

# VIETNAM

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: Vietnam should be elevated to the Priority Watch List in 2011.<sup>1</sup>

Executive Summary: IIPA had hoped that the 2005 passage of the IP Code in Vietnam, revisions to the Penal Code, and a nationwide judicial reform process would lead to steady improvements in copyright protection, allowing a legitimate creative marketplace to emerge in Vietnam's thriving marketplace of over 89 million people. Unfortunately, physical piracy remains largely unchecked, and the increased uptake and capacity of broadband and mobile Internet improvements in the country have led to a severe increase in the trade of illegal copyright files online. Technological advances in Vietnam have outpaced the government's response to copyright policy issues, further exacerbating the piracy problem, and notwithstanding that the Vietnamese have long recognized that piracy in the country is increasingly "sophisticated" and involves violations of "[m]ost of the objects of the rights."<sup>2</sup> The Vietnamese Government has taken some enforcement actions, but with an undue focus on administrative measures as opposed to implementing a strong criminal remedy (the current Criminal Code remains in violation of Vietnam's commitments under the Bilateral Trade Agreement), refused to lift onerous market access restrictions, and even overlooked pay TV signal theft by the government-controlled system, VTC. Vietnam, which has seen its economy grow an average of 7.2 percent per year over the past decade, witnessed exponential growth in its bilateral relationship with the U.S. (700% increase since the BTA), and come to rely on the United States as an extremely important export market, must now hold up its part of the bargain to address copyright piracy and related concerns.

Priority Actions Requested in 2011:

### Enforcement

- Devote greater resources and Ministry of Culture, Sports and Tourism (MCST) Inspectorate and Economic Police manpower to running raids and bringing cases under the Criminal Code through targeted criminal actions, e.g., against online piracy, retail and source piracy, CD-R burning labs, end-user piracy of business software, reprinting/photocopying facilities, etc.
- Take effective action against well-known sites whose business models are based on providing access to infringing content, including in particular those sites identified in this report.
- Enforce the Administrative Remedies Decree, imposing maximum penalties.
- Adopt a more coordinated and robust policies to reduce online and mobile piracy, including a regulatory approach (notice and takedown) and mechanisms to recognize service provider responsibility and foster service provider cooperation in combating infringement and thereby demonstrate best practices for the private sector to follow.
- Reduce pirated imports from China.
- Reduce signal theft by removing illegal content from local cable operators, including VTC, and stopping retransmission of signals from neighboring countries without license.

### Legislation and Market Access

- Issue Inter-Ministerial Circular to implement the revised Penal Code, in line with Vietnam's BTA obligation, by i) clarifying that the Code applies to online distributions/offers to distribute, and ii) providing detailed interpretations of "commercial scale" infringements that include infringements undertaken without a profit motive.
- Join the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).
- Ensure procurement policies do not impose preferences for open source or other software or technologies.

<sup>1</sup> For more details on Vietnam's Special 301 history, see IIPA's "History" Appendix to this filing at <http://www.iipa.com/pdf/2011SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' country reports, at <http://www.iipa.com/countryreports.html>.

<sup>2</sup> Copyright Office of Vietnam, *Overview of Copyright in 2008*, January 19, 2009, at <http://www.cov.gov.vn/English/viewNew.asp?newId=217&rd=20090202or146>.



- Adopt a decree on ISP liability that clarifies the secondary liability of ISPs for copyright infringement, avoids blanket immunities for intermediaries and requires ISPs to take responsibility and to cooperate with right holders to combat online infringements both in the hosted and the non-hosted environment.
- Afford U.S. right holders greater access to the Vietnamese market, by eliminating foreign investment restrictions and other entry barriers with respect to production, importation and distribution of copyright materials whether in the physical or online/mobile marketplaces.
- Pass optical disc licensing regulation.
- Extend the term of protection for sound recordings to the BTA-compatible term (75 years) and otherwise extend term in line with the international trend (life of the author plus 70 years).

## PIRACY AND ENFORCEMENT CHALLENGES IN VIETNAM

Courts and Judicial Reorganization: The inactivity of the courts in dealing with copyright infringement issues is a major disappointment. To IIPA's knowledge, no criminal copyright infringement case has ever been brought to the courts in Vietnam. While inter-governmental discussions have ensued on judicial reforms, there still seems to be great reluctance to apply criminal remedies to even the most egregious cases involving copyright infringement. Equally, there have to date been relatively few civil court actions in Vietnam. The main reasons for this are ambiguity within the law, complicated procedures, delays, and a lack of certainty as to the expected outcome. Building IP expertise must be a part of the overall judicial reform effort. Training should be provided to police and prosecutors because they play a very important role in bringing a criminal offense case to the court. With regard to the civil courts, full training programs should ensue for specialized judges and other IP professionals, to include training from authorities such as the National Office of Industrial Property (NOIP) as well as training by external organizations. Civil judges require training on the determination of compensation for damages together with the calculation of damages.

End-User Piracy of Business Software Harms the Software Industry and Stunts the Growth of the IT Sector: The rampant use of unlicensed software in the workplace by businesses continues to cause the greatest revenue losses to the software industry, thereby stunting the growth of the IT sector. Retail piracy and hard disc loading continue to cause losses as well. Most leading cities, such as Hanoi, Ho Chi Minh City, Đà Nẵng, and Hải Phòng are key software piracy hotspots. The enterprise end-user software piracy rate in Vietnam remained among the highest in the world at 82% in 2010, and preliminary data indicates the commercial value of unlicensed software in Vietnam remained quite high at US\$208 million.<sup>3</sup> A 2010 study done by the International Data Corporation (IDC) with the Business Software Alliance concluded that decreasing Vietnam's software piracy rate by ten percent over a four year period would add US\$1.17 billion to Vietnam's economy, create 2,100 new high-wage high tech jobs and generate an additional \$60 million in tax revenue.

In 2010, the MCST Inspectorate carried out four raids against corporations using unlicensed software, based on complaints lodged by the Business Software Alliance. While the Economic Police worked well in teams with the MCST Inspectorate during the enforcement actions, no criminal cases were brought based on these (or any prior) raids, although a civil case is being considered. Administrative fines arising out of end-user software piracy actions continue to result in non-deterrent fines, in amounts below the cost of having purchased legal software. It is reported that low fines result from reluctance to consider the legitimate value of the products infringed rather than the "pirate value." The authorities have also never taken *ex officio* raids against businesses engaged in software end-user piracy.

