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## Trading Systems: Vietnam's Creation of a New Intellectual Property Regime at the Inception of the Vietnam-United States Bilateral Trade Agreement

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# **TRADING SYSTEMS: VIETNAM'S CREATION OF A NEW INTELLECTUAL PROPERTY REGIME AT THE INCEPTION OF THE VIETNAM- UNITED STATES BILATERAL TRADE AGREEMENT**

## **I. INTRODUCTION**

Exactly one day after Vietnamese and United States negotiators signed a bilateral trade agreement on July 13, 2000, an international newsletter reported that Vietnam had doubled its penalties for copyright infringements.<sup>1</sup> The Vietnamese National Assembly had raised the maximum fine for breaches of copyright laws to 200 million Vietnamese dong (approximately US \$15,000).<sup>2</sup> The legislature also increased the maximum jail sentence for this offense to three years.<sup>3</sup> The article reported that Vietnam's Ministry of Culture and Information, which administers the intellectual property regulations through its Copyright Department, also announced that it had conducted 23,000 intellectual property inspections in

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1. *Vietnam: Fines for Infringement of Copyright are Doubled*, PAT., TRADEMARK & COPYRIGHT L. DAILY (BNA), July 14, 2000, at 1, available at LEXIS, BNA Library, Bnaptd File.

2. *Id.*

3. *Id.*

1999, and that 18,000 violations were discovered as a result of these inspections.<sup>4</sup> The Ministry further said that it had confiscated and destroyed 850,000 pirated videotapes and 1.7 million pirated compact discs in 1999.<sup>5</sup> These confiscations are amongst the first reported actions taken by the Vietnamese government in its attempt to enforce recently adopted intellectual property regulations.

Copyright laws along with other intellectual property laws have always existed in Vietnam, however, these laws were always considered to be "paper tigers" – laws that Vietnamese citizens did not heed and the Vietnamese Government neither implemented nor enforced.<sup>6</sup> This article is not only a recent example of the Vietnamese citizens' continuous disregard of Vietnamese copyright laws, but is also a noteworthy example of the recent positive changes taken by the Vietnamese Government in their attempt to enforce current copyright laws and take new steps towards a functioning intellectual property system in Vietnam.

The people of Vietnam have long and consciously ignored copyright laws without the fear of repercussions.<sup>7</sup> High consumer demand, coupled with a complete disregard for copyright laws, has made Vietnam a haven for copyright pirates.<sup>8</sup> Vietnam's major cities have experienced, until recently, a steadily rising invasion of pirated goods into its country.<sup>9</sup> The Vietnamese Government's attempt, in recent years, to enforce intellectual property laws has mostly to do with the only nominal economic success of the implementation of Doi Moi, their "country wide plan of economic renovation and improvement de-

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4. *Id.*

5. *Id.*

6. Than Nguyen Luu, *To Slay a Paper Tiger: Closing the Loopholes in Vietnam's New Copyright Laws*, 47 HASTINGS L.J. 821, 822 (1996).

7. See John Rogers, *Vietnam: Vietnam Could Win and Lose from United States – China Trade War*, REUTERS NEWS SERVICE – FAR EAST, Feb. 5, 1995, at 1, available at LEXIS, Asiapc Library, Vietnam File.

8. See Yojana Sharma, *China Trade: CD Pirates Look for Safer Havens*, INT'L PRESS SERV., Jan. 28, 1995, at 1, available at LEXIS, Asiapc Library, China File.

9. Amy Chew, *Vietnam Sees Rise in Piracy of Copyrights*, S. CHINA MORNING POST, Aug. 17, 1994, at 3.

signed to attract foreign investment.”<sup>10</sup> Under Doi Moi, one of the first priorities of the Vietnamese Government was to facilitate the influx of foreign trade and revenues into its borders in the hopes of spreading the eventual wealth to its impoverished people.<sup>11</sup> One major barrier to the successful implementation of Doi Moi is the Vietnamese Government’s failure to promulgate and enforce effective intellectual property laws.<sup>12</sup> The lack of effective copyright protection in Vietnam has deterred many Western companies and private individuals from investing in and trading with Vietnam.<sup>13</sup> The desired prosperity and the full success of Doi Moi have proven untenable without a system of protection for intellectual property rights.<sup>14</sup>

The economically unsuccessful Doi Moi policies prompted the Vietnamese government to apply for membership to the World Trade Organization (“WTO”).<sup>15</sup> The WTO requires, however, that every country meet the minimum Trade Related Aspects of Intellectual Property Rights (“TRIPS”) standards in order to become a member. Vietnam has yet to fully meet this standard.<sup>16</sup> In order for Vietnam to make a meaningful attempt at adopting the TRIPS standard they will need to adopt them in an atmosphere of free trade and competition.<sup>17</sup> This will, in turn, encourage joint ventures with outside firms, spur innovation in Vietnam, and ensure copyright and patent protection.<sup>18</sup> The Vietnam–United States Bilateral Trade Agreement which has been signed by both countries but has not yet received Congressional approval, includes a

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10. Luu, *supra* note 6, at 822.

11. See *World Bank Report Recommends Wide-Ranging Vietnamese Reforms*, 12 INT’L TRADE REP. (BNA) March 8, 1995, at 456, available at LEXIS, News Library, Nwltrs File [hereinafter *World Bank Report*].

12. See John Rogers, *Vietnam at Crossroads on Intellectual Property*, REUTERS WORLD SERVICE, Aug. 23, 1994, at 1, available at LEXIS, Asiapc Library, Vietnm File.

13. *Id.*

14. Greg Torode, *Hanoi, Vietnam*, S. CHINA MORNING POST, Dec. 21, 1994, at 1, available at LEXIS, Asiapc Library, Vietnm File.

15. See *World Bank Report*, *supra* note 11.

16. 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, 223 (1999).

17. *Id.*

18. *Id.*

promise by the Vietnamese government to effectively phase in the WTO's TRIPS requirements within eighteen months after approval.<sup>19</sup> This Note will argue that the Vietnam–United States Bilateral Trade Agreement fosters the atmosphere of free trade and economic growth that will allow Vietnam to make their “paper” tigers, “iron” tigers. Their agreement with the United States marks a positive and essential step by the Vietnamese Government to aggressively enforce new intellectual property laws by adopting and strictly adhering to the intellectual property system set forth by TRIPS. This Note will begin by giving an overview of international intellectual property treaties already in place and will then discuss current Vietnamese intellectual property law. The international intellectual property treaties will include: The Berne Convention for the Protection of Literary and Artistic Works (“the Berne Convention”) and the Agreement on Trade Related Aspects of Intellectual Property Rights or TRIPS subsumed under the General Agreement on Tariffs and Trade (“GATT”). This Note will then explore the legal issues involved when a Non-Western developing nation such as Vietnam adopts the Western-style intellectual property protection in order to encourage foreign investment and involvement in world trade. The last section will also discuss the ways in which the Bilateral Trade Agreement seeks to positively impact these legal issues as a means of restructuring the Vietnamese intellectual property system.

