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# **FEATURE ARTICLES**

## **The U.S. - Vietnam Bilateral Trade Agreement: How Vietnam's Efforts to Strengthen its Trademark and Copyright Laws Signal its Desire to Join the World Economy**

Cara A. Boyle<sup>1</sup>

### **I. Introduction**

On July 13, 2000, the United States and Vietnam signed a Bilateral Trade Agreement ("BTA").<sup>2</sup> The BTA will come into force once President Bush signs it and the Vietnamese National Assembly ratifies it.<sup>3</sup> The historical significance of the BTA to the United States is obvious in light of the Vietnam War and subsequent foreign relations between the two countries. Because of the enormous influence of the U.S. in international trade, the implementation of the BTA will significantly improve Vietnam's bid for membership in the World Trade Organization ("WTO"). The BTA acknowledges that both countries agree that "economic and trade ties and intellectual property rights protection are an important and necessary element in the strengthening of their bilateral relations."<sup>4</sup> It therefore devotes an entire section to the parties' obligations to provide protection and enforcement of intellectual property. Vietnam's negotiations with the U.S. regarding intellectual property issues, as well as the intellectual property provisions in the BTA, provide

one framework in which to analyze one of the steps Vietnam has taken to join the world economy.

When the agreement was signed, the Clinton administration noted that the BTA "mark[ed] a key step in the historic reconciliation between the United States and Vietnam" and fulfilled the goal of "negotiating a comprehensive trade agreement with Vietnam that would advance reform by leading to significantly more open markets and to Vietnam's firmer integration into the global economic community."<sup>5</sup> Noting that the agreement is "now a key initiative in President Bush's trade agenda," current U.S. Trade Representative Robert B. Zoellick stated that "[b]y lowering tariffs and trade barriers, particularly in the services sector, this trade agreement will provide Americans with expanded access to the Vietnamese market and includes important protections for American intellectual property rights."<sup>6</sup> The legal, political, and economic changes within Vietnam and the BTA itself demonstrate Vietnam's desire to normalize relations with the U.S. and to join the world economy. After experiencing the failure of its socialist economic model, Vietnam established a market economy.<sup>7</sup> In order to stimulate foreign investment, in 1986, the Vietnamese government instituted its policy of *doi moi*, or economic reform. *Doi moi* represented one of Vietnam's first steps in its bid for acceptance into the international trade community. For the first time Vietnam permitted small-scale private commerce and foreign investment.<sup>8</sup> The Vietnamese economy experienced an increase in foreign investment in the early to mid-1990s, only to be followed by a rapid decline in such investment in 1999.<sup>9</sup> This decline in investment was attributed to frustration with the "massive red tape of the Hanoi bureaucracy" and "abundant corruption."<sup>10</sup> Despite this, bilateral trade between the U.S. and Vietnam grew from US\$225 million in 1994 to US\$1.2 billion in 2000.<sup>11</sup>

In 1993, the Clinton Administration initiated its "policy of normalization" of relations with Vietnam in

order to “encourage Vietnam’s cooperation on issues of interest to the United States and to promote Vietnam’s integration into the region and the world economy.”<sup>12</sup> Major events which lead to this policy included the 1989 withdrawal of Vietnamese troops from Cambodia and Vietnam’s admission to several international organizations.<sup>13</sup> In 1993, President Clinton authorized U.S. support for international lending to Vietnam and permitted U.S. firms to join in development projects in Vietnam.<sup>14</sup> In 1994, the U.S. lifted its economic embargo on Vietnam and in 1995, opened normal diplomatic relations with Vietnam.<sup>15</sup> In 1996, the U.S. and Vietnam began negotiations on the BTA.<sup>16</sup> The overall effect of this policy has been a strengthened cooperation regarding the POW-MIA issue, the resettlement of thousands of refugees, and enhanced cooperation in combating narcotics trafficking, promoting human rights and religious freedom, and expanding economic links.<sup>17</sup>

With the lifting of the U.S. trade embargo in 1994 and Vietnam’s decision to encourage foreign investment, many U.S. businesses began investing in Vietnam. Since many of these businesses owned some type of intellectual property which they intended to use while trading in Vietnam, they expressed concern about the protection of their intellectual property rights in Vietnam. For example, while Vietnam had enacted trademark and copyright legislation, inadequate enforcement of these laws made it easy for trademark and copyright pirates to work out of Vietnam. Furthermore, China’s attempts to gain Most Favored Nation (“MFN”) status and join the WTO had an adverse effect on Vietnam’s reputation in the intellectual property arena. Responding to pressure from the U.S., the Chinese government substantially increased its trademark and copyright enforcement mechanisms in an effort to reduce its rampant counterfeiting and piracy.<sup>18</sup> As a result, trademark and copyright pirates and counterfeiters fled China and set up shop in Vietnam.<sup>19</sup> This caused such an enormous increase in trademark and

copyright infringement in Vietnam that Vietnam was rapidly becoming a center for intellectual property piracy.<sup>20</sup> American textiles manufacturers were discovering that while there were economic advantages to Vietnam's cheaper labor costs, Vietnam was also becoming a good market for counterfeit goods.<sup>21</sup>

As a result, U.S. businesses urged the U.S. government to focus its attention on the protection and enforcement of intellectual property rights in Vietnam during the BTA negotiations.<sup>22</sup> From the U.S. perspective, "the sudden emergence of intellectual property protection as a major goal of U.S. foreign economic policy in the mid-1980s was a result both of an objective change in the value of intellectual property, and of the domestic political debate over how to respond to the trade deficit and the relative decline of American economic power."<sup>23</sup> One reason for Vietnam's poor record of enforcement of its trademark and copyright laws was the problem of mismanagement and corruption in Vietnam's infrastructure. Moreover, the U.S. knew that any trade agreement with Vietnam would significantly increase the trade activity of American companies in Vietnam and thus affect the intellectual property rights of U.S. companies.<sup>24</sup> Several U.S. companies currently have operations in Vietnam, including Nike, General Electric, Citibank, Coca-Cola, Procter & Gamble, Eastman Kodak, Hewlett Packard, Microsoft, and Cargill.<sup>25</sup> Each of these companies owns a significant number of patents, trademarks, and copyrights in the United States.<sup>26</sup> These companies undoubtedly expect to be able to not only use, but also enforce their intellectual property in Vietnam.

While the BTA addresses all types of intellectual property,<sup>27</sup> this paper will focus only on the trademark and copyright provisions. Although Vietnam has substantially revised its trademark and copyright laws in the last four years, significant improvements must occur if Vietnam wishes to become a successful trading partner of both the U.S. and other countries. Specifically, while

Vietnam has implemented rules and regulations which provide protection of trademarks and copyrights for foreign entities, it has yet to enforce these rights at an internationally satisfactory level. These issues are specifically addressed in the BTA.