---

<sup>3</sup> BSA's 2010 statistics are preliminary, representing U.S. software publishers' share of commercial value of pirated software in Vietnam. They follow the methodology compiled in the Seventh Annual BSA and IDC Global Software Piracy Study (May 2010), <http://portal.bsa.org/globalpiracy2009/index.html>. These figures cover packaged PC software, including operating systems, business applications, and consumer applications such as PC gaming, personal finance, and reference software – including freeware and open source software. They do not cover software that runs on servers or mainframes, or routine device drivers and free downloadable utilities such as screen savers. The methodology used to calculate this and other piracy numbers are described in IIPA's 2011 Special 301 submission at <http://www.iipa.com/pdf/2011spec301methodology.pdf>. BSA's final piracy figures will be released in mid-May, and the updated US software publishers' share of commercial value of pirated software will be available at <http://www.iipa.com>.

A 2008 Memorandum of Agreement has been effective in fostering good working relations between industry and government enforcement authorities through the Partnership in Protection of Software Copyright program.<sup>4</sup> In BSA's experience, enforcement officers show a strong interest in learning about copyright, improving their inspection skills, and applying what they have learned in practice. Unfortunately, this interest has not translated into increased deterrence through greater numbers of actions, criminal prosecutions, or deterrent administrative.

Internet and Mobile Piracy Grew With Increased Internet, Broadband, and Mobile Penetration in 2010: Once again in 2010 and into 2011, growth in Vietnam's Internet usage out-paced much of the world. There were almost 26.5 million Internet users throughout Vietnam as of November 2010, or around 30% penetration, up from 26.6% in 2009, according to Trung Tâm Internet Việt Nam-VNNIC (the national registry for Vietnam's Internet domain).<sup>5</sup> This number keeps Vietnam ranked seventh in Asia in total number of Internet users.<sup>6</sup> Broadband usage expanded rapidly in 2010, up to 3.6 million broadband subscribers or 4% of the total population. Meanwhile, mobile penetration continued to skyrocket in Vietnam in 2010, with an estimated 133 million mobile subscriptions as of June 2010,<sup>7</sup> having exceeded the 100% mobile penetration rate in 2009. The most significant statistic related to mobile, however, is the number of 3G network users, which was up to 9 million users by the end of 2010, according to the General Statistics Office of Vietnam and the Ministry of Information and Communications. This increased penetration in Vietnam opens up opportunities for faster, more efficient and more cost-effective distribution of information, products and services, but unfortunately has resulted in a proliferation of copyright infringements over services and sites which require a response by the Vietnamese Government.

While locally hosted streaming/download websites, for example, zing.vn, slightly decreased in 2010 according to the record industry, other forms of online piracy such as deeplinking sites providing access to infringing materials continued to proliferate, e.g., Baamboo.com, Socbay.com, and Tamtay.cn, forum sites, e.g., forum.trasua.vn; kenh14.vn (the video player for which is powered by Baamboo.com), livevn.com, rap.vn, trasua.vn, and truongton.net,<sup>8</sup> and video sites,<sup>9</sup> e.g., clip.vn, giaiTri24.vn, kine.vn, onlinemtv.net, and timnhanh.com. Industry continues to notify the Vietnamese Government of many sites that provide illegal content, including music, movies, software, games, and published works (with reports of growing electronic piracy of textbooks and dictionaries, among other published products).<sup>10</sup> Other forms of Internet piracy in Vietnam include piracy-oriented search engines, including Baamboo.com, Socbay.com, Tamtay.cn, and xalo.vn,<sup>11</sup> peer-to-peer (P2P) services specializing in pirate copyright content, e.g., up.4share.vn, and cyberlockers used for piracy, e.g., megashare.vnn.vn, mega.1280.com, share.megaplus.vn and azsharing.com. University networks are increasingly being used for dissemination of infringing content. Partly due to the lack of enforcement actions taken by the Vietnamese Government, piracy at music portal sites, e.g., noi.com, mp3.zing.vn, nhac.vui.vn and yeucahat.com, have become rampant as advertising income provides the incentive to conduct such infringing services.

Hosted music streaming or download sites such as chacha.vn, nghanhac.info, nhaccuatui.com, etc. are still active, notwithstanding the fact that industry filed complaints with MCST in 2009 and 2010. Many advertisements can be found at these websites which are placed by well-known brand names. While the infringements under hosted streaming or download sites are still rampant, there has been an increase in "mobile" piracy over the year. With proliferating mobile device use, but more significantly, increased connectivity through 3G networks, right holders now

---

<sup>4</sup> In August 2008, a Memorandum of Agreement was signed establishing the "Partnership in Protection of Software Copyright" between BSA, the Vietnam Software Association, the Inspectorate of the Ministry of Culture, Sports & Tourism (MCST), and the Copyright Office of Vietnam.

<sup>5</sup> See <http://www.thongkeinternet.vn/jsp/trangchu/index.jsp>.

<sup>6</sup> See *Asia Internet Usage and Population*, Internet World Stats, at <http://www.internetworldstats.com/stats3.htm>.

<sup>7</sup> Vietnam Ministry of Finance, *Vietnam Telecommunications Update*, Vietnam Financial Review, August 14, 2010, at [http://www.vfr.vn/index.php?option=com\\_content&task=view&id=1103&Itemid=4](http://www.vfr.vn/index.php?option=com_content&task=view&id=1103&Itemid=4).

<sup>8</sup> Informal networks and forums used particularly by students but also by other Internet providers are increasingly used for dissemination of infringing content.

<sup>9</sup> Illegal streaming of copyrighted content of international channels remains a major issue.

<sup>10</sup> MCST and COV have been informed of the following websites: 1280.com, 7Sac.com, Baamboo.com, bbs.orkoo.com, chacha.vn, clip.vn, galaxyz.net, Gate.vn, giaiTri24.vn, giaiTriamnhac.info, hihihehe.com, karaoke.com.vn, kenh14.vn, livevn.com, loitraitim.com, nghanhac.info, nhac.vui.vn, nhaccuatui.com, noi.vn, onlinemtv.net, rap.vn, Socbay.com, tamtay.vn, timnhanh.com, Top1.vn, truongton.net, vast.net.vn, VietGiaiTri.Com.Vn,,Vui.vn, tamtay.vn, top1.vn, xalo.vn, Yeah1.com, Yeumnhac.com, yeucahat.com, and Zing.vn.

<sup>11</sup> Industry indicates that both bamboo.com and xalo.vn have diversified their services to include video and an mp3 search engine.

face two major challenges. First, the loading by mobile device vendors of illegal copyright content onto the devices at the point of sale remains a hindrance to the development of the legitimate market in Vietnam for mobile content. More damaging was the development in 2010 of illegal music channels or “apps” set up to be accessed on mobile platforms, without any intervention from the authorities to cease such activities. As an example of this phenomenon, sites like Socbay.com offer illegal downloads of ringtones to mobile phones, but Socbay has now developed a mobile “app” called Socbay iMedia which provides a variety of unauthorized entertainment content, including *inter alia*, music files. This second phenomenon will, if allowed unchecked, threaten the entire online/mobile market for music and other copyright materials into the future and must be addressed.