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19. Mark E. Manyin, Congressional Research Service Rep. for Cong., The Vietnam–United States Bilateral Trade Agreement, July 21, 2000 at 9 [hereinafter Agreement].

## II. INTERNATIONAL TREATIES ON INTELLECTUAL PROPERTY RIGHTS

### A. *The Berne Convention*

#### 1. Introduction

The Berne Convention for the protection of Literary and Artistic Works<sup>20</sup> is the foremost international treaty providing guidelines for the protection of copyrights.<sup>21</sup> The Berne Convention was first drafted in 1886 and then modernized through six later revisions. The Berne Convention is considered to be “the oldest and most comprehensive copyright treat[y] in the world.”<sup>22</sup> Administration and implementation of the Berne Convention is accomplished through the World Intellectual Property Organization (the “WIPO”).<sup>23</sup> However, Vietnam has not joined the Berne Convention because of its almost complete non-compliance with its earlier copyright laws.<sup>24</sup>

The Berne Convention is primarily designed to protect the rights of authors who create literary and artistic works.<sup>25</sup> The three main principles of the Berne Convention include national treatment, automatic protection, and independence of protection.<sup>26</sup> The principle of national treatment entitles foreign authors of artistic works to enjoy the same level of copyright protection as nationals of other Berne-member countries.<sup>27</sup> In this way, the Berne

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20. See Berne Convention for the Protection of Literary and Artistic Works, Sep. 9, 1886, as revised at Paris, July 24, 1971, 828 U.N.T.S. 221, 225-51 [hereinafter Berne Convention].

21. Doraine Lambelet, *Internationalizing the Copyright Code: An Analysis of Legislative Proposals Seeking Adherence to the Berne Convention*, 76 GEO. L.J. 467, 467-68 (1987).

22. Deborah Ross, *The United States Joins the Berne Convention: New Obligations for Authors' Moral Rights*, 68 N.C.L. REV. 363, 363 n.2 (1990). The Berne Convention was last amended in 1971. *Id.*

23. *Id.* at 363.

24. Luu, *supra* note 6, at 824.

25. Berne Convention, *supra* note 20.

26. *Id.*

27. *Id.* at 231.

Convention views domestic authors and foreign authors as equals in terms of copyright protection.<sup>28</sup>

The principle of automatic protection, which is set forth in Article 5 of the Berne Convention enables authors to receive copyright protection without the burden of complying with any preconditions or formalities.<sup>29</sup> Under Article 3, authors who are nationals of a member country are entitled to automatic copyright protection of their works whether published or unpublished.<sup>30</sup> Any country that seeks membership in the Berne Convention would be required to waive all prerequisites and conditions ordinarily imposed on authors when protecting their work.<sup>31</sup> Nevertheless, a country is still eligible for membership should it require authors to register their works.<sup>32</sup>

The principle of independence of protection entitles the author's work to a dual system of protection.<sup>33</sup> First, the Berne Convention protects the work under Article 5.<sup>34</sup> Second, the work may be independently protected by the copyright laws of its country of origin.<sup>35</sup>

## 2. Author's Rights

The Berne Convention requires that each member country protect copyrights for the duration of an author's life plus an additional fifty years.<sup>36</sup> In addition, member countries must entitle authors to retain economic and moral rights in the works they create.<sup>37</sup> Economic rights protect the authors' opportunities to seek out the most competitive market for their works, recover their invest-

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28. Luu, *supra* note 6, at 825.

29. Berne Convention, *supra* note 20, at 233.

30. *Id.*

31. Luu, *supra* note 6, at 825.

32. *Id.*

33. *Id.*

34. Berne Convention, *supra* note 20, at 233.

35. *Id.* In some countries such as the United States, the Berne Convention is not self-enforcing. Therefore, these countries must bring their domestic laws into compliance with Berne Convention standards; owners of infringed works may then bring a suit under these laws.

36. *Id.*

37. *Id.*

ments, and enjoy profits.<sup>38</sup> Author's rights also include the right to translate, reproduce, perform, broadcast, adapt and make motion pictures of their work.<sup>39</sup> The Berne Convention requires members to protect two moral rights: The right of integrity and the right of attribution.<sup>40</sup> The right of integrity entitles authors to protect their works from misrepresentation or undesired alterations even after they have already sold or licensed their economic rights to someone else.<sup>41</sup> The right of attribution protects the authors' rights to be recognized as the author of the work and to avoid having works of other authors wrongly attributed to them.<sup>42</sup>

### 3. Enforcement of Copyrights

Article 16 of the Berne Convention contains provisions for the enforcement of copyrights.<sup>43</sup> Article 16 seizes any infringing copies of a protected work under the jurisdiction of the domestic laws of the member state.<sup>44</sup> The Convention does not specify other remedies that may be available to authors or owners of infringed copyrights.<sup>45</sup> In a country like Vietnam, which has not yet joined the Berne Convention and which has a weak copyright protection system, the works of authors have very little, if any, protection.<sup>46</sup>

### 4. The Benefits of Berne Membership

Because of the Berne Convention's pervading impact on world trade,<sup>47</sup> membership in the Berne Conven-

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38. Luu, *supra* note 6, at 825.

39. *Id.*

40. Berne Convention, *supra* note 20, at 233.

41. *Id.*

42. *Id.* art. 6.

43. *Id.* art. 16.

44. *Id.* art. 16(3).

45. Luu, *supra* note 6, at 825.

46. See Marshall A. Leaffer, *Protecting United States Intellectual Property Abroad: Toward a New Multilateralism*, 76 IOWA L. REV. 273, 281 (1991).