Part II of this paper will describe the current state of trademark and copyright piracy and counterfeiting in Vietnam. This section will also discuss U.S. reaction to this increase in counterfeiting and piracy. Part III will discuss the trademark and copyright provisions of the BTA, including Vietnam's obligation to adopt several international intellectual property treaties and agreements.<sup>28</sup> This section will also analyze Vietnam's trademark and copyright laws to determine whether or not they comply with the BTA. Part IV will discuss what future steps Vietnam must take in enforcing the regulations in order to meet its obligations under the BTA.

## **II. Trademark and Copyright Piracy and Counterfeiting in Vietnam**

As noted above, Vietnam has become a haven for trademark and copyright pirates.<sup>29</sup> In response to such activity, the U.S. traditionally implements trade restrictions on those countries that violate the intellectual property rights of foreign entities. In 2000, as a result of this increase in trademark and copyright piracy, the U.S. Trade Representative ("USTR") placed Vietnam on a watch list.

### **A. Trademark Infringement in Vietnam**

A 1997 article in the *Vietnam Investment Review* noted that counterfeiting was on the rise in Vietnam and quoted a report by Vietnam's Market Control Department ("MCD") in the Ministry of Trade which stated that "increasing numbers of world-famous brand names are being exploited by Vietnamese manufacturers."<sup>30</sup> Accord-

ing to that article, "clothing, shoes, cosmetics, artificial leather, motorcycle parts, electronic goods, beverages, toothpaste, and detergent" constituted the highest percentage of counterfeited goods.<sup>31</sup> The MCD also noted that both state-owned and private companies import modern printing systems capable of producing artificial labels which can be supplied to counterfeit manufacturers and then sold on the open market.<sup>32</sup> This results in the counterfeit labels entering into Vietnam through illegal channels from China, Laos and Cambodia.<sup>33</sup> Additionally, most of the counterfeit foodstuffs and pharmaceuticals were made in Vietnam using materials bought locally, with no regulation or government control.<sup>34</sup>

## **B. Copyright Infringement in Vietnam**

While many different industries have experienced some level of copyright piracy in Vietnam, the software and film industries have probably been the most adversely affected.<sup>35</sup> In May 2000, the Software & Information Industry Association ("SIIA") issued its Piracy of Software Study which concluded that Vietnam has a 98% rate of software piracy, the largest of any country.<sup>36</sup> In 1998, U.S. computer giant Microsoft claimed that 90% of its computer software in Vietnam was pirated.<sup>37</sup> Effective control of software copyright piracy has been difficult because of the ease with which one can make and distribute unauthorized copies of works in Vietnam, and because later detection is virtually impossible.<sup>38</sup> According to the International Intellectual Property Alliance ("IIPA"),<sup>39</sup> pirated software smuggled in from China and Hong Kong, in both diskette and CD-ROM formats, is widely available on the streets of Hanoi and Ho Chi Minh City.<sup>40</sup> The IIPA's 1998 report showed a piracy rate of 100% for motion pictures, 99% for sound recordings and musical compositions, and 97% for computer programs and business applications.<sup>41</sup>

The publishing industry has also experienced copyright infringement. The Ministry of Culture and Information ("MoCI") has stated that 20% of the books published in Vietnam were unauthorized translations of foreign novels or instruction manuals.<sup>42</sup> In 1995, when former U.S. Defense Secretary, Robert McNamara, visited Vietnam, he received as a gift an unauthorized Vietnamese version of his book *In Retrospect*.<sup>43</sup> At that time, such unauthorized copying was not illegal because copyrighted works were only protected if they were registered in Vietnam within 30 days of their foreign release.<sup>44</sup> In 1998, Vietnam's Ministry of Science, Technology and Environment investigated over 600 cases of alleged copyright violations, nearly 250 of which were linked to intellectual property rights.<sup>45</sup> That same year, Vietnam's Copyright Office settled 18 copyright disputes, mostly in the publishing industry.<sup>46</sup> Vietnam's widespread piracy in the publishing area is preventing the growth of a potentially good market for U.S. publishers, especially for English language training and college textbooks.<sup>47</sup>

### **C. U.S. Response to Increased Piracy and Counterfeiting in Vietnam**

The U.S. responds to such high levels of international piracy and counterfeiting activity by issuing "Special 301" reports. In 1988, Congress amended the Trade Act of 1974<sup>48</sup> by adding § 182, referred to as "Special 301." Under § 182, every year, the USTR must file a report in which it identifies those foreign countries that (a) deny fair and equitable protection of intellectual property rights; or (b) deny fair and equitable market access to U.S. persons who rely on intellectual property protection.<sup>49</sup> The USTR must also identify "priority foreign countries," which are those countries that have the most "onerous or egregious acts, policies, or practices and that have the greatest adverse impact on relevant U.S. products."<sup>50</sup> Within thirty days of identifying "priority foreign



countries," the USTR must initiate § 301 investigations of the intellectual property practices identified in the Special 301 report.<sup>51</sup> In May 2000, the USTR released its annual report for the year 2000 in which it noted that it:

... devoted special attention to proper and timely implementation of the WTO TRIPS Agreement by developing country WTO members . . . . In addition, USTR continued to focus on two other critically important issues: cracking down on production of unauthorized copies of 'optical media' such as CD's, VCD's, DVD's, and CD-ROM's, and ensuring that government ministries use only authorized software. Considerable progress has been made over the past year by many developing countries in implementing their TRIPS obligations. USTR also has made progress . . . in encouraging our trading partners to implement optical media controls and appropriate software management programs. While progress also has been made in improving enforcement in many countries, the unacceptably high rates of piracy and counterfeiting of U.S. intellectual property around the world require on-going vigilance.<sup>52</sup>

Because of Vietnam's increase in trademark and copyright counterfeiting and piracy during the late 1990s, the USTR has repeatedly placed Vietnam on its watch list. In its 2000 report, the USTR once again placed Vietnam on the watch list, noting that:

The Government [of Vietnam] is still in the formative stages of drafting, enacting and enforcing intellectual property laws. Copyright piracy is the most pressing problem, though there is also some unchecked trademark counterfeiting . . . . On December 27, 1998, the bilateral copyright agreement between the United States and Vietnam entered

into force, following the issuance of implementing regulations by Vietnam. The agreement grants U.S. works copyright protection in Vietnam for the first time. We look to the Government of Vietnam to enforce its new copyright regime vigorously to reduce piracy levels measurably, and to take steps to ensure that all government offices use only legitimate software. We also expect the Government of Vietnam to address intellectual property rights issues in the contexts of negotiations on a bilateral trade agreement and its accession to the WTO.<sup>53</sup>

By the time the U.S. began its negotiations over the BTA, it had serious concerns about trademark and copyright infringement in Vietnam. The intellectual property provisions of the BTA reflect these concerns and will be discussed in the following section.