Right holders have once again taken an active approach at self-help measures in 2010, seeking numerous takedowns of infringing sites and materials. Unfortunately, takedown rates in response to right holder notices to services providers is woefully low, for example, the takedown rate was around 13% for the music industry. Vietnamese law remains ambiguous with respect to thresholds for ISP liability for online infringement. As a result, ISPs are generally uncooperative with right holders in addressing infringements over their services or in responding to takedown requests. The problem is further compounded by existing administrative enforcement remedies being rendered ineffective by: 1) the lack of an effective procedure to deal with online piracy administrative complaints; 2) a heavy burden on right holders for production of evidence and proof of actual damages (as opposed to regarding advertising revenues and other commercial advantage as sufficient proof of damage); 3) continued rudimentary issues related to MCST knowledge of and ability to identify and effectively deal with online infringement cases; 4) lack of compliance with administrative orders, since some infringing websites do not comply with the orders issued by MCST, and some websites merely remove infringing “URLs” without ceasing the infringing operation. The International Federation of Phonographic Industries (IFPI) has filed several administrative complaints with the MCST under the new Administrative Decree against music streaming and deeplinking sites and a TV channel. MCST inspectors have issued warnings and asked for the removal of the infringing content identified in the complaints. However, only about 20% of the sites have removed infringing content. Infringing content can still be found on the remaining sites, continuing to cause damage to the record companies.

With the seriousness of the Internet and mobile piracy problem,<sup>12</sup> the Vietnamese Government needs to devote additional resources, time, expertise, and equipment, in order to build capacity, train its officers, and ultimately, take needed actions to reduce this threat to legitimate content businesses in 2011. Target cases should be prosecuted against egregious examples of Internet and mobile piracy, and administrative authority should be exercised to prevent unfair business practices and address activities of commercial entities that actively facilitate infringement. Finally, government-run networks (including university networks) should be monitored closely, and should adopt zero-tolerance policies to minimize infringing activity.

Physical Piracy Dominates the Market, Including Imports, Recordable Disc “Burning,” and Local Factory Production: Evidence of physical piracy can still be found everywhere in Vietnam, especially in urban areas, including major piracy hubs like Hanoi, Ho Chi Minh City, Danang, Haiphong, and two border cities Lang Son and Mong Cai. It remains, for example, very easy to buy almost any kind of software at shops on the so-called “PC streets” or other “CD-DVD” shops.<sup>13</sup> Piracy storefronts are more than happy to supply any content on recordable discs, complete with hacking or cracking instructions for those products embedded with technological measures to protect the original discs from being illegally accessed or copied. Vietnamese-sourced pirate products flood the domestic markets and have been found in other Asian countries, North America, and Eastern Europe. In fact, for the music industry, with piracy levels still over 90%, financial returns for recorded music sales have dropped so deeply

---

<sup>12</sup> For example, the independent film and television segment of the motion picture industry (IFTA) reports that online and physical piracy remains a significant export constraint for independent producers and distributors, the majority of which are small to medium sized businesses. Independent producers partner with local authorized distributors to finance and distribute their films and programming. Unable to compete with free, legitimate distributors are unable to commit to distribution agreements or offer drastically lower license fees which are inadequate to assist in financing of independent productions. Piracy is undermining and may permanently damage legitimate distribution networks essential to reaching the consumer and leaves little confidence for investment in intellectual property.

<sup>13</sup> Pirate optical discs in the market come in three varieties: imports, mainly from China; locally produced “burning” onto recordable discs; and factory-produced discs. The majority of pirate VCDs and DVDs of movies are now imported from China. Authorities in Vietnam have previously reported eight optical disc plants operating in Vietnam today, with the capacity to produce well above any rational legitimate domestic demand.

that the companies involved are unable to invest in new albums and artists. Instead, companies operating in Vietnam have shifted their focus to different revenue streams, such as ring tones, ring-back tones, ancillary revenues for personality rights, and music channel licensing.

Though MCST has been supportive in recognizing the problem, they have devoted very few resources to deal with piracy across Vietnam. With the development of the Internet, some physical piracy has begun to migrate to smaller provinces like Khánh Hòa, Đồng Nai, Bình Dương and Hưng Yên where Internet connectivity is less developed. A reported seizure in Ho Chi Minh City on January 6, 2010 of "300,000 discs of all kinds that could be considered pirated" from a plant supposed to be producing blank discs highlights the continued struggle in Vietnam against piracy.<sup>14</sup> Only a 'zero tolerance' campaign, including *ex officio* actions against open and blatant piracy activities of all kinds, with deterrent administrative fines meted out to their maximums, license revocations, shop closures, seizures of pirate imports and pirated product destined for export by the Border Guard, and criminal penalties can result in a significant reduction in piracy in Vietnam.

**Book and Journal Piracy Severely Harms Publishers:** Book and journal publishers continue to suffer from rampant piracy in Vietnam, in the form of illegal reprints and unauthorized photocopies. Bookshops, roadside vendors and copy shops all sell illegal copies of bestselling trade books, travel books and academic textbooks, and unlicensed print overruns continue to plague foreign publishers who engage local production. The English language teaching market continues to be hard hit, with much of the market (private-sector education and universities) being supplied by unauthorized reprints and adaptations. State-sector publishers also have an interest in making sure their licenses (such as those of the Ministry of Youth and the General Publishing House of Ho Chi Minh City) are not misused. In 2009, AAP member representatives informed authorities of a printer and book store owner engaged in unauthorized re-printing of ELT reading materials. Law enforcement raided the bookstore premises twice (in December 2009 and March 2010), seizing 38,764 pirated books. A fine of VND 500 million (US\$25,700) was imposed but has yet to be collected from the pirate. Instead, the perpetrator is reportedly appealing the imposition of the fine, and in the meantime, is continuing to operate his bookstore under a different name and remains in the business of selling pirated books.