47. Membership in the Berne Convention has increased since the TRIPS provisions of GATT came into existence on January 1, 1996. *Copyright Office - Copyright Provisions Have Effective Date of January 1, 1996*, PAT.,



tion is crucial for any developing country that desires to effectively participate in international trade.<sup>48</sup> Generally, membership in the Berne Convention brings with it three important benefits.<sup>49</sup> First, member countries meet at the Convention where they each play a determinative role in the creation of international copyright policies and regulations.<sup>50</sup> Because the Convention sets the standard for international copyright laws, each country benefits from being able to contribute to the decision-making process of the Convention's General Assembly and Executive Committee.<sup>51</sup> Second, member countries gain increased copyright protection on both domestic and international levels.<sup>52</sup> Berne provides a more complete system of protections, moving beyond national treaty obligation and requiring member states to enforce collectively determined minimum standards for the protection of works of foreign authors.<sup>53</sup> Finally, membership in the Berne Convention strengthens a member country's political credibility.<sup>54</sup> This strengthened credibility, which in turn, leads to increased bargaining power in trade agreements with other countries.<sup>55</sup>

## 5. The Berne Convention and Vietnam

For a developing country like Vietnam, membership in the Berne Convention would provide an additional benefit of great importance: Economic prosperity through the increase of foreign trade and investment.<sup>56</sup> With the implementation of a strong intellectual property protection system created by Berne standards, Vietnam would be extremely attractive to foreign companies investing or

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TRADEMARK & COPYRIGHT DAILY (BNA), Feb. 14, 1995, at 1, available at LEXIS, BNA Library, Bnaptd File [hereinafter *Copyright*].

48. Luu, *supra* note 6, at 825.

49. *Id.*

50. Ralph Oman, *The United States and the Berne Union: An Extended Courtship*, 3 J.L. & TECH. 71, 110-13 (1988).

51. *See id.* at 111.

52. Luu, *supra* note 6, at 825.

53. Lambelet, *supra* note 21, at 473.

54. Oman, *supra* note 50, at 111.

55. *Id.* at 111-12.

56. Luu, *supra* note 6, at 826.

looking to trade in Southeast Asia.<sup>57</sup> Strong copyright protection in a developing country such as Vietnam stimulates innovation thereby producing long-term benefits, creating more jobs for its citizens, and cultivating a more skilled labor force.<sup>58</sup> In contrast, if the Vietnamese Government decides not to join the Berne Convention and chooses to maintain their current copyright protection system, the economy and the people of Vietnam will be disadvantaged in the future as a result of free-riding and imitation which will condemn Vietnam to "perpetual second-class status."<sup>59</sup>

Moreover, having weak copyright laws severely disadvantages local Vietnamese authors.<sup>60</sup> In Vietnam, for example, there exists an overflow of inexpensive pirated books and compact discs of European authorship for sale on the streets.<sup>61</sup> Local Vietnamese writers and musicians who market their works in Vietnam are forced to compete with the cheaper pirated goods while also being denied copyright protection for their works in Europe.<sup>62</sup> Because the pirated European goods are often comparable in price or less expensive than the works of the Vietnamese authors, they outsell the Vietnamese works.<sup>63</sup> For a local publisher, there is little incentive to publish works by local authors and suffer low sales, and a great incentive to publish infringing goods that sell quickly.<sup>64</sup>

Having a weak copyright protection scheme harms Vietnam by keeping it from having an active voice in the international copyright system, making it less attractive to foreign investors who value protection of their copyrighted goods, and threatening the livelihood of its local authors.<sup>65</sup> Signing the Bilateral Trade Agreement seems to create the atmosphere that could foster Vietnam's ad-

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57. *Id.*

58. Leaffer, *supra* note 46.

59. *Id.*

60. Edmund W. Kitch, *The Patent Policy of Developing Countries*, 13 UCLA PAC. BASIN L.J., 166, 169 (1994) (discussing how developing countries may disadvantage their authors by maintaining weak copyright protection laws).

61. Luu, *supra* note 6, at 826.

62. Kitch, *supra* note 60, at 169.

63. *Id.*

64. Luu, *supra* note 6, at 826.

65. *Id.*

herence to the Berne Convention. Not only would adherence to the Berne Convention fulfill the stated goals of Doi Moi, but it would also advance a strong intellectual property regime that could benefit its people.

### B. GATT

The General Agreement on Tariffs and Trade is said to be the most important multilateral international agreement in the world today.<sup>66</sup> Originally created from negotiations between the United States and the United Kingdom in 1948, GATT now includes more than one hundred participating nations, accounting for a substantial majority of the world's trade.<sup>67</sup>

GATT abides by five main principles of international trade.<sup>68</sup> The first is the most favored nation principle ("Most Favored Nation"), which provides that GATT nations must award Most Favored Nation trading status to the products of other GATT nations.<sup>69</sup> The second principle of GATT is national treatment, which prohibits member nations from discriminating against imported goods by charging higher taxes and duties on these goods and lower taxes on domestic goods.<sup>70</sup> Closely related to the principle of national treatments is the third principle of GATT, the tariff concessions principle. The tariff concession principle forbids member nations from imposing tariffs on imported goods that exceed the current applicable tariff schedules.<sup>71</sup> The fourth principle is the principle against non-tariff barriers, which prohibits member nations from restricting free trade using non-tariff barriers.<sup>72</sup> Finally, the fair trade principle of GATT allows member nations to protect their national interests by restricting their trade practices with opposing countries. These re-

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66. David Kennedy, *Receiving the International*, 10 CONN. J. INT'L L. 1, 12 (1994).

67. *Id.*

68. Leaffer, *supra* note 46, at 292.

69. *Id.* at 299.

70. *Id.*

71. *Id.* General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT].

72. *Id.* See also Berne Convention, *supra* note 20.

strictions, however, must be fair and reasonable under GATT.<sup>73</sup>

Currently, Vietnam does not have Most Favored Nation status with the United States. Once the Bilateral Trade Agreement goes into effect, the United States would restore permanent Most Favored Nation status to Vietnam. This process would require Congress to "graduate" Vietnam from the group of non-market economies that are denied unconditional Most Favored Nation treatment.<sup>74</sup> Most Favored Nation status would constitute the last step in the Agreement implementation process. Should Vietnam be given Most Favored Nation status, the country will likely see an increase in United States investment and an increase in revenue growth from Vietnamese exporters who will be given the same tariff rates that are applied to all other Most Favored Nation-recipient countries.<sup>75</sup> Furthermore, gaining Most Favored Nation status would be an important stepping-stone in Vietnam's accession into the WTO.<sup>76</sup> The process of implementing Most Favored Nation status and the Bilateral Trade Agreement will be useful for raising Vietnam's legal, regulatory, and economic systems to the WTO's standards.<sup>77</sup>

### C. The TRIPS Agreement

In 1986, GATT member nations agreed to incorporate the Trade Related Aspects of Intellectual Property Rights ("TRIPS Agreement")<sup>78</sup> into GATT during the Uruguay Round of Negotiations.<sup>79</sup> On January 1, 1996, the members of the World Trade Organization ratified the TRIPS Agreement.<sup>80</sup> The TRIPS Agreement provides the

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73. GATT, *supra* note 71.

74. Agreement, *supra* note 19, at 4.

75. *Id.* at 7.

