



The impact of CPTPP and EVFTA commitments on the mechanism for enforcing copyright in the digital environment in Vietnam

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Abstract

In the context of digital transformation, Vietnam is facing numerous challenges in enforcing copyright as online infringements grow in scale and become increasingly sophisticated. Commitments under the CPTPP and EVFTA require Vietnam to enhance protection standards, fully apply civil, administrative, and criminal remedies, and establish the legal liability of intermediary service providers. Although Vietnam has amended the Intellectual Property Law and acceded to several WIPO treaties, the gap between legal provisions and enforcement practice remains significant. The main causes stem from insufficiently deterrent sanctions, difficulties in monitoring infringements in the digital environment, and ineffective coordination among competent authorities. Against this backdrop, Vietnam needs to adopt a comprehensive set of solutions, including further improving the legal framework, strengthening technological tools for monitoring, enhancing the capacity of enforcement agencies, and promoting public awareness to foster a culture of copyright compliance. Effective enforcement of copyright not only helps Vietnam meet its international obligations but also contributes to the development of the creative industries and strengthens the country's competitiveness in the integration process.

Keywords: Copyright, digital environment, CPTPP, EVFTA, intellectual property

Introduction

In the context of a rapidly developing digital economy, the protection of copyright in the online environment has become an urgent global issue. In the film industry alone, 2022 recorded more than 191.8 billion visits to copyright-infringing websites. In Vietnam, the situation is particularly serious, ranking third in the Asia-Pacific region with approximately 15.5 million users frequently accessing illicit content websites. The expansion of digital technologies has both facilitated the dissemination of creative works and increased the challenges associated with monitoring and enforcing copyright on the Internet. In response to integration demands, Vietnam has joined new-generation free trade agreements, notably the CPTPP and EVFTA, which impose high standards of intellectual property protection. These agreements require strengthened enforcement of copyright, including accession to and compliance with key international treaties such as the WIPO Copyright Treaty (WCT). The process of domesticating and implementing these commitments not only fulfills Vietnam's international obligations but also contributes to strengthening the foundation for the development of the creative industries and enhancing the country's competitiveness in the digital era. This article provides an overview of the enforcement of copyright in the digital environment under the influence of CPTPP and EVFTA commitments, assesses the challenges that arise, and draws key lessons to improve Vietnam's copyright protection mechanisms.

Overview of Copyright Enforcement in The Digital Environment Under the Impact of New Generation Fta Commitments

1. Theoretical Foundations of Copyright in the Digital Environment

Copyright is a fundamental legal institution designed to protect creative achievements in the fields of literature, art,

and science when works are expressed in a tangible form. In the traditional environment, copyright enforcement primarily focused on acts such as reproduction, printing, distribution, or public performance. However, the rapid development of digital technologies and the Internet has fundamentally transformed both the scope and the methods of protection. Digitized works can be easily stored, transmitted, and disseminated across online platforms at high speed, low cost, and with global reach, making copyright control increasingly difficult and complex. In this context, various new legal issues have emerged, including challenges in distinguishing between lawful use and infringement, difficulties in addressing cross-border violations, and the far-reaching implications of new technologies such as artificial intelligence, blockchain, and big data each reshaping the ways in which works are created, exploited, and managed. Therefore, expanding and strengthening copyright protection mechanisms in the digital environment is not only aimed at reducing infringements but also at building a sustainable creative ecosystem that balances the rights and interests of authors, businesses, and consumers. This requires a harmonized combination of national legislation, international commitments, and multilateral cooperation mechanisms^[1]. The rapid development of digital technologies and the global expansion of the Internet have driven the expansion and refinement of international copyright treaties, aiming to incorporate new concepts and rights suited to the digitized environment. Among these instruments, the 1996 WIPO Copyright Treaty (WCT) a special agreement under the Berne Convention plays a particularly significant role in establishing a modern legal foundation for the protection of works in the online environment. In addition to reaffirming authors' traditional moral and economic rights, the WCT introduces three core economic rights: the right of distribution of originals or copies of works; the right of rental in certain sectors; and, most notably, the right of