### **III. Trademark and Copyright Provisions of the BTA**

The BTA acknowledges that Vietnam is a “developing country at a low level of development, is in the process of economic transition and is taking steps to integrate into the regional and world economy.”<sup>54</sup> The BTA notes Vietnam’s membership in the Association of Southeast Asian Nations (“ASEAN”), the ASEAN Free Trade Area (“AFTA”), the Asia Pacific Economic Cooperation (“APEC”) forum, as well as Vietnam’s efforts to join the WTO.<sup>55</sup> The BTA requires each country to accord each other MFN status or “Normal Trade Relations” (“NTR”).<sup>56</sup> It provides that each country shall apply to each other’s respective businesses the same treatment that it would apply to its own domestic companies and their products or services.<sup>57</sup> Additionally, the BTA enables Vietnamese and U.S. firms the right to import and export freely, over time, from within each respective border and provides for a tariff reduction schedule in accordance

with WTO standards.<sup>58</sup> It also contains provisions that give U.S. companies access to Vietnam's service market and protect U.S. investments in Vietnam.<sup>59</sup>

Chapter II of the BTA specifically addresses the trademark and copyright provisions of the agreement and requires both parties to give effect to the substantive economic provisions of the Paris Convention, the Berne Convention and the Geneva Convention.<sup>60</sup> The BTA states that if a party has not acceded to any of these conventions before "the date of entry into force of this agreement, it shall promptly make every effort to accede."<sup>61</sup> The U.S. is a member of the Geneva Convention, the Paris Convention, the Berne Convention, as well as the WTO. Vietnam has been a member of the Paris Convention since 1949, but as of July 15, 2001, has not acceded to either the Berne Convention or the Geneva Convention.<sup>62</sup>

As noted above, the BTA acknowledges Vietnam's intent to join the WTO.<sup>63</sup> Vietnam is an "observer" to the WTO and must therefore start accession negotiations within five years of becoming an observer.<sup>64</sup> The WTO has several trade agreements which guarantee member countries certain trade rights.<sup>65</sup> The WTO enacted the Trade Related Aspects of Intellectual Property ("TRIPs") in an effort to formulate more predictable internationally-agreed trade rules for intellectual property and to settle disputes more systematically.<sup>66</sup> TRIPs attempts to "narrow the gaps in the way [intellectual property] rights are protected around the world and to bring them under common international rules."<sup>67</sup> Under TRIPs, each WTO member country must apply the substantive obligations of the leading intellectual property conventions, supplement those conventions with substantial additional protection, and ensure that critical enforcement procedures will be available in each member country to safeguard intellectual property rights.

## A. Trademark Provisions of the BTA

The BTA requires Vietnam to comply with the Paris Convention within twelve months from the date of entry into force of the BTA.<sup>68</sup> Vietnam's Civil Code of 1996 and Implementation Regulations constitute Vietnamese trademark law.<sup>69</sup> Vietnam has enacted trademark protection rights that comply with international standards. For example, in accordance with the Paris Convention, the Code provides protection for trademarks, service marks and grants such protection on a first-to-file basis, as opposed to the U.S. first-to-use basis.<sup>70</sup> The Code also complies with the Paris Convention and TRIPs by providing protection for famous or well-known marks and by refusing protection of certain types of marks, including generic or descriptive marks.<sup>71</sup>

Vietnam's trademark laws provide several types of enforcement mechanisms, including informal actions, administrative actions, civil actions, and criminal actions.<sup>72</sup> These mechanisms appear to comply with the enforcement provisions of both the Paris Convention and TRIPs.<sup>73</sup> One option is to send an alleged infringer a standard letter, in which the trademark owner demands that the alleged infringer cease and desist from its unauthorized use of the mark.<sup>74</sup> Another option is to obtain an opinion from the National Office for Intellectual Property ("NOIP") as to whether a trademark owner's rights have been violated.<sup>75</sup> After obtaining such an opinion, a trademark owner may send an advisory warning letter to the alleged infringer.<sup>76</sup> While there are no official opposition procedures in Vietnam, a trademark owner may file an unofficial opposition against any pending trademark application that allegedly infringes its trademark.<sup>77</sup> Under Vietnamese law, a registration can also be canceled if the trademark is not used in Vietnam during a consecutive five-year period, and if the mark is identical or confusingly similar to a prior registered trademark or a well-known mark under the Paris Convention.<sup>78</sup>

Administrative actions include filing a complaint with the Market Control Office within Vietnam's Ministry of Commerce, the Department of Customs, or the Economic Police.<sup>79</sup> The complaint must be supported by "documentary evidence of ownership of the infringed mark and proof of infringement, including samples of both the infringing and genuine articles."<sup>80</sup> The relevant government agency will refer any questions to the NOIP to determine whether the marks are confusingly similar.<sup>81</sup> If a determination of trademark infringement is made, the government agency will seize the counterfeit goods without notice to the infringer.<sup>82</sup> A counterfeiter can be liable for up to three times the illegal profits or 10%-50% of the value of the infringing goods.<sup>83</sup>

In order to obtain damages for infringement, a civil proceeding must be instituted.<sup>84</sup> Where one of the parties is a foreigner, the case must be filed in the People's High Court in either Hanoi or Ho Chi Minh City.<sup>85</sup> The suit must be supported by "documentary evidence of the ownership of the trademark and proof of infringement, including samples of both the genuine and infringing articles."<sup>86</sup> "The trademark owner may seek an injunction, damages, and/or destruction of the infringing products."<sup>87</sup> Damages are based on the actual amount of the trademark owner's loss or the illegal profits of the infringer.<sup>88</sup>

Finally, criminal actions may be filed under Article 167 of the Criminal Code, and are usually filed in cases of counterfeit goods.<sup>89</sup> Criminal complaints are usually initiated by the police after they receive a trademark owner's formal complaint.<sup>90</sup> The trademark owner must provide details related to the alleged infringement, including its ownership of the mark, its business interest and locations, the names of the alleged infringers, and the details of the infringement.<sup>91</sup> If convicted, the infringer can face up to seven years imprisonment for counterfeit goods, five to fifteen years imprisonment if the counterfeit goods involve foods, and up to twenty

years imprisonment or even the death penalty for "extremely serious crimes."<sup>92</sup> A counterfeiter may also be liable for up to ten times the value of the counterfeit goods or illegal profits.<sup>93</sup>