76. *Id.*

77. *Id.*

78. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization [hereinafter WTO Agreement], Annex 1C, LEGAL INSTRUMENTS - RESULTS OF THE URUGUAY ROUND vol. 31, 33 I.L.M. 81 (1994) [hereinafter TRIPS Agreement].

79. Luu, *supra* note 6, at 827.

80. Copyright, *supra* note 47, at 55.

basic principles and standards of international intellectual property rights for all GATT member countries.<sup>81</sup> Specifically, the TRIPS Agreement regulates international copyrights, trademarks, patents, and other forms of intellectual property.<sup>82</sup>

In the field of copyright law, the TRIPS Agreement embraces the Berne Convention as the "universal" copyright law.<sup>83</sup> The TRIPS Agreement adopted all of the major provisions of the Berne Convention with the exception of moral rights for authors.<sup>84</sup> Most importantly, the TRIPS Agreement expanded the enforcement provisions of the Berne Convention<sup>85</sup> to compensate for the lack of strong enforcement provisions by WIPO.<sup>86</sup> TRIPS resulted in a remarkably comprehensive scheme of international copyright enforcement and protection.<sup>87</sup>

For instance, the TRIPS Agreement requires member nations to enact laws that entitle owners of infringed copyrights to halt the infringers' illegal activities, using judicial injunctions, and to order the infringing party to reveal the names of other person involved in the illegal activities.<sup>88</sup> Furthermore, owners of infringed copyrights in TRIPS countries have the rights to compensatory damages and to have infringing copies of the works destroyed in order to deter future infringement.<sup>89</sup>

In terms of criminal penalties, the TRIPS Agreement targets large-scale pirating operations.<sup>90</sup> It requires all member nations to provide for criminal penalties such as imprisonment, heavy fines, and the seizure, forfeiture, and destruction of the infringing goods.<sup>91</sup>

The TRIPS Agreement also provides procedural

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81. TRIPS Agreement, *supra* note 78.

82. *Id.* art. I.

83. *Id.* pt. 2, § 1, art. 9(1).

84. *Id.*

85. TRIPS Agreement, *supra* note 78.

86. Mitso Matsushita, *Taiwan and The GATT: Panel Three: A Japanese Perspective on Intellectual Property Rights and the GATT*, 1 COLUM. BUS. L. REV. 81, 81-82 (1992).

87. Luu, *supra* note 6, at 827.

88. TRIPS Agreement, *supra* note 78, at pt. III.

89. *Id.*

90. *Id.*

91. *Id.* pt. III, § 2, art. 48(1) (Indemnification of the Defendant).

safeguards for accused infringers,<sup>92</sup> notwithstanding the severe penalties enforceable against them. For example, the TRIPS Agreement requires the author to provide reasonably available evidence to support [his or her] claim.<sup>93</sup> If an author, for purposes of harassment, abuses the enforcement procedures provided by a member nation under the TRIPS Agreement, he or she must compensate the accused infringer for the abuse and any expenses that may result.<sup>94</sup> Judicial review is required for all disputes according to the laws of the parties' countries.<sup>95</sup>

Finally, the TRIPS Agreement requires member nations to enforce copyright protection at their borders.<sup>96</sup> If the owner of a copyright has grounds for suspecting the future importation of pirated goods, he or she may place a ten-day hold on the goods through the local customs office.<sup>97</sup> Customs officials may then inspect the goods and order their destruction if they are found to be infringing.<sup>98</sup>

The extensive copyright provisions of the Berne Convention, together with the definitive enforcement techniques of the TRIPS Agreement, establish an arduous and effective international copyright protection system.<sup>99</sup> The pivotal issue for Vietnam is whether its current copyright laws can conform to TRIPS and, finally, provide effective copyright protection for all works in Vietnam.<sup>100</sup>

### III. VIETNAM'S CURRENT COPYRIGHT LAWS

#### A. Background

Compared with the rest of the industrialized world, Vietnam is considered a neophyte in the field of intellec-

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92. *Id.* pt. III, § 2 art. 43(1).

93. TRIPS, *supra* note 78, pt. III.

94. *Id.*

95. *Id.*

96. *Id.* pt. III, § 4, art. 51-60 (Special Requirements Related to Border Measures).

97. *Id.* pt. III, § 4, art. 51 (Suspension of Release by Customs Authorities).

98. *Id.* pt. III, § 4, art. 59 (Remedies).

99. Luu, *supra* note 6, at 827.

100. *Id.*

tual property protection and enforcement.<sup>101</sup> The first forms of intellectual property laws in Vietnam did not come about until 1958.<sup>102</sup> In 1986, the Vietnamese Government promulgated a copyright law that aspired to conform to international copyright standards.<sup>103</sup> The 1986 law, unfortunately, proved to be incomplete and impossible in application. By 1992, copyright piracy in Vietnam remained rampant and largely unregulated.<sup>104</sup>

After promulgating a substantively deficient copyright law in 1986, the Vietnamese Government failed to issue enforcement and implementation regulations.<sup>105</sup> In Vietnam, ordinances, decrees, and codes have no legal effect if they are not supported by the sorely needed implementing regulations.<sup>106</sup> Without implementing regulations, Vietnamese copyright and other intellectual property laws merely serve as general guides as to what the law may be for interested parties who wish to protect their intellectual property right in Vietnam.<sup>107</sup> Until the Vietnamese Government enacts the proper regulations, these laws are true paper tigers. Implementation regulations authorize local governmental authorities, Vietnamese courts, and private parties to enforce ordinances and decrees.<sup>108</sup> For Vietnam's Civil Code, the implementing regulations are especially crucial because they provide important details and guidelines for enforcement, registration, and the resolution of disputes in court.<sup>109</sup>

Vietnamese law specifies six areas of intellectual property protection: Copyright, trademarks, inventions, utility solutions, trade secrets, and appellations of origins.<sup>110</sup>

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101. *Id.* at 828.

102. *Id.*

103. *Id.*

104. Chew, *supra* note 9, at 3.

105. Luu, *supra* note 6, at 828.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. See ANNE C.M.J. SCHOT, LEGAL ASPECTS OF FOREIGN INVESTMENT IN THE SOCIALIST REPUBLIC OF VIETNAM 269, n.2 (1996).