**Signal Piracy:** While Vietnam's Pay-TV sector is one of the fastest developing markets in the Asia Pacific, with 4.2 million overall connections as of May 2010, the legitimate Pay-TV market development is being held back by signal piracy in Vietnam.<sup>15</sup> Urban cable systems are prone to "line tapping" and signal theft by individual consumers, while cable companies continue engaging in "under-declaration" by which they fail to pay for the full number of customers to whom they provide programming, and also use unlicensed content (including unauthorized broadcasts of DVDs directly over their channels). "Overspill" is also a problem in Vietnam as cable operators capture signals from neighboring countries' satellite systems. These are endemic problems which the government should address. A relatively new and dangerous problem in Vietnam involves the operation of websites which steal Pay-TV signals and stream them onto the Internet. Several sites have been identified streaming premium content channels without authorization, mainly focusing on motion pictures or sports content.<sup>16</sup>

Vietnam Television Corporation (VTC), operated by the Ministry of Posts and Telematics, continues broadcasting foreign content, including Motion Picture Association of America members' content, without a license to do so. In addition, industry reports that the unauthorized reception and redistribution of foreign satellite channels using illegal decoders remains a problem throughout the country. According to the Cable and Satellite Broadcasters Association of Asia (CASBAA), the cost of pay-TV piracy in Vietnam increased 20% to almost US\$18 million in 2010, attributable to more than 1.1 million illegal connections (307,000 illegal individual connections or overspill, and

---

<sup>14</sup> *Vietnam Police Say Pirated Discs Seized*, Agence France Presse, January 7, 2010, at <http://www.france24.com/en/20100107-vietnam-police-say-pirated-discs-seized>.

<sup>15</sup> Cable and Satellite Broadcasters Association of Asia (CASBAA), *CASBAA Release - Vietnam Pay-TV in Bloom*, May 7, 2011, at <http://www.casbaa.com/media-and-resources/news-center/casbaa-news/casbaa-news-archive/55-casbaa-release-vietnam-pay-tv-in-bloom>.

<sup>16</sup> One example of a website with questionable content has adopted the name of a well known U.S. sports broadcaster without authorization, and is reportedly live-streaming unauthorized content from that broadcaster, and others.

825,000 under-declarations or illegal distributions). On top of this increase in lost revenues are the lost opportunities due to the restrictions placed by the Vietnamese government on the number of international channels. Even with the current 170 TV channels of all kinds in Vietnam, foreign right holders are being denied access to the Vietnamese market. The music industry also reports that along with developments in IPTV, music and music video signals are being exploited without obtaining permission from or making payments to right holders.

## COPYRIGHT LAW AND RELATED ISSUES

Criminal Code Violates Vietnam's BTA Obligations; Inter-Ministerial Circular Should Ensure Full Compatibility with BTA: Vietnam's 2009 revisions to the Criminal Code included a new Article 170a criminalizing "commercial scale" acts of "[c]opying of works, audio recordings and visual recordings" or "[d]istributing the copies of work, audio or video recording." This constitutes a significant weakening from the framework in the February 2008 Criminal Circular, which criminalized all acts of "infringement" in Articles 28 and 35 of the IP Code, including acts of infringement defined therein, violations involving circumvention of technological protection measures (TPMs), decryption of encrypted satellite signals, and other acts. Article 170a did improve Vietnam's statutory framework in two respects: 1) the phrase "and for commercial purposes" was removed from the Criminal Code, so the standard for criminal liability is now "on a commercial scale"; and 2) fines are increased to a range from US\$3,000 minimum to US\$30,000 maximum, and for crimes committed in "an organized manner" or for recidivism, fines are increased to a range from US\$22,000 minimum to US\$57,000 maximum. IIPA notes that the revised Criminal Code violates Chapter II, Article 14 of the Bilateral Trade Agreement (2001) (BTA) with the United States,<sup>17</sup> in which Vietnam agreed to criminalize all "infringement of copyright or neighboring rights on a commercial scale." Thus, the Vietnamese Government should also return to the *status quo ante*, i.e., by ensuring that criminal liability can attach to infringements enumerated under Articles 28 and 35 of the IP Code (consistent with the terms of the previous 2008 Criminal Circular). The BTA also expressly calls for criminalization of the trafficking in a device or system used for "the unauthorized decoding of an encrypted program-carrying satellite signal" or "the willful receipt or further distribution of an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal," so the revised Criminal Code also places Vietnam in violation of Chapter II, Article 5 of the BTA. The U.S. should commence immediate consultations in conjunction with Chapter VII, Article 5 of the BTA, to resolve these express violations of the terms of the BTA, recognizing that resolution is also imperative to Vietnam's successful participation in the TPP.<sup>18</sup>

An Inter-Ministerial Circular to implement the revised Criminal Code is to be issued. IIPA understands the drafting team is headed by the Inspectorate of the Ministry of Science & Technology. In such a Circular, the government of Vietnam should clarify the types of acts subject to criminal liability under the amended Criminal Code to include online distributions and offers to distribute online (making available).<sup>19</sup> It would also be important for the government to provide detailed interpretations of "commercial scale" infringements that include acts which harm the market regardless of the purpose of the infringer. Guidance should be provided to set out that "commercial scale" includes infringements that are undertaken without a commercial purpose but which nevertheless have a clear commercial impact (such as the unauthorized making available on the Internet of copies of protected works,

---

<sup>17</sup> See *Agreement Between The United States of America and The Socialist Republic of Vietnam on Trade Relations*, July 13, 2000 (BTA).

<sup>18</sup> Chapter VII, Article 5(3) of the BTA provides in relevant part,

The Parties agree to establish a Joint Committee ("Committee") on Development of Economic and Trade Relations between Vietnam and the United States of America. The Committee's responsibilities shall include the following:

A. monitoring and securing the implementation of this Agreement and making recommendations to achieve the objectives of this Agreement;

...

C. serving as the appropriate channel through which the Parties shall consult at the request of either Party to discuss and resolve matters arising from interpretation or implementation of this Agreement....

<sup>19</sup> Specifically, to ensure proper coverage of commercial scale Internet-based copyright infringements, which cause enormous commercial damage to copyright owners, those drafting interpretations should ensure that Internet transmissions are included within the term "distributing," so that communicating works to the public by wire or wireless means, through electronic information network or by any other technical means, and such acts as making available works through interactive networks, are covered.



knowingly providing access to such infringing materials, or other acts such as the unauthorized use of software in a business). Such guidance will give administrative authorities in Vietnam the confidence to recommend cases for criminal action when harmful piracy activities are taking place.

Administrative Remedies Decree Must be Implemented in Practice: Decree No. 47/2009/ND-CP, on "Handling Administrative Infringement in Copyright and Related Rights" (Administrative Decree), covers "intentional or unintentional actions of individuals or organizations violating the law on copyright and related rights but not serious enough to hold criminal liability," which appears to cover any violation of the IP Code including violations as to works in Article 28 of the Code and as to related rights in Article 35 of the Code.<sup>20</sup> MCST has indicated the government is working on an additional Decree to institute the higher administrative penalty structure. While the Decree and administrative enforcement in general should not be viewed as a substitute for a workable and deterrent criminal remedy in Vietnam, IIPA members believe that swift implementation in practice of the remedies in the Administrative Decree can begin to deter piracy and send a strong signal that violations of the IP Code will not be tolerated.