The terms of the BTA provide another enforcement remedy whereby the Vietnamese Trademark Registrar may cancel a registration for non-use if the mark is not used within three consecutive years from the date of registration (as opposed to the Code's five year requirement).<sup>94</sup> The Registrar can also refuse to grant registration to those marks which are confusingly similar to a registered trademark.<sup>95</sup> The BTA requires a minimum registration term of ten years, thus complying with the TRIPs minimum registration term of at least seven years.<sup>96</sup> The BTA expressly prohibits the compulsory licensing of trademarks.<sup>97</sup> While the BTA contains enforcement provisions found in the TRIPs agreement, it also allows the parties to provide for criminal penalties in cases of willful infringement, including imprisonment or monetary fines.<sup>98</sup>

## **B. Copyright Provisions of the BTA**

The BTA requires Vietnam to comply with the Berne Convention and the Geneva Convention within eighteen months from the date of entry into force of the BTA.<sup>99</sup> Vietnam would benefit greatly from membership in the Berne Convention because a strong copyright protection system would stimulate innovation, create more jobs and would cultivate a more skilled labor force, thus making Vietnam a more attractive market for foreign businesses.<sup>100</sup>

The Civil Code of 1996 and Implementation Regulations constitute Vietnamese copyright law.<sup>101</sup> Vietnam currently grants copyright protection for computer software and works by anonymous and foreign authors.<sup>102</sup> A copyright arises once a work is created and expressed in a material form, regardless of whether it was published

or registered.<sup>103</sup> As in the U.S., while it is not necessary to register a copyright in order to obtain protection, it is "highly advisable" to obtain a registration "in order to bring an administrative and/or civil infringement action and to obtain certain remedies."<sup>104</sup>

In 1997, the U.S. and Vietnam signed a bilateral copyright agreement designed to protect music, software, movies and videotape.<sup>105</sup> The agreement obligated each country to accord to the other equal treatment under its respective copyright laws.<sup>106</sup> Both countries were to guarantee that certain minimum rights be extended to the copyright owner, including the right to authorize or prohibit the public performance of choreographic works, pantomimes, motion pictures and other audiovisual works.<sup>107</sup> The agreement provided for stricter enforcement of copyrights by providing, in the case of civil actions, preliminary injunctive relief, permanent injunctive relief, damages, and the seizure and destruction of infringing goods and the materials and machinery used to create them.<sup>108</sup> The agreement also contained criminal procedures and penalties in the case of copyright piracy on a commercial sale, including the imposition of fines and imprisonment.<sup>109</sup> It provided for effective enforcement at the border by giving reciprocal protection to each country's copyrighted works.<sup>110</sup>

Unfortunately, the copyright agreement never reached its maximum potential mostly because it did nothing to curtail the rampant copyright piracy in Vietnam. In a report issued in 1999, the IIPA stated that while U.S. works of authorship were legally protected in Vietnam, "virtually every copy of a U.S. video, sound recording, computer program, or book . . . [was] illegal and unauthorized."<sup>111</sup> The IIPA attributed this enormous rate of piracy to the Vietnamese government's official sponsorship of piracy of books, videos, and broadcast programs.<sup>112</sup> In 1997, FAFILM, a division of Vietnam's Ministry of Culture and Information, "blatantly import[ed], copie[d] and distribute[d] pirate video product[s]"

throughout Vietnam and “emblazoned [the products] with official censorship stickers.”<sup>113</sup>

In light of this experience, Article 18 of the BTA states that in the case of any conflict between the provisions of the BTA and the earlier bilateral copyright agreement, the BTA will prevail.<sup>114</sup> Under the BTA, Vietnam must grant protection to all types of computer programs that are literary works within the meaning of the Berne Convention and compilations of data or other material, excluding data or material itself.<sup>115</sup>

In accordance with the Berne Convention, the BTA requires that authors and their successors in interest have the right to authorize or prohibit the importation into the other party’s territory of the following: (a) copies of the original work; (b) the first public distribution of the original and each copy of the work by sale, rental or otherwise; (c) the communication of the work to the public; and (d) the rental of the original or a copy of a computer program for the purposes of commercial advantage.<sup>116</sup> The BTA requires Vietnam to provide any person acquiring or holding any economic rights in a copyrighted work to freely and separately transfer those rights by contract.<sup>116</sup>

Also, in accordance with the minimum standards provided by TRIPs, the BTA extends the duration of a copyright term (when not based on the life of the author) to not less than 75 years from the end of the calendar year of the first authorized publication, or failing such authorized publication, within 25 years of the creation of the work, to not less than 100 years from the end of the calendar year of the creation of the work.<sup>118</sup> The BTA’s enforcement provisions mirror those of TRIPs in that they require effective civil and criminal remedies to prevent copyright infringement.



## **IV. Vietnam's Future Steps in Effective Enforcement of Trademark and Copyright Rights**

### **A. Trademark Enforcement**

While the Vietnamese Government will enforce laws against direct trademark infringement if the issue is brought to its attention, it tends to take a "limited view" of what constitutes trademark infringement.<sup>119</sup> Vietnamese officials themselves acknowledge the problems with enforcement as evidenced by the increase in infringement actions.<sup>120</sup> They contend that the Government must not only tighten control over printing agents and ban the selling of counterfeit goods, but also improve cooperation between the police, the Customs Department, Ministry of Trade, and the Rural Development and Directorate for Standard and Quality.<sup>121</sup> Additionally, it is also important to educate manufacturers, as well as consumers, about the potential dangers of buying counterfeit goods because manufacturers have to "reali[z]e that they are responsible [and that] they can be an effective force in the fight against counterfeiting."<sup>122</sup>

While the government has seized counterfeit goods at the point of sale, it has been unable to locate the production base.<sup>123</sup> As one government official noted, "If we want to fight counterfeiting effectively, we have to start at the root of the problem . . . . Out of tens of thousands of cases, very few are resolved."<sup>124</sup> This same official, however, also maintained that some types of counterfeiting are not always harmful to customers. Referring to the counterfeit 501 jeans from Levi Strauss & Co. that were sold in Vietnam, he claimed that in this case, the Vietnamese customers knew they were buying imitations, but were "happy to do so for the cheaper price and reasonable quality."<sup>125</sup> From the U.S. perspective, this attitude signals a disregard for the importance of protection of foreign trademarks and could have a negative impact on Vietnam's bid for MFN status.

There has been some success in the enforcement arena, however. When the Walt Disney Co. learned that several of its trademarks were being infringed, it successfully challenged these acts by filing complaints with Vietnam's NOIP.<sup>126</sup> Many Vietnamese companies are now more careful about accepting orders from importers that could have adverse effects on foreign trademark owners' rights. One Vietnamese textile company now requires importers to provide certificates of ownership for particular brands they are ordering.<sup>127</sup> While it appears that the government is making more of an effort to enforce its trademark law, these recent events show that there is still need for more consistent enforcement action.