*B. Copyright*

As a result of an ineffectual intellectual property law in 1986 and the lack of implementing regulation to effectuate it, Vietnam quickly became known as "Photocopy City," a place where consumers could purchase infringing copies of almost any copyrighted work.<sup>111</sup> Nearly a decade later, the Vietnamese Government went to great lengths to remedy the copyright epidemic by significantly revising the 1986 law.<sup>112</sup> The Vietnamese Government produced at least four revised drafts of the new law before it finally passed the Ordinance on Copyrights in December of 1994.<sup>113</sup> This time, they specifically drafted the new Ordinance to comply with international standards.<sup>114</sup> Nevertheless, the Ordinance contains many loopholes, and several of its provisions continue to substantially depart from the Berne Convention and the TRIPS Agreement.<sup>115</sup> And yet, despite the existence of new drafts of law, the Vietnamese Government never issued any implementing regulations to give the Ordinance any legal effect.<sup>116</sup>

Vietnam's current copyright law appears to be in a "state of limbo."<sup>117</sup> The Civil Code of Vietnam took effect on July 1, 1996 ("Civil Code")<sup>118</sup> and repealed the Ordinance on Protection of Copyrights, which was passed in 1994 ("Ordinance").<sup>119</sup> There is currently no recognized copyright protection for foreign works in Vietnam.<sup>120</sup> Under the repealed Ordinance, copyright protection existed for a number of literary, scientific, and cultural works.<sup>121</sup> The duration of the protection of authors' works generally lasted for the author's lifetime plus fifty years.<sup>122</sup> Televi-

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111. Rogers, *supra* note 12, at 1.

112. See Sesto E. Vecchi & Michael J. Scown, *Intellectual Property Rights in Vietnam*, 11 UCLA PAC. BASIN L.J., 67, 69 (1992).

113. *Id.* at 74.

114. Luu, *supra* note 6, at 828.

115. *Id.*

116. *Id.*

117. Smith, *supra* note 16, at 242.

118. Gregory Buhyoff, *Changes to the Intellectual Property Framework*, VIETNAM BUS. J., Apr. 10, 1997, at 46.

119. *Id.*

120. Smith, *supra* note 16, at 242.

121. SCHOT, *supra* note 110, at 285.

122. Smith, *supra* note 16, at 242.



sion programs and movies enjoyed protection for fifty years.<sup>123</sup> Copyright infringement, under the Ordinance, did not include reproduction for private use, research, and quotes, and translations and copying for non-profit purposes required neither permission nor payment of royalties to the author.<sup>124</sup> Remedies were weak and did not deter future offenders. They included requesting the infringer to cease and publicly apologize, asking a state administrative body for resolution, and filing a claim with a people's court.<sup>125</sup> Most notoriously, the Ordinance contained a thirty-day rule.<sup>126</sup> While Vietnamese authors enjoyed the full protection provided by the law, foreign authors had to publish their works in Vietnam within thirty days of publishing the work elsewhere in order to receive protection in Vietnam.<sup>127</sup> The thirty-day rule was the only one that specifically pertained to foreign copyright protection and was repealed by the Civil Code, but nothing has since replaced it.<sup>128</sup>

Works that are contrary to Vietnamese politics, encourage violence or depravity, disclose State and Party secrets, or misinterpret Vietnamese history are denied protection under current Vietnamese law.<sup>129</sup> These and other laws "essentially amount to censorship provisions."<sup>130</sup> Vietnamese law denies protection to "works that propagate violence or acts of aggression, induce hatred, disseminate reactionary ideas, prurient lifestyles, inhumane acts, social vices, superstition, or undermine traditions and customs."<sup>131</sup> Moreover, Vietnamese law, as of 1995, "denied copyright protection to works that repudiate the achievements of the communist revolution, offend the honor of distinguished persons or national heroes, or injure the reputation of an organization."<sup>132</sup> Another fea-

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123. *Id.*

124. SCHOT, *supra* note 110, at 237.

125. *Id.*

126. *Id.*

127. Berne Convention, *supra* note 20, arts. 8-9.

128. Smith, *supra* note 16, at 243.

129. SCHOT, *supra* note 110, at 237.

130. Luu, *supra* note 6, at 830.

131. SCHOT, *supra* note 110, at 10 (citing Vietnam's Civil Code art. 749(b)).

132. *Id.* (citing Vietnam's Civil Code art. 749(d)).

ture of the Vietnamese law allows for "unlimited use of a theatrical work or other type of artistic performance, without permission or remuneration, as long as the use occurs during a cultural entertainment event or public political campaign activity."<sup>133</sup> Given the lack of enforcement provisions, the wide loopholes, and the vague wording, it is difficult to see how an author has any rights against government appropriation of his/her work.<sup>134</sup>

### *C. Trademarks*

Vietnamese law recognizes trademarks for goods, services, and marks and requires that they be registered prior to their gaining protection.<sup>135</sup> Since 1993, Vietnam has used a first-to-file rule, which gives trademark protection in Vietnam to whomever is the first to file there.<sup>136</sup> An exception is made for "world famous" trademarks.<sup>137</sup> Further, the trademark must not be insufficiently distinctive, widely used generically, considered contrary to public policy or "socialist morality," or identical to a previously registered mark.<sup>138</sup> In Vietnam, the National Office of Industrial Property ("NOIP") manages all trademark and patent registration, but the process is slow, largely because of its reliance on an outdated computer system.<sup>139</sup>

Enforcement may be accomplished by obtaining an advisory opinion from the NOIP determining whether the trademark has been violated.<sup>140</sup> This is often difficult for infringers who are usually unaware that they are doing anything wrong, because the Vietnamese are not familiar with the way brand names work in a developed country.<sup>141</sup> After obtaining a decision from the NOIP, an advisory

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133. *Id.* at 11 (citing Vietnam's Civil Code art. 761(f) and noting that the drafters excluded a definition for "cultural entertainment activity").

134. Smith, *supra* note 16, at 243.

135. SCHOT, *supra* note 110.

136. *Id.*

137. *Id.* See also Buhyoff, *supra* note 118, at 46 (while the new scheme preserves the first-to-file rule, it is not clear if it maintains the "world famous" mark exception to the rule).

138. SCHOT, *supra* note 110.

139. *Id.* (noting that search procedures can take up to seven months).

140. *Id.* at 275.

141. Smith, *supra* note 16, at 244.

warning letter to the party typically curbs further unauthorized usage.<sup>142</sup> Criminal penalties, reserved for organized, repeat offenses, range from six months imprisonment to the death penalty.<sup>143</sup> Further, "it should be noted that courts in Vietnam are not very experienced in adjudicating disputes regarding industrial property."<sup>144</sup>

#### *D. Patents*

Under current Vietnamese law, inventions may be protected as patents for invention or certificates of innovation.<sup>145</sup> After registration, the NOIP determines whether the invention is sufficiently novel, shows inventive creativity, and is practically applicable to receive protection.<sup>146</sup> Patents are valid for twenty years.<sup>147</sup> Certain inventions, "related to national defense and security, medicines, disease treatment, chemical substances and food products may not be eligible for patenting," but may receive a Certificate of Innovation.<sup>148</sup> A Certificate of Innovation entitles the government the exclusive right to exploit the invention while the author/creator enjoys remuneration.<sup>149</sup> This then turns the author/creator into the government's licensee. Inventions with a lesser degree of novelty are considered a utility solution and granted a lesser degree of protection.<sup>150</sup>

#### *E. Trade Secrets*

Trade secrets are not specifically provided for un-

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142. SCHOT, *supra* note 110, at 275.