Copyright Law and Implementing Regulations to IP Code Remain Incompatible with the BTA and Potentially Vietnam's Other International Obligations: IIPA has commented in previous submissions<sup>21</sup> regarding the Intellectual Property Code (2005)<sup>22</sup> and the 2009 amendments to that Code.<sup>23</sup> The law, and the Civil Code which remains as a vestigial parallel law, are subject to an implementing Decree which is reportedly undergoing further revisions.<sup>24</sup> The laws, while not entirely in compliance with Vietnam's international or bilateral obligations, represented a major modernization, including implementation of the WCT and WPPT, and Vietnam should now be encouraged as an immediate next step to join those Treaties. The following issues are identified for ongoing consideration as Vietnam's policy makers and legislators continue to make adjustments:

- **Importation Right (BTA):** BTA Articles 4.2(a) and 4.6(b) require Vietnam to provide an exclusive importation right. The law with regard to related rights violates Article 4.6(b) of the BTA. While Article 30 provides a right to "distribute copies to the public," this does not expressly include "importation." The government of Vietnam has referred to Article 35(8) of the IP Code with respect to related rights to satisfy Article 4.6(b) of the BTA. This deems importation of sound recordings an infringement only when rights management information has been removed or altered without permission. This provision does not afford an importation right to producers of sound recordings as required by the BTA.
- **Term of Protection (BTA):** The 2009 amendments did not meet the BTA obligation to increase the term of protection for sound recordings to 75 years from publication (or 100 years from fixation, if not published within 25 years of fixation). Article 34(2) of the IP Code therefore still violates BTA Article 4.4. When the government does go forward and amend the law to fix this BTA deficiency, it should follow the international trend to extend term of protection for works as well to life of the author plus 70 years.

---

<sup>20</sup> For such violations, Section 2 of the Administrative Decree provides, "for each administrative violation, the individual or organization shall be subjected to one of two forms of primary penalty: warning and fine," with the maximum fine being VND500 million (US\$25,700). Remedies also include seizure of all infringing goods and materials (transport, equipment, raw materials, and imported materials) used in the infringement, suspension of the business or service for three to six months, and possible destruction of all infringing goods and materials used to effect the infringement. Importantly, the law expressly refers to removal from the Internet of copies "that were transferred illegally by digital networks," and removal of all illegal copies "under form of electronic storage." While there is overlap, the Administrative Decree also sets forth separate penalties, with a different fine structure, for illegally making derivative works, displaying (or performing) works to the public, reproducing works, distributing or importing works, communicating works to the public by wireless or wired means, electronic information networks or other technical means, and rental of cinematographic works or computer programs.

<sup>21</sup> See, e.g., International Intellectual Property Alliance, *Vietnam*, in 2009 Special 301 Submission, at <http://www.iipa.com/rbc/2009/2009SPEC301VIETNAM.pdf>.

<sup>22</sup> Law No. 50/2005/QH11, Pursuant to the Constitution 1992 of the Socialist Republic of Vietnam as amended and supplemented by the Resolution No. 51, 2001, QH10 of the 10th Section of the 10th National Assembly dated December 25, 2001.

<sup>23</sup> National Assembly of Law No. 36/2009/QH12, "Law on Amendment of and Supplement to Some Articles of the Intellectual Property Law," which went into effect January 1, 2010.

<sup>24</sup> Decree No. 100 on Detailed Regulations and Guidelines to the Implementation of Number of Provisions of the Civil Code and the Intellectual Property Law on Copyright and Related Rights, Decree No. 100/2006/ND-CP, September 21, 2006, at <http://www.cov.gov.vn/english/viewNew.asp?newId=79>. IIPA understands that The amendment of Decree No.100 is submitted to the government and waiting for the comments and opinions from the government. In addition to the remaining issues discussed in the text hereinbelow, members have indicated it would be helpful if the government considered introduction of a provision making pre-established (statutory) damages available, upon the election of the right holder. Statutory damages can be very important in civil cases in circumstances in which the amount of reproduction or distribution having occurred is difficult to calculate. Such damages systems have been adopted in many countries.

- Internet Rules to Clarify Service Provider Responsibility and Promote Service Provider Cooperation: Laws in Vietnam dealing with Internet issues and service provider responsibility include the Information Technology Law (2007),<sup>25</sup> and Decree No. 55 on the Management, Provision and Use of Internet Services (2001) (Internet Decree).<sup>26</sup> The Information Technology Law apparently provides a broad exemption for information transmitted over or stored on their network.<sup>27</sup> The Internet Decree, by contrast, contains helpful language on service provider issues. Article 6(1) provides, “[i]nformation stored, transmitted and received on Internet must comply with the corresponding provisions of the Press Law, Publication Law, Ordinance on the Protection of the State’s Secrets and other law provisions on intellectual property and Internet information management.” Article 6(2) provides, “[o]rganizations and individuals providing and/or using Internet services must be responsible for the contents of their information stored and/or transmitted on Internet.” To create meaningful copyright protection online in Vietnam, the laws must be tailored to foster service provider responsibility. This can be done initially by creating mechanisms including statutory notice and takedown to deal with infringement in the hosted environment. With increasing broadband penetration and mobile piracy, fostering responsibility (especially when the service provider knows or has constructive knowledge of infringing activity) including other measures to deal with the non-hosted environment will also be important. The government must engage ISPs, most of which have ties to Vietnamese Government agencies, and adopt policies so that they can easily stop online infringements and repeat infringers from engaging in such illegal activities. IIPA understands Vietnam may be working on changes to the Internet Decree and would look forward to reviewing a draft when made available.
- Making Available Right: The Implementing Decree does not expressly confirm that Article 30(1)(b) provides producers of sound recordings with a WPPT-compatible right of “making available” as required by Article 14. Either a clarification should be made to Article 30 of the IP Code to ensure that this right should cover any form of transmissions of sound recordings under the distribution right, including interactive and non-interactive digital transmissions, or Article 23(4) of the Decree should be made applicable, *mutatis mutandis*, to Articles 29 and 30 of the IP Code (covering related rights) to ensure full implementation of the WPPT.
- Technological Protection Measures (WPPT): It appears an inadvertent gap was created in enactment of the IP Code, namely, the prohibition on trafficking in circumvention devices (codified in Article 28(14) as to works) was not made applicable to related rights. This can be resolved in one of two ways: Article 28(14) can be made applicable, *mutatis mutandis*, to related rights, or a separate provision of Article 35 can be added to provide that trafficking (as in Article 28(14)) is a “related rights infringement.”
- Restrictions on IP Rights: IIPA remains concerned about Article 7(2) (which potentially gives the State unchecked power to decide when a right holder may exercise rights and under what circumstances), Article 7(3) (which permits the State to take away copyright altogether or restrict the ability of a right holder to exercise lawful rights), and Article 8 (which establishes impermissible content-based restrictions of protection under copyright, similar to a provision in the Copyright Law of the People’s Republic of China which was found by a WTO panel to violate China’s WTO obligations). The scope of Article 23 also remains ambiguous. These articles must be made compatible with Vietnam’s commitments under bilateral and international copyright agreements and treaties.
- Unacceptable Hierarchy Between Works and Other Subject Matter: Article 17(4) creates an unacceptable hierarchy of the rights of authors over related rights. The need for the authorization of the performer or producer must not cease to exist because the author has granted authorization of a particular use, and vice versa. Article

