyright protection and enforcement abroad and to open foreign markets closed by piracy and other market access barriers. Members of the IIPA include Association of American Publishers (<https://publishers.org/>), Entertainment Software Association ([www.theesa.com](http://www.theesa.com)), Motion Picture Association ([www.motionpictures.org](http://www.motionpictures.org)), and Recording Industry Association of America ([www.riaa.com](http://www.riaa.com)). Collectively, IIPA’s four member associations represent over 3,100 U.S. companies producing and distributing copyrightable content. The materials produced and distributed by IIPA member companies include video games for consoles, handheld devices, personal computers, and online; motion pictures and television programming distributed in all formats (including cinema, television, online, mobile, DVD, etc.); music recorded in all formats (from digital files to CDs and vinyl) for streaming and other online services, as well as broadcasting, public performance, and synchronization in audiovisual materials; and fiction and non-fiction books, educational, instructional and assessment materials, and professional and scholarly journals, and databases.

<sup>2</sup> Secretariat, *Copyright Industries in the U.S. Economy: The 2024 Report* (February 2025), p. 12, available at [https://www.iipa.org/files/uploads/2025/02/IIPA-Copyright-Industries-in-the-U.S.-Economy-Report-2024\\_ONLINE\\_FINAL.pdf](https://www.iipa.org/files/uploads/2025/02/IIPA-Copyright-Industries-in-the-U.S.-Economy-Report-2024_ONLINE_FINAL.pdf)

<sup>3</sup> *Id* at p. 14.

the United States.<sup>4</sup> The average annual compensation paid to employees of the total copyright industries was 28% higher than average at \$121,018.<sup>5</sup>

The request for public comments is part of the Section 301 investigation USTR initiated on May 29, 2026 into the acts, policies, and practices of the Government of Vietnam related to IP protection and enforcement that resulted in USTR's identification of Vietnam as a priority foreign country in the April 30, 2026 Special 301 Report. IIPA's comments address the first ground for USTR's identification of Vietnam as a priority foreign country: the failure to provide persistent and effective enforcement to combat online piracy. IIPA's comments also address two closely related concerns. First, Vietnam's legal framework is inadequate to address its online piracy problems, and second, severe market access restrictions in Vietnam fuel demand for pirated products. To effectively tackle its online piracy problem, in addition to improving enforcement, Vietnam must also take action to improve its legal framework and to address its severe market access restrictions. Such reforms would be in line with the Framework for an Agreement on Reciprocal, Fair and Balanced Trade agreed on between the U.S. and Vietnam in October 2025, in which both sides agreed to "engage... to address intellectual property" issues at the highest level.<sup>6</sup>

When considering an appropriate remedy, IIPA encourages the U.S. government to refrain from taking any action that would undercut the intent and value of this investigation, notably the fostering of the competitiveness of the U.S. IP-intensive industries. This would include refraining from imposing tariffs on products that consumers use to enjoy copyrighted content, such as video game consoles and accessories.

As discussed in detail below, IIPA requests that the U.S. government work with Vietnam to ensure Vietnam takes the following actions to provide adequate and effective copyright protection and enforcement:

### **Summary of Recommended Actions**

#### **Enforcement**

- Investigate and take action against major piracy services in Vietnam.
- Establish a robust enforcement framework against commercial-scale piracy services by issuing guidance and/or instructions to courts and enforcement agencies.
- Ensure that enforcement authorities have the power to seize, preserve, and handle digital evidence, including login credentials, back-end servers, websites, and associated domains, to ensure effective investigation and prosecution of IP crimes.

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<sup>4</sup> *Id* at p. 12.

<sup>5</sup> *Id* at p. 14.

<sup>6</sup> Fact Sheet: The United States and Vietnam Reach a Framework for an Agreement on Reciprocal, Fair, and Balanced Trade, available at <https://ustr.gov/about/policy-offices/press-office/fact-sheets/2025/october/fact-sheet-united-states-and-viet-nam-reach-framework-agreement-reciprocal-fair-and-balanced-trade>.

- Hand down deterrent penalties for IP crimes, including the imposition of custodial sentences and the enhancement of fines and compensation levels where appropriate.