## **B. Copyright Enforcement**

As noted above, the increase in counterfeit goods in Vietnam is a result of both China's crackdown on its own counterfeit activity and the ineffective enforcement of Vietnam's copyright laws.<sup>128</sup> The chief of the copyright department under the Ministry of Culture and Information has noted that copyright violations in Vietnam are significantly harming domestic tape and CD producers.<sup>129</sup> In Hanoi and Ho Chi Minh City, there are apparently hundreds of illegal recording studios that only illegally copy programs that are in high demand in the Vietnamese market.<sup>130</sup> In a 1998 article in the *Vietnam Investment Review*, the Vietnamese Government stated that "blatant copyright infringement . . . must be stamped out to improve Vietnam's standing in the international community."<sup>131</sup> Until recently, however, the Vietnamese government never "made any serious, sustained attempt to clear pirated materials from the market."<sup>132</sup> The Ministry of Culture and Information ("MoCI") recently raided 77 video rental shops in Hanoi, Ho Chi Minh City, Haiphong, and Quang Ninh and confiscated 30,700 pirated video tapes.<sup>133</sup> Despite this show of enforcement, however, a Hanoi video shop owner was quoted as

saying it was still possible to "[t]ake a walk to a few big video rental stores and ask for Hollywood's latest movies [which] were copied abroad, sent to Ho Chi Minh City and finally reached Hanoi."<sup>134</sup>

While the Vietnamese Government has officially stated that it must "crack down on those who clearly infringe on copyrights, [e]specially in relation to US works" and that "violation of copyright must be stopped," there has been limited success in this regard.<sup>135</sup> The general director of the official Vietnam Film Export-Import Distribution Company acknowledged that while it was working very hard to fight piracy, it was difficult to do so. There have been some successful examples of enforcement, however, one of which involved counterfeit musical tapes, discs and videotapes.<sup>136</sup> In this instance, a Vietnamese music composer Tran Tien sued Saigon Video for recording and offering for sale some of his songs without permission.<sup>137</sup> Apparently, Tran Tien was the first person in the Vietnamese music industry to publicly assert his copyright rights.<sup>138</sup> Although he won the lawsuit and was awarded US\$1200, he was unfortunately "silently blackballed" by the music production industry.<sup>139</sup>

As the above discussion illustrates, Vietnam still has yet to effectively enforce its copyright laws in order to satisfy international standards. The IIPA has urged the U.S. government to "press the [Vietnamese] government to put in place effective enforcement mechanisms against copyright piracy" and noted that the Vietnamese government must make a good faith showing of "the complete cessation of government-sponsored video, broadcast and public performance piracy."<sup>140</sup>

### **C. Recent Business Responses to the Signing of the BTA**

In conjunction with former President Clinton's visit to Vietnam in November, 2000, the White House

issued a list of ten contracts signed between the U.S. and Vietnam involving sales of U.S. goods and services to Vietnam.<sup>141</sup> These contracts warrant a brief discussion because they are representative of the types of business U.S. companies will conduct in Vietnam once the BTA goes into effect. Each of these companies has a substantial interest in preserving its rights in its trademarks and copyrights and will undoubtedly expect to be able to enforce these rights once it commences business in Vietnam.

In one contract, the Boeing Company agreed to provide the Vietnamese Government with three Boeing 777-200ER wide body commercial aircraft. Boeing owns over 250 trademark applications and registrations in the U.S., including several registrations of its famous 777 mark.<sup>142</sup> Boeing also owns over 150 U.S. copyright registrations, including registrations referring to its 777 planes in photographs, publications, toys, and catalogues.<sup>143</sup> Another contract involved V-Trac Holdings, Inc., a Vietnamese subsidiary and exclusive dealer of Caterpillar, Inc., whereby V-Trac agreed to supply Ha Long Investment and Development Company with Caterpillar's Marine Propulsion Engines and gear boxes. Caterpillar owns over a hundred trademark applications and registrations in the U.S.<sup>144</sup> Boeing and Caterpillar will undoubtedly expect to receive adequate protection for its trademarks and copyrights in Vietnam.

One particularly interesting contract involved MeetChina.com and the Corporation for Financing and Promoting Technology.<sup>145</sup> The purpose of the contract is to form a joint venture company and create a website for MeetVietnam.com that would provide "Vietnamese exporters with a 'virtual storefront' to display goods and services and allow online ordering/shopping opportunities for overseas buyers."<sup>146</sup>

This contract brings up the issue of the Internet in Vietnam. Vietnam has a literacy rate of 92% and has a relatively young population, with 60% of the population

under 30 years of age and 80% under 40 years of age.<sup>147</sup> Despite this, however, the Internet is not widely used in Vietnam because it is too expensive for the average Vietnamese to use. In a country of over 80 million people, there are approximately 60,000 Internet subscribers, two-thirds of which are governmental or Communist Party institutions.<sup>148</sup> An hour on the Internet costs more than what the average Vietnamese earns in one day.<sup>149</sup> The BTA will lead to increased American investments and increased access to American markets, which hopefully will benefit Vietnam's economy. The World Bank estimates that the reduction in U.S. tariffs could be as much as 40%, which would raise Vietnamese exports to the U.S. to \$800 million.<sup>150</sup> Hopefully, this would increase wages for most Vietnamese which would, among other things, increase access to and use of the Internet. In an interview following his historic visit to Vietnam, former President Clinton stated, "I believe that as we implement this trade agreement, and then Vietnam moves toward membership in the [WTO], the rule of law will become more important, openness will become more important, there will be a lot more access to the Internet and information of all kinds."<sup>151</sup> Expanding the use of Internet in Vietnam would, of course, also increase the potential for trademark and copyright issues, much as it has over the past few years in the United States.

## **VII. Conclusion**

Vietnam has made the decision to participate in the world economy. Its recent trade agreement with the U.S. is a major step in realizing its goal of becoming an effective international trading partner. Its success as an effective trading partner with the U.S., however, depends in part on how it will enforce its laws in order to better protect U.S. businesses' trademark and copyright rights in Vietnam. Vietnam's Civil Code provides the foundation upon which a modern trademark and copyright law

and enforcement system can be built. Vietnam must, however, take more effective action in applying its trademark and copyright laws. As the Deputy Director of NOIP stated, "the effective protection and enforcement of industrial property rights in Vietnam [has] become a compulsory requirement for its integration into the world economy."<sup>152</sup> Such a good faith effort would show not only the United States, but other developed nations, that Vietnam intends to be an effective reliable partner in the international trade community.