143. *Id.* at 276.

144. *Id.*

145. *Id.* at 277. See generally Rory J. Radding & H.T. Than, *Patent Protection in Vietnam: A Business Decision*, 8 TRANSNAT'L LAW. 87, 89-93 (describing the current patent law system in Vietnam and the requirements for patentability).

146. SCHOT, *supra* note 110.

147. Buhyoff, *supra* note 118, at 46.

148. SCHOT, *supra* note 110.

149. *Id.* at 280.

150. *Id.* at 281.

der Vietnamese law.<sup>151</sup> However, the current law expands industrial property rights to include "other objects stipulated by law"<sup>152</sup> and NOIP officials believe that this could include trade secrets.<sup>153</sup> Additionally, no mention is made of protection for chip design, but this may ultimately fall under utility solutions.<sup>154</sup>

#### IV. THE BILATERAL TRADE AGREEMENT'S IMPACT ON VIETNAM'S INTELLECTUAL PROPERTY SYSTEM

On July 13, 2000, Vietnam and the United States signed a long awaited Bilateral Trade Agreement. The accord requires Congressional approval before it becomes effective, but if approved by Congress, the Agreement would be a major step toward normalizing United States–Vietnam commercial relations, as it would restore reciprocal Most Favored Nation treatment between the two countries, as well as commit Vietnam to undertake a wide range of market-oriented economic reforms.<sup>155</sup> Extending Most Favored Nation status to Vietnam would significantly reduce US tariffs on most imports from Vietnam.<sup>156</sup> The Agreement is comprehensive and includes provisions that will significantly facilitate trade in goods and services, improve the investment climate, and provide strong intellectual property protection.<sup>157</sup> If Vietnam can implement TRIPS under this Bilateral Trade Agreement and have their Most Favored Nation status restored, they will likely be accepted into the WTO. Once Vietnam is accepted into the WTO, they will be entitled to non-discriminatory access to all WTO members. The United States is hoping that with the Bilateral Trade Agreement, Vietnam will improve the climate for foreign investors.<sup>158</sup> United States businesses in Vietnam will look forward to

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151. Smith, *supra* note 16, at 245.

152. Buhyoff, *supra* note 118, at 46.

153. *Id.*

154. Smith, *supra* note 16, at 245.

155. Agreement, *supra* note 19, at 1.

156. *Id.*

157. Press Release, United States Vietnam Bilateral Trade Agreement Signed (July 13, 2000), at [http://www.usvtc.org/usvtc\\_bta\\_release.htm](http://www.usvtc.org/usvtc_bta_release.htm) (last visited Oct. 29, 2001) [hereinafter Press Release].

158. Agreement, *supra* note 19, at 6.

receiving legal protections that are unavailable today.<sup>159</sup> Additionally, the Bilateral Trade Agreement will help make the Vietnamese business environment more predictable and accessible to foreign investors who already understand the standards set by the WTO.<sup>160</sup> Vietnam is hoping that the Bilateral Trade Agreement will result in increased United States investment and Most Favored Nation access to the United States market as a means of reversing its declining economic growth rates.<sup>161</sup> Not only does Vietnam regard the Bilateral Trade Agreement as necessary to obtaining United States support for its application for WTO membership, but they also see the process of negotiating and implementing the Agreement as useful for raising Vietnam's legal, regulatory, and economic systems to the WTO's standards.<sup>162</sup> Both countries have a lot to gain from the Bilateral Trade Agreement because of the economic potential it has created as well as the legal benefit it provides both countries.

In order for Vietnam to revise their intellectual property system and facilitate the implementation of TRIPS, they will need to consider six elements fundamental to a normative intellectual property regime.<sup>163</sup> This section of the Note will discuss the impact that the Agreement has had on the improvement of the intellectual property system in Vietnam, to bring it in line with the international standards set by TRIPS and the issues that Vietnam will face in trying to adopt the standards as a developing Non-Western country.

#### *A. The Concept of an Exclusive Right*

The concept of an exclusive right requires an emphasis on the superiority of individual rights over those of the state, while the state functions as guarantor of those individual rights.<sup>164</sup> The exclusive right "values individual-

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159. *Id.*

160. *Id.*

161. *Id.* at 7.

162. *Id.*

163. See ROBERT M. SHERWOOD, INTELLECTUAL PROPERTY AND ECONOMIC DEVELOPMENT 37 (1990).

164. Smith, *supra* note 16, at 246.

ism, individual creative effort, disassociation with the past, and constant innovation."<sup>165</sup>

The Vietnamese recognizes Chinese culture "as the wellspring of their civilization."<sup>166</sup> Thus, unlike other Southeast Asian countries that looked to India and Buddhism for cultural and social principles, Vietnam looked to China and Confucianism.<sup>167</sup> In accordance with Vietnamese tradition, scholar-officials called "mandarins" administered governmental affairs.<sup>168</sup> The mandarins as well as the emperor focused their efforts on maintaining social and cosmic order.<sup>169</sup> They achieved this through ethical action based upon Confucian ideals.<sup>170</sup> The most important of these ideals included the promotion of the five fundamental relationships of society and the evincing of the five basic virtues.<sup>171</sup>

The five fundamental relationships are "the relationship between ruler and his subjects, between father and son, between husband and wife, between elder brother and younger brother, and between friend and friend."<sup>172</sup> Conceptions of individual and society are seen in terms of relationships.<sup>173</sup> Not only does the individual define himself or herself in terms of kinship relationships at the family level, but also on the broader political and social levels.<sup>174</sup> Traditional Vietnamese society is based on ideals in terms of relationships rather than the Western universalistic principles that accrue to each individual separate and apart from the group.<sup>175</sup>

Hence, the relationship between the ruler and his ruled takes on a paternalistic flavor.<sup>176</sup> It is the ruler's duty to control the distribution of information to the popu-

165. *Id.*

166. CHARLES F. KEYES, *THE GOLDEN PENINSULA: CULTURE AND ADAPTATION IN MAINLAND SOUTHEAST ASIA* 183 (1995).

167. *Id.* at 181.

168. *Id.* at 186.

169. *Id.* at 195.

170. *Id.* (explaining that the five basic virtues are human heartedness, righteousness, proper ritual conduct, wisdom, and good faith).