<sup>25</sup> Law No. 67/2006, enacted by the National Assembly on July 29, 2006 (into force January 1, 2007).

<sup>26</sup> Decree No. 55/2001/ND-CP of August 23, 2001 on the Management, Provision and Use of Internet Services.

<sup>27</sup> Industry indicates that, under this Law, Internet service providers (ISPs) are exempt from liability for information transmitted over or stored on their network. Accordingly, ISPs are not responsible for any copyright infringing material transmitted over or residing on their networks, despite their knowledge of the infringement, unless (i) they themselves initiated the transmission of the information; (ii) they themselves proactively selected recipients of transmitted information; (iii) they proactively selected and modified the content of the transmitted information. Industry indicates that in practice, this means ISPs have to take down infringing content only where they are so requested by competent State authorities.



35 of the Implementing Regulations establishes the supremacy of copyright over related rights. This should be remedied.

- Exceptions Overly Broad, and Impermissible Compulsory Licenses: Certain exceptions in the IP Code may be overly broad. Article 25(1)(g) on “[d]irectly recording and reporting performances for public information and educational purposes” and Article 25(1)(e) on “dramatic works and other forms of performing arts in cultural gatherings or in promotional campaigns” remain potentially problematic. IIPA also remains concerned that Article 25(2) of the Implementing Decree appears to allow the copying of a computer program “for archives in libraries for the purposes of research,” which would create a TRIPS-incompatible exception which must be remedied. Article 25 further codifies a broad broadcasters’ compulsory license as to all works except cinematographic works. Notwithstanding the attempt to limit the scope of the compulsory license to the three-step test, the simple addition of the language of the test will not avoid any compulsory arrangement from colliding with it. As drafted, it creates a Berne- and TRIPS-incompatible compulsory remuneration scheme. Similarly, the Article 33 compulsory license (which was a last minute addition to this legislation) for use of sound and video recordings for commercial “broadcasting” is in violation of international standards. Article 33(1)(b) allows “[u]sing a published sound/video recording in ... business and commercial activities.” Again, the Vietnamese attempt to limit the scope of these compulsory license provisions with the Berne Convention three-step test language (Article 33(2)) fails, because this compulsory license, by its very nature, conflicts with a normal exploitation of the sound and video recordings, and unreasonably prejudices the legitimate interests of the right holders involved.
- TRIPS/Berne-Compatible Presumption of Ownership Must Be Afforded and No Formality Principle Honored (BTA, Berne, TRIPS): Article 203 of the IP Code requires right holders to provide “necessary evidence proving basis [for] the establishment of copyrights, related rights, of which [a] Copyright Registration Certificate and Related Right Registration Certificate are consider[ed] as acceptable evidence.”<sup>28</sup> The Vietnamese Government has taken the position that nothing in Article 203 requires a registration certificate as a formality and that it affords a presumption of ownership without production of a certificate. Vietnam must adhere to the “no formalities” principle of Berne and TRIPS, and Article 3.2 of the BTA.<sup>29</sup>
- “Compelling Distribution or Use for Non-Commercial Purpose of Goods, Materials and Implements”: Articles 202(5) and 214(3) of the IP Code provide that remedies for copyright infringement may include compelling the distribution or use for non-commercial purpose of the infringing goods, as well as the materials and equipment used in furtherance of the infringement, provided that such distribution does not affect the exploitation of rights by an aggrieved rights holder. These provisions fall short of Vietnam’s BTA (Article 12.4) and TRIPS obligations.<sup>30</sup>

Optical Disc Regulations: IIPA understands that draft optical disc regulations have been under consideration by Vietnam for some time to deal with optical disc production over-capacity in Vietnam. This regulation should be enacted and implemented forthwith. IIPA members have provided the government with model legislation on numerous occasions. Such a regulation on the licensing of optical disc manufacture should include the mandatory use of source identification (SID) Codes (including on blank discs), government inspections of optical disc production facilities, revocations and suspensions for violating plants, a prohibition on the unauthorized commercial burning of content onto CD-Rs or DVD-Rs, and a way to monitor imports of machinery and raw materials used to make pirate discs. APEC Member Economies’ Ministers endorsed a paper, “Effective Practices for Regulation of Optical Disc Production” in 2003, which contained key aspects of an effective optical disc regulatory scheme.

---

<sup>28</sup> Articles 208(1) (regarding provisional measures) and 217(1)(a) (with respect to border measures) of the Code apply the same standard of proof as Article 203.

<sup>29</sup> Article 3(2) of the BTA provides, “[a] Party shall not ... require right holders to comply with any formalities or conditions ... in order to acquire, enjoy, enforce and exercise rights or benefits in respect of copyright and related rights.”

<sup>30</sup> The government of Vietnam points to “Circular 01/TTLT-TANDTC-VKSNDTC-BCA-BTP of February 29, 2008,” which indicates that in case any law of Vietnam or international treaty to which Vietnam is party “provides that infringing goods, materials, equipments must be destroyed, the proceeding agencies must destroy them even if they still have use value.” This response seems helpful, although it may not fully satisfy the default rule in the IP Code, since that Code does not compel the destruction of infringing goods.