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## Endnotes

1. Cara A. Boyle graduated from Loyola University Chicago School of Law in May, 2001, and now resides in Washington, D.C. She can be reached at CaraABoyle@yahoo.com.
2. Press Release, Office of the Press Secretary Fact Sheet, *Vietnam Bilateral Trade Agreement: Historic Strengthening of the U.S. - Vietnam Relationship*, M2 Presswire (July 14, 2000) (on file with the Loyola Consumer Law Review) [hereinafter Press Secretary Fact Sheet].
3. *Id.*; see also The Trade Act of 1974, 19 U.S.C.S. § 2435(c) (providing that a bilateral commercial agreement authorized by the President along with a proclamation "shall take effect only if a joint resolution" is enacted into law); see also The White House Fact Sheet: Background on the U.S. - Vietnam Bilateral Trade Agreement at <http://www.whitehouse.gov/news/release/2001/06/20010608-4.html> (May 29, 2001); see also Christopher Moore, *Reason to Cheer: The Trade Agreement Will Not Come into Force Until Next Year, but the Impact of the Historic Deal is Already Being Felt*, at <http://www.viam.com> (last visited Sept. 21, 2001); see also Press Release, Federal Document Clearing House, *Vietnam Bilateral Trade Agreement*, (Oct. 3, 2001).
4. Agreement Between the United States of America and the Socialist Republic of Vietnam on Trade Relations available at <http://www.ustr.gov> and <http://192.239.92.165/regions/asia-pacific/text.html> (July 13, 2000) [hereinafter BTA].
5. Press Secretary Fact Sheet, *supra* note 2; see also Andrew J. Pierre, *Vietnam's Contradictions*, FOREIGN AFFAIRS, Nov/Dec 2000, at 78 (noting that "[t]he recent decision to sign the U.S. - Vietnam trade agreement

after a year of hesitation suggests that the [Vietnamese Communist] party finally recognizes the need to engage more fully in the global economy.”).

6. Kristi Ellis, *U.S. – Vietnam Pact to Congress*, WWD, June 11, 2001, at 2.

7. Thomas R. Stauch, Comment, *The United States and Vietnam: Overcoming the Past and Investing in the Future*, 28 INT’L LAW 995, 1011 (Winter 1994).

8. Pierre, *supra* note 5, at 79; see also Michael W. Smith, *Bringing Developing Countries Intellectual Property Laws to TRIPs Standards: Hurdles and Pitfalls Facing Vietnam’s Efforts to Normalize an Intellectual Property Regime*, 31 CASE W. RES. J. INT’L L. 211, 242 (Winter 1999) (noting that doi moi was a country-wide plan of economic renovation and improvement designed to attract foreign trade and investment).

9. Pierre, *supra* note 5, at 79 (noting the drop in foreign investment in Vietnam from \$8.3 billion in 1996 to \$1.4 billion in 1999).

10. *Id.*

11. Kirsty Alfredson, *Vietnam – U.S. Trade Agreement On Track* (Aug. 1, 2001), available at <http://www1.cnn.com/2001/WORLD/asiapcf/southeast/08/01/vietnam.trade>.

12. Press Secretary Fact Sheet, *supra* note 2.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. Press Secretary Fact Sheet, *supra* note 2.

18. Comment, *Vietnam or Bust: Why Trademark Pirates are Leaving China for Better Opportunities in Vietnam*, 14 DICK. J. INT’L L. 291, 292 (Winter 1996).

19. *Id.*

20. *Id*; see also Michael J. Scown, *Bucking the Wiles of Vietnam's Pirates*, THE ASIAN WALL STREET JOURNAL, Jan. 7, 1993, at 6.

21. Scown, *supra* note 20, at 6 (noting the manufacture and sale of counterfeit versions of Levi Strauss's 501 blue jeans. The article also notes that two major international hotel chains, Regent and Intercontinental, discovered that local Vietnamese competitors had misappropriated their trade dress. Also, unauthorized versions of Microsoft's Windows software were on sale in Hanoi and Ho Chi Minh City).

22. Of course, two of the top priorities for the U.S. were the POW/MIA issue and the question of human rights violations in Vietnam. This paper will not address either issue except to note that the U.S. government has acknowledged progress in this area.

23. Smith, *supra* note 8, at 221.

24. *Business Briefs: Vietnam - U.S. Trade Exchanges to Flourish*, THE SAIGON TIMES DAILY, July 31, 2000. Immediately after the BTA was signed, many U.S. businesses sought to establish trade links with Vietnamese businesses. The Vietnamese Ambassador to the U.S. at that time, Le Van Bang, was quoted as saying that U.S. companies wanted to find partners to import dragon fruit, crabs, shrimps, rice, sugar, paper, textile items, leather products, mineral water and medical equipment.

25. Naftali Bendavid, *Vietnam, U.S. Adopt Normal Trading Rules; Step Furthers Reconciliation Between Once Bitter Enemies*, CHI. TRIB. July 14, 2000, at 20.

26. See U.S. Patent and Trademark Office website at <http://www.uspto.gov> to conduct searches for patent grants and trademark applications and registrations owned by these companies and U.S. Copyright Office website at <http://www.copyright.gov> to conduct a search for copyright registrations owned by these companies.

27. BTA, *supra* note 4, at ch. II, art. 5, 7-10. Chapter II, art. 5 and 7-10 address protection and enforcement of encrypted program-carrying satellite signals, patents, integrated circuits, trade secrets, industrial designs.

28. The relevant treaties are the Paris Convention for the Protection of Industrial Property, 1967 (Paris Convention), the Berne Convention for the Protection of Literary and Artistic Works, 1971 (Berne



Convention), the Geneva Convention for the Protection of Producers of Phonogram Against Unauthorized Duplication of their Phonogram, 1971 (Geneva Convention), and the WTO's Agreement on Trade Related Aspects of Intellectual Property (TRIPS).

29. *Vietnam or Bust*, *supra* note 18, at 312.

30. Bich Ngoc, *Pirates Lay Siege to Designer Flagships*, VIETNAM INVESTMENT REV., June 16, 1997, at 9.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. Winnie Chung, *Cutting Ground from under Movies Pirates; an SAR Company Is Teaming up with Vietnam to Fight Copyright Infringements There*, SOUTH CHINA MORNING POST, May 10, 1998, at 4.

36. See 2000 SIIA Global Software Piracy Report, The Software & Information Industry Association (SIIA), available at <http://sii.net/piracy/pubs/pubs.asp> (last visited Sept. 21, 2001). SIIA is the principal trade association of the software code and information content industry. SIIA represents leading high-tech companies that develop and market software and electronic content for business, education, consumers and the Internet. According to the report, software piracy in the Asia/Pacific region cost software publishers \$2.8 billion in 1999, led by a \$975 million revenue loss in Japan, and piracy in this region has accounted for more than \$17 billion in losses during the last five years. Countries with the highest piracy rates were Vietnam (98%), China (91%), and Indonesia (85%). Countries with the highest dollar losses were Japan, China (\$645 million), and India (\$214 million).