### **Legal Reforms**

- Repeal the Amended IP Law passed in December 2025, which includes a text-and-data mining (TDM) exception for artificial intelligence (AI) training (or at least ensure sufficient safeguards are applied in the implementing regulations).
- Make necessary changes to codes and 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 Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties), the Bilateral Trade Agreement (BTA) with the United States, the WTO TRIPS Agreement, and other international obligations and evolving global norms.
- 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 clear and transparent 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.
- Amend measures on collective management organizations (CMOs) to guarantee that rates are reflective of the market value of creative works, that distribution rules are fair, and that all rights holders are able to participate in CMO decision making.

### **Market Access**

- Remove severe market access restrictions that continue to negatively impact the U.S. creative industries, including strict licensing requirements that have constrained the ability of U.S. services to enter the market.

Through this investigation, IIPA encourages the U.S. government to work with Vietnam to fully implement the actions listed above to ensure adequate and effective copyright protection and enforcement. This should include technical assistance from U.S. IP and enforcement agencies to ensure that the reforms are meaningful and effective in addressing the above deficiencies.

## **PRIORITY ACTIONS TO ENSURE ADEQUATE AND EFFECTIVE COPYRIGHT ENFORCEMENT**

### **Investigate and take action against major piracy services in Vietnam.**

Vietnam currently hosts some of the most egregious, popular piracy sites and services in the world that target a global and English-speaking audience.<sup>7</sup> 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 2025, Vietnam ranked eighth 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, 25th for PC-based games, and 15th for console-based games. 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.

Vietnam is a hub for piracy operators, with several regionally and globally popular stream-ripping services operated within the country. Thus, the need for effective enforcement tools and procedures and engagement from authorities is crucial. In October 2025, the sound recording industry was able to secure the closure of the stream-ripping site *y2mate.com* together with 11 other stream-ripping sites operated from Vietnam following targeted enforcement action. From January to December 2025, these sites collectively received more than 620 million visits globally. Nevertheless, visits from Vietnam to stream-ripping sites remain the main cause of music piracy in the country.

Efforts to tackle these sites remain impeded by the fact that under the Penal Code of Vietnam 2015 (revised in 2017) there is no explicit crime for infringement by communication to the public. In contrast, recording industry representatives in 13 countries, including Brazil, Italy, Peru, and Spain, have successfully used effective civil, criminal, or administrative measures against stream-ripping sites.

The Vietnamese-operated cyberlocker *fshare.vn* is very popular with over 76 per cent of the traffic to the site coming from Vietnam. Mobile app piracy also constitutes a major issue, with stream ripping and MP3 download apps among the most popular categories.

Streaming and Internet protocol television (IPTV) piracy remain the most prominent type of online piracy in Vietnam. Piracy sites and services, including *Hianime*, *Sflix*, *MyFlixerz*, *Megacloud* (formerly *2embed*), *Motchill*, *Rophim*, *Linkkf*, *Filelions*, and *KKphim*, continue to cause significant damage to the local and international marketplaces and make Vietnam a haven for piracy.<sup>8</sup> Piracy sites and services have persisted despite initially successful enforcement efforts. For example, while the Alliance for Creativity and Entertainment (ACE) successfully shut down

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<sup>7</sup> Media Partners Asia 2022 study on creative industry losses in Vietnam caused by online piracy is summarized in Vietnamese here: [https://nhandan.vn/hop-tac-ngan-chan-vi-pham-ban-quyen-truc-tuyen-tai-viet-nam-post706584.html?zarsrc=31&utm\\_source=zalo&utm\\_medium=zalo&utm\\_campaign=zalo](https://nhandan.vn/hop-tac-ngan-chan-vi-pham-ban-quyen-truc-tuyen-tai-viet-nam-post706584.html?zarsrc=31&utm_source=zalo&utm_medium=zalo&utm_campaign=zalo).

<sup>8</sup> 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.

*2embed.to* and *zoro.to* in July 2023, in a matter of weeks, a new domain (*aniwatch.to*, later, *Hianime*) replaced *zoro.to* and a new domain (*2embed.me*) replaced *2embed.to*. Further criminal enforcement action by the Ministry of Public Security (MPS) is needed to deter the operators and conclusively close such expansive piracy syndicates.

It is critical for responsible enforcement authorities, including the relevant police units, the MPS, and the Ministry of Culture, Sports, and Tourism (MOCST), to follow through on infringement complaints, take meaningful and effective enforcement actions, and impose deterrent sanctions against infringing websites. Vietnam enforcement authorities have taken several important criminal enforcement actions in recent years. For example, in August 2024, the MPS, supported by ACE, shut down the largest pirate streaming operation in the world, including the piracy site *Fmovies* and other notorious piracy sites, such as *bflixz*, *flixtorz*, *movies7*, *myflixxr*, and *aniwave*. *Vidsrc.to*, a notorious video hosting provider operated by the same individuals, was also taken down.