## MARKET ACCESS BARRIERS IN VIETNAM

Various market access barriers exist in Vietnam today, the most serious of which are limitations and prohibitions on foreign companies' setting up subsidiaries to produce or distribute "cultural products," including IIPA members' products. These restrictions contribute to the lack of a robust and competitive marketplace for content, and limit investment in the creation of new Vietnamese cultural materials. Thus, the vicious cycle of high piracy rates and little to no market access continues. To facilitate commercial development of Vietnam's cultural sector, Vietnam should look to internationally accepted standards and practices which are premised on the understanding that constraining market access for legitimate products complicates efforts to effectively combat piracy. The Vietnamese have indicated they prioritize preserving cultural diversity and strengthening Vietnam as a producer and provider, not just as a consumer, of creative products.<sup>31</sup> Unfortunately, Vietnam's restrictive policies on foreign investment operate as a limitation on investment in cultural production, thus, undermining this objective.

IIPA has included extensive discussions of various market access barriers in previous submissions. The following provides a summary and, where applicable, updates.

- **Government Procurement Preferences in the Software Market:** The Vietnamese Government, under the auspices of the Prime Minister's Office, has established a framework for the procurement, use and adoption of open source software within government organizations with one of the key objectives being "enhancing copyrights protection," and the Ministry of Information and Communications reiterated this goal in a 2008 clarification stating choosing open source would be "*contributing to reduce software copyright violation.*" On December 14, 2010, the Ministry of Information and Communications held a seminar at which it once again strongly voiced its preference for open source software, which would necessarily limit technology choice in Vietnam. IIPA takes no position on the decision made by a company or a government agency as to the type of software it wishes to license. However, creating a clear procurement preference harms companies that rely on software copyright for their livelihoods, since it denies such legitimate companies access to the market. It should be noted that the "Principles for Technology Choice Pathfinder," adopted by APEC in 2006 (furthering the 2002 "Statement to Implement APEC Policies on Trade and the Digital Economy"), recognize that procurement preferences can close markets and stifle innovation and economic development.
- **Restrictions on Trading Rights for Films and Distribution Services:** Importation (trading rights) and distribution of foreign films is limited to cinemas and business entities that own or have the right to operate a qualified cinema for at least five years and have a license from the Ministry of Culture and Information (MOCI). The import plan and the contents of foreign films must also be pre-approved by MOCI.
- **Quantitative Restrictions on Foreign Films Imported for Theatrical Distribution:** Under the market liberalization measures offered by Vietnam in conjunction with its bid to gain WTO accession, the number of cinematographic films imported each year may not exceed two-thirds of those domestically produced. Also, the number of foreign films projected by each cinema is only allowed to reach two-thirds of the total projected films in a given year. Since the domestic film industry is underdeveloped and the number of domestic films produced has generally ranged between 10-15 films or less per year, these restrictions, if enforced, would be a significant barrier to the import and distribution of foreign films in Vietnam. The Cinematography Law amendments appear to leave the possibility for quantitative restrictions on importation of films for distribution.
- **Laws Leave Potential Quotas In Place:** IIPA has in previous submissions noted the concern over potential quotas for foreign film projection in Vietnam in the Cinematography Law as amended. Such quotas should be

---

<sup>31</sup> See Asia-Europe Meeting (ASEM) Seminar on Cultural Diversity in Hanoi on Dec. 15, 2008, discussed in *Vietnam Prioritises Preservation of Cultural Diversity*, Nhan Dan, March 26, 2009, at [http://www.nhandan.com.vn/english/culture/171208/culture\\_v.htm](http://www.nhandan.com.vn/english/culture/171208/culture_v.htm).

disfavored. Certain articles also endanger to television broadcast market, for example, Article 35(2) provides that broadcast of films shall ensure “the proportion of Vietnamese films broadcast as compared with foreign films, the hours for broadcasting Vietnamese films, and the duration of and hours for broadcasting films for children in accordance with regulations of the government.” Unfortunately, Article 2.4 of Decree No. 96 implementing certain provisions of the Cinematography Law requires that the proportion of Vietnamese films broadcast on TV must be at least 40%.<sup>32</sup> Such quotas are disfavored and should be lifted.

- **Foreign Investment Restrictions:** Foreign investment in Vietnamese theaters is limited to 51% and must be through joint ventures.
- **Government Monopoly Over TV Broadcasting:** The Vietnamese government controls and owns all television stations in the country. It does not allow foreign-owned TV stations. Foreign content is reportedly limited to 50% of broadcast time, and foreign programming is not allowed during prime time.
- **Censorship Process for Filmed Entertainment:** MOCI maintains strict censorship of the content of films, television and home video, including foreign content. Because of the broad discretion delegated to the reviewing authority resulting in unpredictable and arbitrary results, the process inevitably becomes highly dependent on personal relationships. Films that require editing are subject to an additional review, though importers are not assured a right of appeal. The implementation of a classification and rating system would be preferred for the development of the theatrical market in Vietnam as opposed to its existing censorship process.
- **Onerous Market Access Restrictions on the Music Sector:** Onerous Vietnamese restrictions prevent U.S. record companies from engaging in production, publishing, distribution and marketing of sound recordings in Vietnam. Vietnam maintains investment barriers against foreign sound recording companies, many of which are of a discriminatory nature. Vietnam made no commitments with respect to production, publication and distribution of sound recordings under GATS as part of its WTO accession. Vietnamese restrictions on the business of making and selling music stifle the development of the Vietnamese music industry, and deny participation of U.S. companies in the market.<sup>33</sup> The lack of a meaningful commercial presence of U.S. record companies in Vietnam also inhibits IIPA members’ anti-piracy efforts – the effectiveness of which is further hampered by restrictions on the ability of our industry to investigate the activities of pirates in Vietnam. This leaves it incumbent upon the Vietnamese Government to enforce intellectual property rights of U.S. content largely on its own. In order to enable lawful trading and curb copyright piracy in Vietnam, foreign record companies should be given an unrestricted right to import legitimate music products into Vietnam and to establish music publishing houses and websites to publish and distribute legitimate music products in Vietnam.
- **Discriminatory Consumption Tax on Imported Game Products.** A draft decree of the Ministry of Information and Communication targets games for a discriminatory 30% special consumption tax imposed only on imported

---

<sup>32</sup> Decree No. 96/2007/ND-CP dated June 6, 2007 Detailing and Guiding the Implementation of a Number of Articles of the Cinematography Law, Article 2.4.