37. Hung Nguyen, *Crack down Targets American Knockoffs. Vietnam Govt. Says Copyright Infringement Should Be Prohibited*, VIETNAM INVESTMENT REV., Oct. 12, 1998.

38. *Vietnam Urged to Take Action Against Software Pirates*, ASIA PULSE, Oct. 29, 1999, Nationwide Financial News.

39. The IIPA is a consortium of trade associations, including the American Film Marketing Association, the Association of American

Publishers, the Business Software Alliance, the Motion Picture Association of America, the National Music Publishers Association, and the Recording Industry Association of America. See the IIPA's website available at <http://www.iipa.com> (last visited on Sept. 12, 2001).

40. See the IIPA web site available at [http://www.iipa.com/html/rbc\\_vietnam\\_301\\_99.html](http://www.iipa.com/html/rbc_vietnam_301_99.html). (last visited on Sept. 12, 2001) [hereinafter IIPA website].

41. *Id.*

42. Nguyen, *supra* note 38.

43. Reginald Chua, *In Vietnam, Publishing Yields Plenty of Dividends*, THE ASIAN WALL STREET JOURNAL, Nov. 13, 1995, at 1.

44. *Id.*

45. *Vietnam Urged to Take Action Against Software Pirates*, *supra* note 38.

46. *Id.*

47. IIPA website, *supra* note 40.

48. BRUCE E. CLUBB, UNITED STATES FOREIGN TRADE LAW, at § 11.21 (1991), citing Trade Act of 1974, § 182, 19 U.S.C.A. § 2242 (1990).

49. *Id.*

50. *Id.*

51. *Id.*, citing the Trade Act of 1974 § 302(b)(2)(A), 19 U.S.C.A. § 2412(b)(2)(A) (1990).

52. 2000 SPECIAL 301 REPORT OF U.S.T.R., at 1, available at <http://www.ustr.gov> (last visited on Sept. 12, 2001).

53. *Id.* at 30-31.

54. BTA, *supra* note 4, at Ch. II.

55. *Id.*

56. *Id.* at ch. I, art. 1-2. Article 1 defines MFN status as follows: "Each party shall accord immediately and unconditionally to products originating in or exported to the territory of the other Party treatment no less favorable than that accorded to like products originating in or exported to the territory of any third country in all matters

relating to: customs duties and charges, imposed on or in connection with importation or exportation." *Id.*

57. *Id.* at ch. I, art. 2 which states: "Each Party shall administer tariff and nontariff measures affecting trade in a manner which affords meaningful competitive opportunities for products of the other Party with respect to domestic competitors" and "[e]ach Party shall accord to products originating in the territory of the other Party treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and other requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, storage or use." *Id.*

58. *Id.*; *see also*, Press Secretary Fact Sheet, *supra* note 2.

59. BTA, *supra* note 4, at ch. II.

60. *Id.* at ch. II.3.A-C and art. 1. Although the BTA also lists the International Convention for the Protection of New Varieties of Plants (UPOV Convention (1978)) or the International Convention for the Protection of New Varieties of Plants, 1991 (UPOV Convention (1991)) and the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974), these conventions do not cover trademarks and copyrights and are thus outside the scope of this paper. *Id.*

61. BTA, *supra* note 4, at ch. II, art. 1.3.e.

62. *See* The Paris Convention, *available at* <http://www.wipo.org/treaties/ip/paris/index.html> (last visited Sept. 12, 2001); The Berne Convention *available at* <http://www.wipo.int/treaties/docs/english/e-berne.doc> (last visited Sept. 12, 2001); The Geneva Convention *available at* <http://www.wipo.int/treaties/docs/english/ophongr.doc> (last visited Sept. 12, 2001).

63. BTA, *supra* note 4, at 1.

64. The WTO website *available at* [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) (last visited Sept. 13, 2001).

65. *Id.*

66. See Final Act Embodying the Results of the Uruguay Round Multilateral Negotiations: Agreement on Trade-Related Aspects of Intellectual Property Rights (1994), *available at* [http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm) (last visited Sept. 21, 2001)[hereinafter TRIPS]. *See also* [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm) (last visited Sept. 21, 2001), for the WTO's summary of the TRIPs Agreement.

67. *Id.*

68. BTA, *supra* note 4, at ch. II, art. 18.1.A.

69. Pham & Associates, *Trade Marks*, at <http://www.pham.com.vn/trademark.htm> (last visited Sept. 21, 2001) [hereinafter Trade Marks].

70. *Id.*; Smith, *supra* note 8, at 244. In other words, if two separate entities are using the same trademark, the entity that files a trademark application with the Vietnamese Intellectual Property Office first will obtain protection over the other entity. On the other hand, in the U.S., trademark rights are granted to the entity that first uses the mark in commerce. *See also* Davis Frye, *Vietnam's Contemporary Battle with the United States: Vying for Most Favored Nation Trading Status*, 29 VAND. J. TRANSNATL L. 777, 796 (October, 1996) (noting that in the past, this first-to-file policy and ineffectual judicial system fostered a lucrative business in counterfeiting foreign trademarks for the domestic market. Vietnam has realized, however, that in order to attract foreign investors and participate in world trade, it must protect intellectual property rights. Mr. Frye also contends that recently, in an effort to curb counterfeit trademark registrations, Vietnam has been more diligent in granting trademark registrations to first-to-file applicants).

71. Decree No. 63-CP of Oct. 24, 1996 of the [Vietnamese] Government Detailing the Regulations on Industrial Property, Ch. II, art. 6(1)(e) – (2) (on file with the Loyola Consumer Law Review). *See also* The Paris Convention, *supra* note 28, art. 6 which provides protection of famous and well-known marks.

72. Trade Marks, *supra* note 69.

73. *Id.*

74. *Id.* Pham & Associates recommends this as a first course of action because “many infringers are ignorant of the law and may not realize that their acts are culpable. It is difficult, particularly at the retail level, for retailers to distinguish what are counterfeits and what [are] not. As a way to persuade infringers from discontinuing their [sic] offending actions, trademark owners or their authorized representatives can present them with a legal opinion signed by an official of the NOIP or a Vietnamese Attorney stating how their actions violate the law.”