**Establish a robust enforcement framework against commercial-scale piracy services by issuing guidance and/or instructions to courts and enforcement agencies.**

Vietnam should establish a robust criminal enforcement framework by issuing guidance and/or instructions to courts on the meaning of commercial scale. Presently, there are significant difficulties identifying the evidence needed to meet the requirements for an offense under Article 225 of the Vietnamese Penal Code. Article 225(1) prohibits reproducing or publicly sharing copyrighted works, and a key basis for establishing the offense is that the infringement is conducted on a commercial scale.

Unfortunately, there is no statutory or judicial clarification on what constitutes “commercial scale” under Vietnamese law. Despite precedents from other jurisdictions, Vietnamese authorities have declined to initiate or prosecute cases on the premise of commercial-scale infringement. This creates uncertainty, making enforcement authorities hesitant to accept rights holders’ evidence, which greatly delays investigations, and makes prosecutors hesitant to use commercial scale as the basis for an indictment, even when the scale of the infringement would have sufficed in other territories under their precedents. Vietnam should issue guidance clarifying that relevant evidence may be considered to meet the commercial-scale standard, including the number of visitors or subscribers the infringing site attracts, the number of infringing titles available on the site, and evidence of monetization of the infringing content. The assessment should ultimately be holistic, based on the totality of circumstances. This approach would be in line with Vietnam’s commitments under Article 61 of the WTO TRIPS Agreement, which requires Vietnam to provide for criminal procedures and penalties at least in cases of commercial scale piracy.

Furthermore, Vietnamese courts should clarify the necessity of evidence required to prove copyright ownership and damages in the initial stages of a copyright complaint and investigation. The requirement for rights holders to quantify the damage caused by the infringer is especially challenging in the case of digital piracy, considering the substantial upstream investment made to

produce music, film and television content, books and journals, and video games and the non-financial harm caused to creators.

In June 2024, the National Assembly of Vietnam approved an amended Law on the Organization of People's Courts that will allow, for the first time in Vietnam, the establishment of a specialized IP court: the Court of First Instance for Intellectual Property. In 2025 two regional IP courts, one in Ho Chi Minh City and the other in Hanoi, were established. For now, these courts are primarily focused on civil cases, and it is not clear if they will have jurisdiction to hear criminal cases. This is a welcome development and should provide new opportunities for rights holders to enforce their IP rights. It is also hoped that this development will pave the way to improved outcomes in civil suits, such as clarity on the type of evidence required to prove copyright ownership, illegal profits, and damages.

The U.S. government should remain involved in training not only judges, but also police and prosecutors, who will ultimately play an important role in bringing criminal cases before the courts.<sup>9</sup> In addition, building IP expertise should be part of the overall judicial reform effort.

Finally, IIPA recognizes that on May 7, 2026, Vietnam issued Official Dispatch No. 38/CĐ-TTg (“Dispatch 38”), which IIPA understands directs agencies nationwide to intensify enforcement efforts against IP crimes, including by taking measures to dismantle piracy websites. IIPA further understands that Dispatch 38 calls upon prosecutorial and judicial bodies to prioritize serious IP cases, including by improving prosecution, expediting adjudication, and leveraging cases to strengthen deterrence and enforcement. IIPA is encouraged by this initiative and is hopeful that the measures undertaken in support of Dispatch 38 will effectively address online piracy, including by bringing effective criminal prosecutions and issuing deterrent penalties against operators of piracy sites.

**Ensure that enforcement authorities have the power to seize, preserve, and handle digital evidence, including login credentials, back-end servers, websites, and associated domains, to ensure effective investigation and prosecution of IP crimes.**

There is a need to confirm whether the Penal Code authorizes enforcement authorities to handle intangible evidence, such as digital assets and domain names. Currently, the lack of express provisions addressing these issues may prevent enforcement agencies from seizing, handling, and preserving intangible evidence, all of which are crucial in IP cases.

