



Intellectual Property Rights in the Socialist Republic of Vietnam
Submitted to the Office of the United States Trade Representative
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Vietnam's policies and practices regarding protection for intellectual property rights (IPR) is a legitimate and key concern for U.S. companies already or wishing to do business with Vietnam.

Members of the American Chamber of Commerce in Vietnam (AmCham) feel the situation with regard to protection of IPR in Vietnam remains troubling. Protection and enforcement of IPR in Vietnam falls short of what is expected of a country that has been a member of TRIPs for many years and aspires to join the Trans Pacific Partnership which aims for stronger IPR. The protection and enforcement of IPR is still not seen as a priority for the government of Vietnam and almost all IPR initiatives come from IP owners. Vietnam's enforcement mechanism needs widespread improvement in order to effectively stop, punish and deter IPR infringement in Vietnam.

The points raised in our Special 301 submission last year remain a concern and have not diminished. The following text briefly updates a few broad areas of concern.

Counterfeit goods produced in Vietnam, China and other nations can still be found in nearly every rural and urban market in Vietnam. Widely available counterfeit goods include counterfeit garments and accessories, footwear, food and beverages, cosmetics, pharmaceuticals, computer software, automobile spare parts (car and motorbike), engine lubricants, consumer electronics, music and video entertainment, motorbikes, and even fertilizers and gas. The Market Management Bureau under the Ministry of Industry and Trade says that over 8,000 cases of IP infringement were detected in 2012, representing an increase of 14% over the number in 2011. Fake infant formula, fake cooking oil, fake laundry detergent, fake Heineken beer, and much more continued to make headlines in local media in 2012. The government admits that the counterfeit goods are difficult to track down and that fake products are becoming more sophisticated and difficult for government inspectors to identify.

Online piracy is a growing problem in Vietnam. Experts indicate that up to 90 percent of all digital content provided to users on the Internet in Vietnam is pirated. The content includes music, movies, e-books, software and mobile phone applications. The most highly publicized case in 2012 involved the sixth most visited website in this country of 30+ million Internet users - Zing.vn, a portal for news, music, games, instant messaging and social networking, run by a Vietnamese company which attracts investments from major international investment firms. Music downloading accounts for 60 percent of activity on the site, which does not respect the copyright of artists whose music is being downloaded. In response to pressure from an Associated Press journalist, several major international companies including Coca-Cola, Samsung, Canon, Yamaha, Intel and Colgate Palmolive pulled their advertisements from Zing.vn. The U.S. Embassy also stopped its activity on the website.

Online trading in counterfeit products is also a growing concern. Counterfeit clothing, cosmetics, shoes, wallets and counterfeit products are being sold online in Vietnam, including products that infringe the trademarks of U.S. trademark owners. Some counterfeiters even offer “different grades” of counterfeits (e.g., “best quality fake”, “second best quality fake”, etc.) and openly mention the popular or well-known trademark being infringed. Although Vietnamese law provides a clear basis for acting against online counterfeiting, the government appears reluctant to take action. AmCham believes that enforcement efforts should be strengthened and severe administrative penalties and judicial remedies imposed as a deterrent to such activities.

Published reports indicate that the volume of pirated software products in Vietnam decreased by 4 percent between 2009 and 2012 (from 85% in 2009 to 81% in 2012). While this is a positive trend, Vietnam still has one of the highest rates of software piracy in the world and has a long way to go to meet international standards (the level of pirated software globally is estimated to be 42%, and regionally is estimated to be 60%). For over 15 years, Vietnam has enjoyed a favourable – and significant – surplus in its trade with the United States. It is clear that some exporters to the U.S. are gaining an unfair competitive advantage by not paying for the software they use in their business processes, which is a clear violation of U.S. law. This unfair competitive advantage is also enjoyed by third-country companies operating in Vietnam – especially Taiwanese, Korean, and Chinese companies – who severely underpay for the corporate software they use.

Fundamental concerns remain about weak (and uneven) enforcement, administrative fines that are not significant enough to serve as a real deterrent, and inadequate capacity and competency of inspectors and local officials. We also note that authorities are often reluctant to enforce the laws because of personal (but hidden) relationships with infringers. In Vietnam, getting “caught” remains unlikely and the worst case scenario is only seen as a cost of doing business – even for serial infringers who are undeterred by fines that only reach up to \$5,000.

From the standpoint of Vietnam’s own self-interest, IPR infringement threatens Vietnam’s long-term economic competitiveness and discourages foreign companies from transferring their best technology and proprietary know-how, or engaging in research and development activities in Vietnam.

Awareness of the harm that counterfeiting and IPR infringement causes to the Vietnamese economy and society generally - especially among consumers – has been improving, but is still not sufficient. Surveys report that a large percentage of Vietnamese consumers have purchased counterfeit goods, mostly due to their low price. Large numbers of Vietnamese retailers continue to openly admit to selling counterfeit products. AmCham members believe that government and local association efforts to raise awareness and educate the public can be more successful than efforts from IP/brand owners at changing the “mindset” of Vietnamese consumers.

If Vietnam aims to attract high-technology value-added manufacturing, as well as develop its human resources by inspiring innovation and creativity within the Vietnam population as a whole, significant improvement in the enforcement of intellectual property rights is urgently needed. Effective enforcement means punishing infringers of IPR in a manner that will deter them and others from engaging in such conduct in the future. It also means increasing public awareness of the need to respect the IPR of Vietnamese and foreigners alike.

AmCham thanks the Office of the United States Trade Representative for its consideration of our comments on Vietnam’s acts, policies, and practices in IPR.