75. Smith, *supra* note 8, at 244; Trade Marks, *supra* note 69.

76. Trade Marks, *supra* note 69.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*
94. BTA, *supra* note 4, at ch. II, art. 6.9.
95. *Id.* at ch. II, art. 6.2.
96. *Id.* at ch. II, art. 6.8.
97. *Id.* at ch. II, art. 6.12.
98. *Id.* at ch. II, art. 14.1.
99. *Id.* at ch. II, arts. 18.1.A and 18.1B.
100. Than Nguyen Luu, *To Slay a Paper Tiger: Closing the Loopholes in Vietnam's New Copyright Laws*, 47 HASTINGS L.J. 821, 830 (1996).
101. Pham & Associates, *Copyright in Vietnam*, at <http://www.pham.com.vn/copyright.htm> (last modified May 23, 2001).
102. Vietnam's Civil Code (Part VI) Intellectual Property Rights and Technology Transfer (Oct. 28, 1995), at ch.I, arts. 745-747 (on file with Loyola Consumer Law Review). *See also* Pham & Associates, *Copyright in Vietnam*, at <http://www.pham.com.vn/copyright.htm>.
103. Vietnam's Civil Code (Part VI) Intellectual Property Rights and Technology Transfer (Oct. 28, 1995), at Ch.I, art. 754. *See also* Pham & Associates, *Copyright in Vietnam*, *supra* note 101.
104. Pham & Associates, *Copyright in Vietnam*, *supra* note 101.
105. U.S. State Department web site at <http://usinfo.state.gov/regional/ea/vietnam/copyrite.htm> (noting that the agreement came into force on December 23, 1998).
106. Agreement Between the Government of the Socialist Republic of Vietnam and the Government of the United States of America on the Establishment of Copyright Relations, *available at* Pham & Associates, *Copyright in Vietnam*, *available at* <http://www.pham.com.vn/copyright.htm> (Dec. 23, 1998).
107. *Id.* at art. 5.
108. *Id.* at art. 6.

109. *Id.*

110. *Id.*

111. IIPA, Vietnam Country Report, at [http://www.iipa.com/rbc/1999/rbc\\_vietnam\\_301\\_99.html](http://www.iipa.com/rbc/1999/rbc_vietnam_301_99.html) (Feb. 15, 1999).

112. *Id.*

113. *Id.*

114. BTA, *supra* note 4, at ch. II, art. 18.5.

115. E-mail from Nguyen Anh Tra, Pham & Associates, 8 Tran Hung Dao St., P.O. Box 641, Hanoi, Vietnam, (Nov. 24, 2000) (on file with the Loyola Consumer Law Review).

116. BTA, *supra* note 4, at Ch. II, art. 4.2.

117. *Id.* at Ch. II, art. 4.3.A.

118. *Id.* at art. 4.4.

119. *Vietnam- Franchising Market*, VT INT'L CONSULTING, July 27, 1999, available at LEXIS, News, Asia Intelligence Wire – Selected Publications File.

120. Tran Viet Hung, *Legal Provisions and Industrial Property Rights Enforcement in Vietnam*, VIETNAM LAW & LEGAL FORUM, Oct. 2000, at 11 (on file with the Loyola Consumer Law Review). Here, Mr. Tran, the Deputy Director General of NOIP stated that “[a]long with the development of a market economy and the increasing role of industrial property objects as well as the growth of the number of industrial property applications in Vietnam, the quantity of disputes, infringements upon industrial property rights has also risen, especially in recent years. In this context, the enforcement of industrial property rights, the handling of infringements upon the rights have become an urgent need aiming at ensuring the fair competition in the market, protecting the legitimate interests of consumers and producers as well and contributing to the struggle against the production and trade in fake goods.”

121. Bich Ngoc, *supra* note 30, at 9.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. Harish Mehta, *Viet Factory's Success is No Fake Business*, BUS. TIMES (SING.), July 26, 1996, at 12.

127. *Id.*

128. Amy Chew, *Vietnam Sees Rise in Piracy in Copyrights*, SOUTH CHINA MORNING POST, August 17, 1994, at 3; *see also*, Nguyen An, *IT Giant Maps Out Masterplan to Dominate Market; Will Launch New Products as a Part of its Plan to Boost its Share in Vietnam's Computer Market*, VIETNAM INVESTMENT REV., September 28, 1998, at 6, quoting general manager of Hewlett Packard, Bob Hughes, as stating that "[w]ith 90 per cent of the computer program[s] used in Vietnam pirated, . . . intellectual property and copyright laws must be enacted strictly. . ."; Nguyen Hanh, *Software Firms Demand an End to Piracy and Absurd Taxes; Vietnam: Software Companies Ask Government to Step Up Anti-Piracy Efforts and Reform Taxes*, VIETNAM INVESTMENT REV., November 2, 1998, page not available, quoting chief representative of Microsoft in Vietnam, Ngo Phuc Cuong, as stating that "Vietnam already has intellectual property laws, but they are virtually impossible to enforce."; Mark Landler, *Washington Expects Delay in Vietnam Trade Deal*, N.Y. TIMES, August 22, 2000, at A3, quoting U.S. Deputy Secretary of Commerce, Robert L. Mallett, as stating that "although Hanoi has passed laws protecting copyrights, it was not enforcing them adequately."

129. Bao Han, *Domestic Producers Slating Piracy*, THE VIETNAM INVESTMENT REV., Feb. 22, 1999.

130. *Id.*

131. Nguyen, *supra* note 37.

132. IPPA website, *supra* note 40.

133. Nguyen, *supra* note 37.

134. *Id.*

135. Bao Han, *supra* note 129.



136. *Vietnam - Copyright Pirates*, VIETNAM ECON. NEWS, Nov. 23, 1998, Business.
137. *Id.*
138. *Id.*
139. *Id.*
140. IPPA website , *supra* note 40.
141. Fact Sheet from the White House Office of the Press Secretary, *President Clinton: New Opportunities for the United States & Vietnam Through Expanding Economic Ties, Trade & Investment* (Nov. 19, 2000), available at <http://usinfo.state.gov/regional/ea/vietnam/vietbus3.htm>.
142. U.S. Patent and Trademark Office, *supra* note 26.
143. U.S. Copyright Office, *supra* note 26.
144. *See* U.S. Patent and Trademark Office and U.S. Copyright Office, *supra* note 26.
145. Fact Sheet from the White House Office of the Press Secretary, *supra* note 141.
146. *Id.*
147. Pierre, *supra* note 8, at 68.
148. *Id.* at 68.
149. *Id.*
150. *Id.* at 81, citing World Bank estimates.
151. Interview by CNN's John King of President Clinton in Ho Chi Minh City, Vietnam (Nov. 19, 2000), available at <http://usinfo.state.gov/regional/ea/vietnam/cnnhcm.htm>.
152. Nguyen, *supra* note 37, at 11.