**Hand down deterrent penalties for IP crimes, including the imposition of custodial sentences and the enhancement of fines and compensation levels where appropriate.**

Deterrent sentences are necessary to reduce widespread piracy. In April 2025, the operators of *Fmovies* were convicted of copyright violations under Article 225.2 of the Penal Code but were

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<sup>9</sup> 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).

given suspended sentences. The primary operator was handed a suspended sentence of 33 months and five years of probation, while the secondary operator was handed a suspended sentence of 15 months and 30 months of probation.

Several other recent enforcement actions against piracy operators have also resulted in non-deterrent penalties. In April 2024, the People's Court of Hanoi sentenced the operator of *BestBuy IPTV* to a 30-month suspended prison sentence. In July 2024, the People's Court of Quang Binh Province sentenced the primary operator of the illegal streaming websites *bilutvt.net*, *tvhayh.org*, and *hlss.pro* to 24 months in prison with a suspended sentence and 48 months of probation. The suspended nature of the sentences in Vietnamese Courts has been disappointing and does little to discourage operators from piracy. In addition, the fines and compensation ordered by Vietnamese courts were a mere fraction of the illegal profits generated from the infringement.

Without sentences and monetary penalties that outweigh the financial gains from copyright infringement, online piracy operations originating in Vietnam will not be sufficiently deterred. There needs to be visible and credible consequences to effectively deter infringement and counter the perception that piracy is a low-risk, high-reward activity. This systemic failure to impose deterrent sentences also undercuts the laudable efforts of Vietnam's enforcement authorities to act against these sites. Vietnam should impose stricter penalties under the Penal Code to ensure they are commensurate with the significant damage and harm caused by such illegal activities.

### **PRIORITY ACTIONS TO ENSURE AN ADEQUATE AND EFFECTIVE LEGAL FRAMEWORK FOR COPYRIGHT PROTECTION AND ENFORCEMENT**

**Repeal the Amended IP Law passed in December 2025, which includes a TDM exception for AI training (or at least ensure sufficient safeguards are applied in the implementing regulations).**

Rather than address deficiencies in Vietnam's copyright protection and enforcement regimes (as discussed below), in October 2025 the Vietnamese government introduced a broad exception to copyright protection for TDM to provide for the use of copyrighted materials by AI models for training purposes without authorization as part of the Amended IP Law, which the National Assembly passed in December 2025. In the 2026 Special 301 Report, USTR stated clearly, "The United States supports the development of legal frameworks for AI development that ensure copyrights are respected and supports voluntary licensing regimes for the use of copyrighted works."<sup>10</sup> Vietnam's exception is unnecessary, as licensing mechanisms have long been available to facilitate TDM activities, and there is no evidence that shows a need for such a broad TDM exception in the market. Moreover, the exception lacks conditions to ensure compliance with the three-step test, thereby contravening the international copyright treaties to which the United States and Vietnam are signatories. In the 2026 Special 301 Report, USTR highlighted "persistent concerns" in Vietnam that included "overly broad exceptions to copyright

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<sup>10</sup> See 2026 Special 301 Report, April 29, 2026, p. 37, available at <https://ustr.gov/sites/default/files/files/Press/Releases/2026/2026%20Special%20301%20Report.pdf>.

and related rights.”<sup>11</sup> This exception should be repealed. However, in the meantime, it is crucial to implement strict limits on this TDM exception in implementing regulations to ensure that the exception is sufficiently limited in scope.

**Make necessary changes to codes and 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.**

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 the addition of 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 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Vietnam's Free Trade Agreement with the European Union (EU).<sup>12</sup> IIPA encourages Vietnam to take the necessary steps to fully implement these treaties, while rejecting proposed amendments that are inconsistent with the obligations in 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 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 in line with the international trend of 70 years after the death of the author, or, when the term is calculated

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<sup>11</sup> *Id.* at 46.

<sup>12</sup> 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.

based on publication, at least 75 years (or 100 years from fixation) as required by BTA Article 4.4.<sup>13</sup>

- **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.
- **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.
- **Making Available Right:** Further certainty would be helpful to ensure that stream ripping—an act of piracy in which a user downloads and stores streamed content, which has been licensed only for streaming, thus seriously hindering legitimate markets—is a violation of the making available right in Vietnam, as is the case in other jurisdictions and under WPPT.
- **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. Under Vietnamese law, ISPs only respond to requests from competent state agencies. Vietnam should amend its law to ensure that there are strong incentives provided for neutral ISPs to work with rights holders to address infringement on their services. The Government of Vietnam should also expressly state that copyright safe harbors should (i) apply only to passive and neutral intermediaries that do not contribute to infringement, and (ii) 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.

