



Domestic implementation of copyright commitments under the CPTPP and EVFTA in the context of digital transformation: A study of Japanese law and lessons for Vietnam

Vo Hoang Thong

SAPUNG Company Limited, Vietnam

Abstract

In the context of digital transformation and deep economic integration, copyright has become a central pillar of legal systems aimed at protecting creative output and fostering the knowledge economy. New-generation trade agreements such as the CPTPP and the EVFTA set standards that exceed those of TRIPS, requiring member states, including Vietnam and Japan to strengthen their copyright regimes by extending the term of protection, enhancing enforcement, and establishing safe-harbour mechanisms for Internet service providers. Japan has proactively and comprehensively implemented CPTPP obligations, notably extending the copyright term to 70 years, criminalizing copyright infringement without the need for a complaint from the rights holder, and adopting broad exceptions to facilitate AI development, data use, and education. At the same time, Japan maintains an effective notice-and-takedown system and places strong emphasis on balancing protection with the promotion of digital creativity. Vietnam has amended the Intellectual Property Law in 2022, acceded to the WCT and WPPT, extended the term of protection, and adopted conditional safe-harbour provisions for digital platforms accompanied by takedown obligations, reflecting efforts to comply with TRIPS-plus commitments. However, Vietnam still needs to continue refining copyright exceptions to accommodate emerging technologies, strengthen specialized enforcement capacity, and enhance policy dialogue with the creative community. Learning from Japan's experience will help Vietnam build a balanced legal environment, encourage innovation, and enhance competitiveness in the digital era.

Keywords: Copyright, copyright protection, digital transformation, intellectual property, domestic implementation of international commitments

Introduction

In the context of digital transformation and international economic integration, copyright protection has become a central issue requiring effective enforcement. New-generation free trade agreements such as the CPTPP and EVFTA impose high-level commitments on copyright standards, contributing to the development of the digital economy. Accordingly, Vietnam is a CPTPP member and signatory to the EVFTA, while Japan participates in the CPTPP and also maintains strong economic ties with Europe. This article analyzes how the two countries implement copyright law in accordance with these commitments in the digital era and proposes lessons for Vietnam.

Overview of Copyright Protection Under Cptpp And Evfta Commitments in The Context of Digital Transformation

The commitments under the CPTPP and EVFTA require raising intellectual property protection standards beyond the minimum obligations set by the WTO TRIPS Agreement. In the EVFTA, Chapter 12 is dedicated entirely to intellectual property, with a broad scope and high level of protection, while reaffirming fundamental principles such as TRIPS compliance, most-favoured-nation treatment, and the right of member states to adopt an appropriate exhaustion regime consistent with their domestic legal system. The CPTPP establishes several specific obligations to strengthen copyright protection in the digital environment, including requiring a minimum protection term of 70 years after the author's death, setting up a liability-safe-harbour mechanism for Internet service providers similar to the U.S. DMCA framework, and imposing strict protection for technological

protection measures (TPMs) that control access to and use of copyrighted works, to prevent circumvention or neutralization of copyright safeguards. [1]. Meanwhile, the EVFTA requires Vietnam to accede to two key WIPO treaties, the WCT and WPPT thereby strengthening the protection of works and related rights in the online environment and expanding remuneration rights for performers and phonogram producers. Accordingly, both the CPTPP and EVFTA establish TRIPS-plus standards for copyright in the digital era, requiring member states, including Vietnam, to continue improving their intellectual property laws and corresponding enforcement mechanisms to meet international obligations and ensure effective protection in the digital environment.

1. Japanese Copyright Law under CPTPP and EVFTA Commitments in the Context of Digital Transformation

Japan, as one of the signatories and ratifying members of the CPTPP, has undertaken significant revisions to its copyright laws to ensure compliance with treaty obligations. During negotiations for the TPP, the precursor to the CPTPP Japan faced several key legal issues, including extending the copyright term, introducing a statutory damages system, and classifying copyright infringement as a non-petition offense, meaning prosecution can proceed without a complaint from the rights holder. These represent TRIPS-plus requirements reflecting the heightened level of protection under the CPTPP. As a result, Japan amended its Copyright Act to align with these new standards, most notably by extending the copyright term to 70 years after the death of the author consistent with CPTPP requirements and the global trend toward longer copyright protection periods. These reforms

demonstrate Japan's commitment to harmonizing its domestic intellectual property framework with international obligations, while strengthening the legal environment for protecting creative works amid rapid digital-economy development.

At the same time, Japan has strengthened the application of stricter sanctions against copyright infringement in order to enhance the effectiveness of enforcement in the context of international integration. With respect to the digital environment, the country has proactively refined its legal framework in a flexible manner that accommodates the characteristics of emerging technologies. Notably, the 2018 Amendment Act (Act No. 30/2018) introduced broad exceptions for the use of works for technical purposes not intended for content enjoyment, including data processing for artificial intelligence development, database creation, and automated computational activities, thereby exempting such activities from being deemed copyright infringement. In addition, Japanese law permits temporary storage activities (caching) to optimize information processing, while also expanding exceptions in the fields of education and access to information for persons with disabilities ^[1]. Regarding online enforcement mechanisms, Japan has established a safe harbour regime for Internet service providers, coupled with complaint-handling procedures and the removal of infringing content. This approach is consistent with the standards set under the CPTPP, reflecting Japan's efforts to balance technological innovation with effective copyright protection in the digital environment.