<sup>33</sup> Under present rules in Vietnam and in the absence of bilateral or multilateral commitments, the ability of foreign sound recording companies to set up subsidiaries to produce or distribute “cultural products” is unclear. It appears that foreign sound recording companies must license a Vietnamese company. Vietnamese companies have not been interested in licensing legitimate product from American companies given that pirated versions of these products are already readily available in the Vietnamese market. Thus, rights holders in sound recordings (and musical compositions), especially with respect to physical product, are largely excluded from the market. U.S. right holders should be permitted to establish wholly-owned subsidiaries in Vietnam that are permitted to engage in all industry activities, including but not limited to creation, manufacture, sale, promotion, publication, distribution, and advertising. It is especially important that foreign-owned enterprises be permitted to invest in Vietnam for the purpose of importing and distributing recorded music for online and mobile distribution to the public. Vietnam’s failure to make any significant commitments to market access for U.S. and other foreign record companies within the framework of the WTO accession agreement is, IIPA believes, a major mistake that prejudices both U.S. and Vietnamese interests. Consumers in markets around the world demand and get access to popular cultural materials, with the only question being whether such access will be provided by legitimate or illegitimate means. If major record companies cannot do business in Vietnam, pirates will fill the void, forming a unique pirate supply chain for consumers. This is what has happened in other markets – like that in China – which results in harming U.S. rights holders, but also local artists. One way to make headway into the damaging piracy that has resulted from lack of market access for foreign sound recording companies in Vietnam is to permit legitimate companies to participate in the growing mobile and Internet markets for music. Namely, Vietnam should permit foreign copyright holders to license their content to Vietnamese Internet or mobile content providers. Further, foreign-owned enterprises should be permitted to invest in Vietnam to engage in the importation and distribution of copyrighted materials including for Internet and mobile users.

online and offline games.<sup>34</sup> Official blocks on user access to Facebook affect both Facebook-based games themselves and a key marketing channel for games offered to the public.

- Onerous Market Access Restrictions on the Online Game Industry: Vietnam is the largest online game market in Southeast Asia, where more than 10 million Vietnamese play online games and domestic game suppliers (many using imported games) generated \$130 million in revenue during 2009. The Vietnamese Government exercises strict control over the country's online games market through an onerous licensing process. Game operators without a license are foreclosed from the market. Unfortunately, the Vietnamese Government has banned issuance of new licenses for online games and has banned advertising of online games, with a disproportionate impact on foreign game publishers. Obtaining a license requires the approval of three separate government ministries, and is limited to companies that are at least partially domestically owned. During the second half of 2010, the government placed a moratorium on new game licenses, making it impossible for new entrants to tap the Vietnamese market.

## TRANS-PACIFIC PARTNERSHIP (TPP)

On December 14, 2009, United States Trade Representative Ron Kirk formally notified Congress of President Obama's intention to negotiate with the TPP countries – including Vietnam – with the objective of shaping a high-standard, broad-based regional agreement.<sup>35</sup> IIPA has submitted public comments to the U.S. Government's Trade Policy Staff Committee which describe in greater detail the hoped-for results of a TPP negotiation, including a high-level IP chapter, including high-level substantive copyright protection, high-level enforcement standards, provisions ensuring the free flow of electronic commerce products and services, and obligations to open markets to trade in copyright goods and services.<sup>36</sup> In particular, enhancement of copyright standards and enforcement consistent with those agreed to by current FTA partners, Australia, Singapore, Chile and Peru, and an expansion of these protections to other countries in the region including Vietnam will contribute to U.S. job growth, an increase in exports, and economic recovery in line with the Administration's goals. The level of IPR protection for the TPP should be consistent and co-extensive with the FTAs between the U.S. and its current FTA partners.

Vietnam has taken strides in its substantive laws which make meeting the legal and enforcement obligations of previous U.S. free trade agreement IPR chapters less challenging. At the same time, as noted, Vietnam has some of the most restrictive market access barriers in the world, and IIPA urges USTR to seek through the TPP negotiations opportunities to address the range of market access impediments identified herein. The TPP e-commerce chapter, and the TPP's market access provisions for services and investment, should require TPP partners to eliminate discriminatory taxes and policies and open Vietnam's market to foreign competition. We remain hopeful that Vietnam's participation in TPP negotiations will aid in the elimination of such discriminatory barriers.

## GENERALIZED SYSTEM OF PREFERENCES

On August 4, 2008, IIPA submitted a filing to the GSP Subcommittee of the Trade Policy Staff Committee of the United States in response to a Federal Register notice on whether to designate "the Socialist Republic of Vietnam as a GSP Beneficiary Country." While the IIPA filing did not oppose granting Beneficiary Developing Country status to Vietnam under the Generalized System of Preference trade program, the filing did note several areas – both market access and IPR deficiencies – in which Vietnam does not fully meet the eligibility criteria. The GSP statute

---

<sup>34</sup> See Article 14 of draft decree, at <http://mic.gov.vn/layyknD/Trang/duthaonghidinhhuongdanmotsodieucualatcongngghethongtinvedichvucongngghethongtin.aspx>.

<sup>35</sup> See United States Trade Representative, *Trans-Pacific Partnership Announcement*, December 14, 2009, at <http://www.ustr.gov/about-us/press-office/press-releases/2009/december/trans-pacific-partnership-announcement>.

<sup>36</sup> International Intellectual Property Alliance, *Public Comment Concerning the Proposed Trans-Pacific Partnership Free Trade Agreement with Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam*, 74 Fed. Reg. 66,720 (December 16, 2009). See also International Intellectual Property Alliance, "Participation of Malaysia in the Trans-Pacific Partnership Trade Negotiations" IIPA Request to Testify and Testimony Regarding "Negotiating Objectives With Respect to Malaysia's Participation in the Ongoing Negotiations of a Trans-Pacific Partnership (TPP) Trade Agreement," 75 Fed. Reg. 64778 (October 20, 2010).

expired on December 31, 2010, but should it be reauthorized, the piracy and market access barriers highlighted in this report are key reasons Vietnam should be scrutinized closely before being granted beneficiary status under the GSP program.

## TRAINING AND TECHNICAL ASSISTANCE

In 2010, the copyright industries at various times had the opportunity to provide training and technical assistance to officials in Vietnam. In particular, the Business Software Alliance provided training to Provincial Inspectorates of MCST in three major regions of Vietnam, organized Software Asset Management (SAM) training for members of AmCham in Ho Chi Minh City, worked with the U.S. Embassy and USPTO in organizing IPR workshops for young businesspeople and enforcement authorities (courts, Economic Police, Customs, Market Management), and are acting as a partner with the STAR Project in the field of IPR protection. In 2011, BSA plans to provide judges with software piracy cases, and plans to provide SAM training (as in previous years) for state-owned enterprises. IFPI plans to conduct several technical training events in 2011 for MCST and other government authorities about investigative techniques to tackle online piracy. Aside from industry training, the World Intellectual Property Organization has been involved in providing some level of training on copyright protection. IIPA hopes WIPO will continue to impress upon the government of Vietnam the importance of joining the WCT and WPPT (particularly since Vietnam's drafters and legislators long ago concluded they should implement those treaties).