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<sup>13</sup> 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."

- **Denial of Protection for Certain Works:** Articles 7(2), 7(3), and 8(1) 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. Finally, Decree 17 should provide further scope to the exception in Article 32(1)(dd) of the IP Law regarding temporary copies for broadcasting to avoid it being abused.
- **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 Goods/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, which became effective in January 2018, criminalizes piracy "on a commercial scale," though the Code does not define "on a commercial scale." 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." A Supreme People's Court Resolution should be issued in line with Vietnam's commitments under the CPTPP, which defines "commercial scale" to include "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." The Resolution should also provide 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). This would include, for example, criminalizing commercial-scale infringements involving the 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.<sup>14</sup> 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 clear and transparent 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, the Authority of Broadcasting and Electronic Information (ABEI) of the Ministry of Information and Communications (MIC) 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. Thousands of infringing domains were blocked in Vietnam, mostly under the process of the now-defunct ABEI. However, blocking 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.<sup>15</sup> Decree 17 should expressly include 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. In addition, Vietnam should amend the criminal law to make it easier to establish criminal liability for digital piracy.

**Amend measures on CMOs to guarantee that rates are reflective of the market value of creative works, that distribution rules are fair, and that all rights holders are able to participate in CMO decision making.**

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<sup>14</sup> Under current Article 225 of the Criminal Code, only the following two acts are considered a criminal offense, (i) the unauthorized reproduction of copyright protected material, and (ii) its unauthorized distribution (applicable to tangible copies/products only). Therefore, to combat online piracy with criminal enforcement, rights holders have no choice but to base their complaints on an "unauthorized reproduction," which may not allow for inclusion of all acts of online piracy. It should be noted that Vietnam's IP Law includes the making available right under the right of communication to the public, not the reproduction right, or any secondary liabilities.

<sup>15</sup> 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.

Amended Article 56 of the IP Law introduces positive elements for greater transparency and more clarity regarding CMO operations. However, it also contains several flaws that prevent free-market collective rights management.

Articles 56(3)(d), 56(3)(i), and 56(5) of the IP Law, which address the distribution of CMO-collected income, fall short of international standards. Under these provisions, there is a risk that, in practice, the distribution will be unfair, discriminatory, and not reflective of rights holders' respective economic contributions. IIPA recommends that specific safeguards be introduced to prevent this outcome and ensure that the distribution will be accurate (according to the actual use of the sound recordings), prevent CMOs from discriminating between rights holders, and ensure that any deductions to support cultural development will be determined by CMOs' governing bodies.

The table of rates is intended to cover all tariffs applicable to collectively managed exploitations, including the broadcasting and public performance remuneration rights. In addition, under Article 56(3)(c) of the IP Law and Decree 17, CMOs must submit rates for approval to the MOCST, and for broadcasting and public performance remuneration rights, rates should be agreed upon between rights holders and users. However, if there is a disagreement, rates in the Decree are applicable. As a result, the rate determination mechanism risks not reflecting the value of the music used in the market. According to international best practice, rates should be negotiated between CMOs and users according to an established set of criteria, which should include the economic value of the use of the rights in trade. The specific rate setting mechanism for broadcasting and public performance remuneration rights should therefore be deleted, because rates for these rights should be the result of negotiations between CMOs and users of the repertoire.

For all rates, only cases in which there is disagreement regarding the rates should be submitted to the Ministry of Culture to settle the dispute. The Government of Vietnam should also introduce provisions to avoid unjustified claims and introduce an obligation for users to provide CMOs with information on the use of the rights. Decree 17 should also introduce an obligation for users to provide CMOs, in an agreed or pre-established timeframe, information on the use of the rights in an agreed format, taking into account voluntary industry standards, along the lines of Article 17 of the European Union Collective Rights Management (CRM) Directive.

Lastly, due to market access barriers and restrictions in the regulations of associations (Decree 45/2010/ND-CP), foreign producers, including their Vietnamese affiliates, are not allowed to be part of the board of CMOs. As a result, the Recording Industry Association of Vietnam (RIAV) is made up of just a handful of local producers and cannot function effectively and professionally. The Government of Vietnam should amend the law to allow all rights holders, both local and foreign, to become members of a CMO. Any rights holder, including a foreign national, whose work is used in Vietnam should be able to establish a CMO. Without restriction, rights holders should be able to determine the scope (rights, uses, repertoire and territory) and character (exclusive or non-exclusive) of the rights mandates they give to the CMO. Rights holders should also have fair and balanced representation in all the governing bodies of a CMO.