In summary, Japan's copyright policy reflects a balanced approach between strengthening copyright protection and fostering a digital creative environment. On one hand, Japan reinforces the level of protection by extending the copyright term and enhancing measures to safeguard technological protection measures, consistent with CPTPP standards. On the other hand, the country has established a flexible legal framework by introducing new exceptions for data use in artificial intelligence development, education, and digital applications, thereby facilitating innovation in the context of the Fourth Industrial Revolution. This approach demonstrates an effort to harmonize compliance with international obligations and the demands of technological advancement, thereby maintaining a legal environment that both encourages innovation and ensures effective copyright protection.

2. Vietnamese Copyright Law under CPTPP and EVFTA Commitments in the Context of Digital Transformation

Vietnam is a member of the CPTPP (effective since 2019) and has signed and ratified the EVFTA (effective since 2020). To fully implement its international obligations under these next-generation free trade agreements, the National Assembly of Vietnam enacted the amended Intellectual Property Law in 2022, which came into force in early 2023. These amendments were designed with the aim of domesticating TRIPS-plus obligations, ensuring consistency with the high standards set out in the CPTPP and EVFTA, and strengthening the intellectual property protection framework amid digital-economic development and deepening international integration. The revised law not only updates provisions on copyright and related rights but also enhances enforcement mechanisms, reflecting

Vietnam's determination to improve the effectiveness of IP protection in accordance with international standards.

Specifically, Vietnam has extended the copyright protection term to 70 years after the author's death, in line with Article 18.63 of the CPTPP, which requires a TRIPS-plus protection duration. With respect to its EVFTA commitments, Vietnam completed the procedures for accession to two important WIPO treaties, the WCT and WPPT on November 17, 2021 (effective from February 2022). Accession to these treaties strengthens the protection of works and related rights in the online environment, including computer programs and databases, while also providing additional benefits to performers and phonogram producers, such as a shared remuneration mechanism for broadcasting activities. These reforms demonstrate Vietnam's efforts to incorporate advanced international standards into domestic law and enhance the level of copyright protection in the context of deep integration and digital transformation ^[3].

In terms of compliance and enforcement, the amended 2022 Intellectual Property Law introduces Article 198b, establishing a conditional safe-harbor regime for Internet service providers (ISPs/OSPs). Under this provision, service providers are exempt from liability when performing purely technical functions such as data transmission, temporary storage (caching), or storage at the request of users, provided that they proactively cooperate in removing or disabling access to infringing content upon receipt of a valid notice. This regulation reflects a "safe harbor" mechanism similar to those in many advanced jurisdictions, ensuring a balance between copyright protection and the need to maintain an open Internet environment, while also supporting Vietnam in fulfilling its TRIPS-plus obligations under the CPTPP and EVFTA.

A direct consequence of this provision, essentially a "safe harbor" mechanism — is the enhancement of the feasibility and effectiveness of digital platforms in managing and controlling infringing content, while ensuring compatibility with EVFTA requirements regarding the legal framework governing the online environment. At the same time, the Government of Vietnam issued Decree No. 17/2023/ND-CP, effective from June 2023, to operationalize the notice-and-takedown mechanism. Under this system, copyright holders may request that online service providers immediately remove infringing digital content upon receipt of a valid notice. The establishment of these coordinated regulatory tools demonstrates Vietnam's effort to build a copyright protection system aligned with international standards, thereby strengthening enforcement effectiveness amid digital transformation and the expansion of online-platform-based economic activities.

3. Comparison of Japanese and Vietnamese Copyright Law under CPTPP and EVFTA Commitments in the Context of Digital Transformation

In terms of protection standards, both Japan and Vietnam have adjusted their legal frameworks by extending the copyright protection term to 70 years after the author's death, consistent with the TRIPS-plus requirements of the CPTPP. Japan implemented this provision through its 2018 Copyright Act amendment, while Vietnam incorporated the same commitment in the 2022 amendments to its Intellectual Property Law. However, regarding exceptions for the use of copyrighted works, Japan adopts a more

flexible and progressive approach, particularly in the digital environment, such as exceptions for technological experimentation, artificial intelligence development, and digital data processing. In contrast, Vietnam currently maintains mainly traditional exceptions (e.g., for research and education) and is in the process of developing and supplementing new exceptions suitable for the digital transformation context and AI applications, consistent with emerging regulatory directions. This difference reflects varying levels of legal maturity between the two countries in adapting copyright law to rapid technological development in the digital era.