171. *Id.*

172. KEYES, *supra* note 166.

173. *Id.*

174. *Id.* at 195.

175. *Id.*

176. WILLIAM P. ALFORD, *TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION* 6 (1995).

lace and carefully ensure that he promotes Confucian virtues and truths.<sup>177</sup> Thus, the printing and dissemination of books, ideas, and art become of central concern to the government, not in order to protect individual rights of the author/inventor, but to ensure that only dignifying and acceptable material are made available to the family/country.<sup>178</sup>

This is a key problem in implementing TRIPS in Vietnam because the concept of intellectual property rights is based on assumptions and notions foreign to Vietnam.<sup>179</sup> Vietnamese law grants the government broad exceptions especially in terms of the subject matter of a copyright evidencing a lingering paternalistic concern for information presented to individuals.<sup>180</sup> Thus, strong notions of individualism recognized in capitalistic, laissez-faire, or democratic societies, are replaced by kinship notions in Vietnam.<sup>181</sup> However, Vietnam, in its signing of the Bilateral Trade Agreement, is showing its willingness to depart from some of its traditional views on intellectual property.

The Bilateral Trade Agreement provides that both countries agree to comply with the Berne Convention for copyright protection of all works that embody original expression of each country's nationals.<sup>182</sup> In particular, protection must be given to the rights of authors and their successors. The Bilateral Trade Agreement provides that each party shall make available to the author or their successor, the rights to authorize or prohibit the importation into the other Party's territory of copies of the work, the first public distribution of the original and each copy of the work by sale, rental or otherwise, the communication of the work to the public, and the rental of the original or a copy of the computer program for the purposes of commercial advantage.<sup>183</sup> The time period in which Viet-

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177. *Id.*

178. Smith, *supra* note 16, at 845.

179. *Id.*

180. *Id.*

181. *Id.*

182. Vision & Associates, *Vietnam Trade Agreement and its Impacts on Intellectual Property System in Vietnam*, INT'L BRIEFING, Aug. 25, 2000, at 6, available at LEXIS, News Group File.

183. *Id.*

nam will have to fully implement its obligations with respect to copyrights and related rights shall be eighteen months from the date of the Bilateral Trade Agreement's entry into force.<sup>184</sup>

Substantially relevant provisions in the Bilateral Trade Agreement which form the obligations of the two countries for trademark protection require each Party to provide to the owner of a registered trademark the right to prevent all persons without the owner's consent, from using in commerce, identical or similar signs for identical or similar goods or services, where such use would result in a likelihood of confusion.<sup>185</sup> The Bilateral Trade Agreement may not be able to radically transform the fundamental thinking intrinsic to the people of Vietnam within the next eighteen months, but the Vietnamese Government is making the strides that will, through implemented practice, teach younger generations the importance of intellectual property rights. By embracing the Bilateral Trade Agreement's provisions that protect the rights of authors, Vietnam is creating a more productive economy and a more effective legal system, and in turn, proving that conceptions of individual intellectual property are no longer unfamiliar in their country.

### *B. Mechanism for Exclusive Rights*

The mechanisms for exclusive rights, however, are not as problematic.<sup>186</sup> Vietnam already has a government agency in place to register patents or trademarks.<sup>187</sup> Additionally, Vietnam has thorough registration procedures.<sup>188</sup> The primary concerns here are long processing times for trademark applications and other inefficiencies due to a lack of reliable computer technology or other innovations to help the NOIP run more efficiently.<sup>189</sup>

The Bilateral Trade Agreement does not speak directly to the improvement of the administration of the NOIP, however, the Vietnamese Government does plan on

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184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. SCHOT, *supra* note 110.

189. *Id.*



taking measures to improve the enforcement of the intellectual property infringements, by creating specialized courts for intellectual property matters in the big cities as well as simplifying the administrative agencies into two agencies, namely the Customs Offices for border control and the Agency for Intellectual Property Rights Management which will handle infringement cases.<sup>190</sup> This improvement will be likely to lighten the load of the NOIP in order to help it run more smoothly.

### C. Duration

Duration involves specifying lengths of time within which exclusive intellectual property rights remain vested in the owner or creator.<sup>191</sup> Under the 1996 Civil Code, Vietnam brought its protection duration into compliance with that required by TRIPS for patent, trademark, and domestic copyright.<sup>192</sup>

Under the Bilateral Trade Agreement, mechanisms for exclusive rights of trademarks and patents will exist for a period of at least an uninterrupted three years before it is canceled, unless a valid reason is given by the owner stating their reasons why the trademark must be prevented from use.<sup>193</sup> As for copyrights, duration for the protection of an author's work is either the life of a natural person or where stipulated, then it shall be in no cases less than seventy-five years from the end of the calendar year of the first authorized publication of the work.<sup>194</sup> In case of failing such authorized publication within twenty-five years from the creation of the work, the term shall not be less than 100 years from the end of the calendar year of the creation of the work.<sup>195</sup> These duration periods comply with the Berne Convention and the TRIPS standards.<sup>196</sup>

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190. ALFORD, *supra* note 176, at 8.

191. Smith, *supra* note 248.

192. Buhyoff, *supra* note 118, at 46.

193. ALFORD, *supra* note 178, at 7.

194. *Id.*

195. *Id.*

196. *Id.*

*D. Public Interest*

The supervening public interest category is another problematic area.<sup>197</sup> Protecting public morals is an area of governmental concern that justifies reducing the exclusivity of intellectual property rights.<sup>198</sup> However, this protection is applied on a limited basis.<sup>199</sup> As previously discussed, the issue of promoting public morals takes a broader conception in Vietnam.<sup>200</sup> TRIPS does restrict protection on plant and animal patents, but Vietnam's broad copyright exceptions concerning subject matter of a work may not fit within the confines of the morality exceptions provided for by the Berne Convention.<sup>201</sup>

The Bilateral Trade Agreement does discuss some of the objects that may be excluded from patentability, such as certain inventions which are necessary for the protection of public order or morality, including those that protect human, animal, or plant life or to avoid serious prejudice to the environment, provided that such exclusion is made merely because the exploitation is prohibited by their law.<sup>202</sup> The Bilateral Trade Agreement does not state in detail what other inventions would be excluded based on their opposition to Vietnamese law. One could argue that the Agreement has already accounted for these exceptions and that either Vietnam will become more lax in their approach to "unacceptable subject matter" or that these exceptions will be few and will have a limited impact on trade relations.

*E. Trans-Border Comity*

Vietnam's application of TRIPS and, if successful, membership in the WTO will satisfy the trans-border comity element, making intellectual property rights effective across its borders.<sup>203</sup> On April 16, 1997, officials from the United States and Vietnam reached an Agreement to

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197. Smith, *supra* note 16, at 248.