**PRIORITY ACTIONS TO ENSURE MARKET ACCESS FOR THE U.S. COPYRIGHT INDUSTRIES AND REDUCE DEMAND FOR PIRATED CONTENT**

**Remove severe market access restrictions that continue to negatively impact the U.S. creative industries, including strict licensing requirements that have constrained the ability of U.S. services to enter the market.**

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 consumers’ 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. On the other hand, when market conditions are improved, that expands consumer access to legitimate content, reduces the attractiveness of piracy services, and thus strengthens the effectiveness of enforcement efforts by reducing reliance on piracy. This, in turn, encourages greater investment in Vietnam’s economy by incentivizing greater investment and creativity from both local and international players.

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 OTT/video-on-demand (VOD) services. IIPA understands that the Government of Vietnam is now considering a replacement Decree for Decree 71. 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 “films” (which would be regulated under the Cinema Law). While the 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 expectations and is likely to indirectly contribute to online infringement due to the removal or restriction of legitimate content services from the market. Further, the National Assembly passed the new Press Law in December 2025. Under the new Press Law, OTT/VOD services are considered radio and television services, and as such, are required to obtain a service license from the MOCST. A streaming service, therefore, requires multiple licenses, under both Decree 71 (or its potential replacement Decree) and the Cinema Law, to provide a full range of content. To IIPA’s knowledge, Vietnam is now the only market in the world that requires two separate licenses from the same ministry to fully operate an OTT/VOD service. This framework is clearly out of step with international best practice, is yet another significant barrier to the legitimate provision of VOD/OTT services and content in Vietnam, and is not only an independent trade barrier but also a structural contributor to the piracy environment that is a subject of this investigation. IIPA urges the Vietnamese government to revisit digital media regulation in Vietnam with a view to alignment with international standards and best practices, especially through the reform of OTT/VOD content regulation mechanisms, which have severely impeded market access for U.S. services. In particular, the Vietnamese government should remove OTT/VOD services from the scope of Decree 71 and its replacement Decree.
- **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 (this phase-in approach was unnecessary as the domestic film market share exceeded the allocated screen time). 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.
- **Implement the existing age-based film classification system, and ensure the content review process is transparent, predictable, expeditious, and does not have a disparate impact on U.S. content:** Vietnam helpfully introduced an age-based classification system in 2016. Vietnam has, on previous occasions, banned the distribution of content locally for political reasons, which foments unpredictable market conditions and fuels piracy as consumers are driven to unlawful sources to view content. IIPA urges the Government of Vietnam to fully implement its age-based classification system, which will help distributors ascertain the feasibility of a product's distribution.
- **Recent Amendments to Decree No. 72 Restrict Video Game Rights Holders:** In 2023, Vietnam adopted Decree No. 72/2013/ND-CP ("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. These restrictions were maintained and expanded upon in Decree No. 147/2024/ND-CP on the management, provision, and use of Internet services and online information ("Decree No. 147"), which took effect on December 25, 2024. As set forth in Decree No. 72, online games are classified 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 service" entity in Vietnam, it must have majority Vietnamese ownership via a joint venture or a business cooperation contract. For some games, the enterprise must obtain a license and approval of the contents of the game from MOCST. 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 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, make 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.

## **CONCLUSION**

Through this investigation, IIPA requests that the U.S. government work with the Vietnamese government to ensure it takes the actions recommended in this filing to provide adequate and effective copyright protection and enforcement, along with related and important improvements in Vietnam's market access frameworks. Taking these actions would bring real commercial gains to the copyright industries, benefiting the U.S. economy and supporting U.S. job creation, while also encouraging a safer, healthier, and more dynamic online marketplace. When considering an appropriate remedy, IIPA encourages the U.S. government to refrain from taking any action that would undercut the intent and value of this investigation, notably the fostering of the competitiveness of the U.S. IP-intensive industries. This would include refraining from imposing tariffs on products that consumers use to enjoy copyrighted content, such as video game consoles and accessories.

Respectfully submitted,

/Kevin M. Rosenbaum/

Kevin M. Rosenbaum  
Executive Director  
International Intellectual Property Alliance