Regarding the Safe Harbour Mechanism for Internet Service Providers (ISPs). Japan established a liability exemption regime for Internet service providers (ISPs) at an early stage, first introduced in 2006, following a framework similar to the U.S. Digital Millennium Copyright Act (DMCA). In contrast, Vietnam only formally incorporated a comparable mechanism in the 2022 amendment to the Intellectual Property Law. Specifically, Article 198b provides liability exemptions for ISPs in three situations: (i) mere conduit transmission without storage; (ii) temporary storage (caching); and (iii) storage at the request of users (hosting), on the condition that the ISP removes infringing content upon receiving a valid notice. This legal framework is consistent with the TRIPS-plus standards under the CPTPP and EVFTA and represents a significant step in creating a conducive legal environment for the development of digital platforms, coupled with accountability obligations and content-removal mechanisms upon notification^[4].

A balanced approach prioritizing digital development. Japan consistently pursues a balanced strategy between protecting intellectual property rights and fostering creative freedom in the cultural digital environment. During the implementation of TPP commitments, Japan paid particular attention to the potential impact of strengthened copyright enforcement on creative communities, such as fan-art artists and doujin creators, in order to avoid unintended legal risks for community-driven cultural creativity. This serves as a valuable lesson for Vietnam in designing copyright exceptions and tax policies for the digital creative sector, especially amid the rapid growth of digital content and the creative economy. At the same time, Japan has implemented a long-term digital economy strategy, exemplified by the “Society 5.0” model, in which intellectual property rights are identified as a key driver of innovation and economic growth in the Fourth Industrial Revolution. Vietnam is similarly positioning intellectual property rights as a pillar of its digital economy strategy, and the timely domestic implementation of high-standard commitments from the CPTPP and EVFTA is expected to foster a more conducive legal environment for innovation, attract investment, and enhance national competitiveness^[5].

Some Lessons for Vietnam

Firstly, Vietnam needs to develop a more flexible and modern copyright exception framework to support the growth of emerging technologies. Experience from Japan shows that adding exceptions for data aggregation, artificial intelligence analysis, system maintenance, and technical data processing is essential to avoid hindering innovation. Vietnam may also consider expanding minor exceptions to facilitate scientific research and online education amid rapid digitalization.

Secondly, improving the safe-harbour mechanism for online platforms (notice-and-takedown) is a critical requirement. Although Vietnam has initially established this mechanism

through Decree No. 17/2023/NĐ-CP, it is necessary to continue ensuring that the processes for receiving, handling, and removing infringing content are carried out promptly, transparently, and with accountability. In addition, promoting the deployment of technical protection measures—such as encryption technologies and digital content recognition tools—will enhance enforcement effectiveness.

Thirdly, strengthening enforcement capacity and inter-agency coordination also plays an important role. Japan has effectively implemented a specialized intellectual property court system and an agency dedicated to monitoring online content. Vietnam can learn from this approach by training specialized personnel to protect copyright in cyberspace while promoting cooperation among relevant ministries and agencies such as the Ministry of Culture, Sports and Tourism, the Ministry of Information and Communications, the Ministry of Public Security, and judicial bodies.

Fourthly, it is necessary to focus on balancing the interests of stakeholders. Similar to Japan, Vietnam should maintain regular policy dialogue with businesses, artists, and the digital creative community to ensure that policies both protect intellectual property rights and encourage creativity. Combining effective enforcement mechanisms with cultural-creative development support—such as copyright education programs and artist assistance, will contribute to building a sustainable legal environment and promoting long-term digital economic growth.

Conclusion

The domestic implementation of CPTPP and EVFTA commitments in the field of copyright is an essential requirement for Vietnam to align with international standards and fully benefit from digital transformation. Japan and Vietnam, through their respective mechanisms and strategic approaches, have established robust legal frameworks for copyright protection while gradually adapting to the digital economy model. Advancements such as extending the term of protection, establishing safe-harbour mechanisms, and acceding to the WCT/WPPT demonstrate that both countries place significant emphasis on this objective. Vietnam can draw valuable lessons from Japan in various aspects, including designing flexible copyright exceptions, strengthening enforcement, and enhancing policy coordination. By consistently implementing its international commitments and improving domestic legislation, Vietnam will create a fair and effective legal environment for both authors and users, fostering the development of the creative economy in the digital era.

References

1. Asia Pacific Foundation of Canada. Chapter 18 – Intellectual Property.
2. Agency for Cultural Affairs, Government of Japan. Regarding the Act Partially Amending the Copyright Act (Act No. 30 of 2018).
3. European Commission, The EU - Vietnam Free Trade Agreement (EVFTA) and intellectual property (IP) protection: What EU SMEs should know, 2021.
4. Vinh Le Quang, ‘Safe Harbor’ Provision under the 2022 Intellectual Property Law of Vietnam, Bross Partners, 2024.
5. Linh Duy Mai, CPTPP Brings Significant and Effective Changes to Vietnam’s IP Landscape, Tilleke Gibbins, 2019.