198. Press Release, *supra* note 157, at 36.

199. Smith, *supra* note 16, at 248.

200. SCHOT, *supra* note 110.

201. Smith, *supra* note 16, at 248.

202. ALFORD, *supra* note 178, at 8.

203. *Id.*

extend mutual protection to copyrighted works registered in their respective countries.<sup>204</sup> The Agreement was seen as clearing an important hurdle to the conclusion of the Bilateral Trade Agreement because it created for the first time a legal framework to protect works of both countries from copyright infringement. This Agreement went into effect not more than six months later and mostly encompasses the terms set out in the Berne Convention. The biggest failure of this Agreement was the lack of copyright protection for foreigners, but a separate decree covering foreign works is expected to be issued by the Vietnamese Government sometime in the future.<sup>205</sup>

Furthermore, the Bilateral Trade Agreement requires that each Party shall accord to nationals of the other, treatment no less favorable than it accords to its own nationals with regard to the acquisition, protection enjoyment and enforcement of all Intellectual Property rights and benefits derived there from.<sup>206</sup> Particularly for copyrights and related rights, the Bilateral Trade Agreement makes it clear that neither party shall allow right holders to comply with any formalities or conditions in order to acquire, enjoy, enforce and exercise rights or benefits.<sup>207</sup> The two countries have established, by signing this Bilateral Trade Agreement, that trans-comity is of the utmost importance.

### *F. Enforcement*

While Vietnam has enforcement provisions in its laws, these rely almost exclusively on administrative or criminal procedures.<sup>208</sup> Strong intellectual property enforcement presupposes a well-developed legal system with expertise in handling such difficulties.<sup>209</sup> The TRIPS

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204. D. Pruzin, *Copyrights: United States, Vietnam Reach Copyright Pact; Precursor to Trade Accord*, INT'L BUS. & FIN. DAILY, (BNA), Apr. 21, 1997, at 1, available at LEXIS.

205. *Id.*

206. ALFORD, *supra* note 178, at 8.

207. *Id.*

208. SCHOT, *supra* note 110.

209. Smith, *supra* note 16, at 249.

Agreement requires stringent enforcement, which may prove expensive.<sup>210</sup>

The U.N. Conference on Trade and Development identified five areas that developing countries must address when creating enforcement and administrative mechanisms on a par with those required by TRIPS.<sup>211</sup> The first recommendation is "improving the relevant legal framework in line with the general obligations of the [Bilateral Trade] Agreement."<sup>212</sup> This may be difficult for Vietnam given the relatively undeveloped nature of its civil legal systems.<sup>213</sup> However, Vietnam's more established criminal systems may be used to provide the commensurate enforcement.<sup>214</sup> The second includes, "strengthening or establishing the relevant administrative offices."<sup>215</sup> Such a strengthening could include setting up a network of patent offices and other offices equipped with the latest computer technology to ensure that intellectual property is efficiently administered.<sup>216</sup> This type of administrative development will be very expensive for Vietnam, but possibly the added efficiencies will help offset these expenses.<sup>217</sup> The third recommendation suggests, "enhancing enforcement mechanisms of the relevant laws and regulations."<sup>218</sup> This area may need to be closely watched by the West given that many developing countries will need to rely on police forces, unencumbered with concerns about human rights, to enforce intellectual property rights.<sup>219</sup> The fourth recommendation is to increase the training of personnel to administer and enforce rights.<sup>220</sup> The last recommendation is that countries adopting TRIPS must increase their "capability to monitor transfer of technol-

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210. *Id.*

211. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD), THE TRIPS AGREEMENT AND DEVELOPING COUNTRIES at 2-3, U.N. Doc. UNCTAD/ITE/1, U.N. Sales No. 96.11.D.10 (1996) [hereinafter UN CONFERENCE].

212. *Id.* at 19-20.

213. Smith, *supra* note 16, at 249.

214. UN CONFERENCE, *supra* note 211, at 20.

215. *Id.*

216. *Id.*

217. Smith, *supra* note 249.

218. UN CONFERENCE, *supra* note 211, at 20.

219. Smith, *supra* note 250.

220. UN CONFERENCE, *supra* note 211, at 20.

ogy arrangements within and between enterprises, along with ensuring that competition authorities are knowledgeable about potential [intellectual property rights] abuses."<sup>221</sup> Again, this will be a very expensive undertaking for Vietnam requiring a developing of administrative procedures, creating well-equipped offices, training personnel, and training the general populace.<sup>222</sup> The signing of the Bilateral Trade Agreement will hopefully mitigate the costs associated with implementation of TRIPS due to increased filing fees or other fees collected on foreign patent or copyright protection.

With the signing of the Bilateral Trade Agreement came new pieces of legislation in Vietnam that addressed the Intellectual Property enforcement concerns mentioned above. Those pieces of legislation to be issued include circulars on hearings related to infringements of industrial property rights and copyright rights, on border measures and procedures against infringement in exportation and importation, and on market control measures against infringement.<sup>223</sup>

Regarding the criminal procedures and remedies, a new Criminal Code was passed on December 21, 1999 and it took effect in early July, adding more crimes related to intellectual property infringements.<sup>224</sup> For administrative procedures and remedies, the Government issued on March 6, 1999 Decree No. 1/1999-CP providing penalties for Administrative Violations in the field of Industrial Property, which governs administrative measures and remedies for industrial property.<sup>225</sup> And as previously discussed, the re-structured model of Intellectual Property enforcement provides for specialized courts and specialized administrative agencies.

## V. CONCLUSION

The Bilateral Trade Agreement is a significant step forward in the developing commercial relationship be-

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221. *Id.*

222. Smith, *supra* note 250.

223. ALFORD, *supra* note 178, at 8.

224. *Id.*

225. *Id.*

tween the United States and Vietnam, of which the protection and enforcement of intellectual property rights plays an important role. The commitments of Vietnam under the Bilateral Trade Agreement show its will and determination to bring its intellectual property regime in line with the international standards of TRIPS. The Vietnamese Government has gone to great efforts to meet its obligations under the intellectual property provisions of the Bilateral Trade Agreement. There is much still left to be done involving funding, expertise, and technological advances that will be needed in order for Vietnam to come into full compliance. However, it is certain that the Agreement will bring about profound changes in the intellectual property system in Vietnam. The Bilateral Trade Agreement will have a wide-ranging impact of which the beneficiaries are not only limited to United States nationals, but also those from other countries who maintain or would like to retain intellectual property rights in Vietnam. All intellectual property rights holders will hopefully see a sufficient legal framework and strong enforcement system that will help them to effectively and fairly protect and enforce their rights.

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