communication to the public through digital means. These rights reflect the international community's efforts to adapt to the rapid pace of technological change while reinforcing the central role of copyright in balancing the interests of authors, commercial exploiters, and users. More broadly, the WCT provides an essential foundation for new-generation free trade agreements such as the CPTPP and EVFTA to further specify and elevate copyright protection standards, thereby promoting greater harmonization between national legislation and the international legal order in the digital era. The right of communication of works to the public is one of the landmark rights recognized in modern international treaties, designed to reflect the characteristics of the digital environment. This right enables authors to control the making available of their works on the Internet in such a way that the public may access them at a time and place of their choosing, thereby establishing the legal foundation for protecting works on on-demand streaming services. Beyond regulating traditional modes of dissemination such as radio or television broadcasting, the right of communication to the public has expanded copyright protection to new digital platforms such as YouTube, Netflix, Spotify, and electronic libraries [2]. The significance of this right lies not only in enhancing authors' ability to control and monetize their works in cyberspace but also in shaping a global legal framework governing the exploitation, sharing, and consumption of creative products in the digital era. More broadly, it serves as a mechanism for balancing the interests of creators, commercial intermediaries, and the public's right to access information, while providing the basis for the sustainable development of cultural industries and the knowledge economy in an age of globalization. In addition, the digital environment necessitates the protection of technological measures and rights management information associated with digital works. Modern copyright law must treat the circumvention of technological protection measures or the removal/alteration of rights management information as acts of copyright infringement [3]. At the same time, the concept of intermediary service providers (ISPs) and their responsibility to remove infringing content from their platforms has become a central issue in the digital age. In summary, the theoretical foundation of copyright in the digital environment is built on extending traditional rights to cover the use of works on the Internet, while also developing regulatory mechanisms to prevent online infringements and to strike a balance between copyright protection and the public's interest in accessing information.

2. Vietnam's Commitments on Copyright Enforcement in New-Generation FTAs

The new-generation free trade agreements to which Vietnam is a party all contain dedicated chapters on intellectual property, setting higher standards of protection and enforcement compared to those of the World Trade Organization (TRIPS Agreement). The CPTPP (Chapter 18) and the EVFTA (Chapter 12) establish specific commitments regarding copyright enforcement, particularly in the digital environment.

Firstly, regarding general principles of enforcement: Under the CPTPP, member states are required to establish a comprehensive and coherent legal system that ensures the application of remedies against intellectual property infringements, including copyright infringement, based on

criteria of fairness, timeliness, reasonable costs, and the avoidance of unnecessary trade barriers. Enforcement decisions must be issued in writing, clearly stating the legal grounds and factual basis, while ensuring publicity and transparency to facilitate public oversight. More broadly, these principles reflect the overarching orientation of new-generation FTAs toward creating a stable, clearly defined, and predictable legal environment. This contributes to fostering creative activities, promoting cross-border trade and investment, and ensuring a reasonable balance between the interests of authors, right holders, and users in the context of the dynamic growth of the digital economy [4].

Secondly, civil enforcement. Under the CPTPP, member states must ensure that their domestic courts have the authority to apply effective civil remedies to address copyright infringements. One of the core requirements of the agreement is that the damages regime must be adequate and sufficiently deterrent, thereby providing substantive protection for the lawful rights and interests of copyright holders. Accordingly, courts must have the power to order the infringing party to compensate based on actual damages, including the copyright holder's lost profits, the market value of the infringed work, the profits gained by the infringer, as well as reasonable expenses such as court costs and attorney's fees. Notably, the CPTPP also encourages member states to consider adopting additional or punitive damages to strengthen deterrence against serious or intentional infringements. At the same time, the agreement requires ensuring procedural fairness by imposing compensation obligations on the complainant in cases of abuse of intellectual property enforcement procedures for example, when a right holder intentionally initiates baseless litigation to cause harm or obstruct a competitor's business operations.

Thirdly, administrative enforcement and border control. Vietnamese law has long provided an administrative sanctions mechanism for copyright infringement, and while the CPTPP acknowledges this measure, it does not impose specific administrative obligations on member states. However, with respect to border control, the CPTPP explicitly grants customs authorities *ex officio* powers to suspend the release of goods suspected of infringing copyright without requiring a request from the right holder. Customs officials are authorized to proactively inspect and detain imported, exported, or transshipped goods showing signs of being pirated or illegally reproduced (for example, pirated discs or counterfeit printed books), thereby preventing infringements at the border. This standard goes beyond the requirements of TRIPS, aiming to block the flow of infringing goods at the very point of entry [5].

Fourthly, criminal enforcement. The CPTPP is regarded as the FTA with the strictest criminal provisions concerning intellectual property infringements. Under the agreement, member states must criminalize not only willful copyright infringements committed for commercial purposes but also non-commercial infringements that cause significant harm to the right holder. In other words, even acts without profit-seeking intent (for example, an individual sharing copyrighted works online for free but on a large scale, causing substantial harm to the owner) may still be subject to criminal prosecution under CPTPP standards. The agreement also requires extending criminal liability to acts that facilitate or contribute to infringement such as distributing, selling, advertising, or importing infringing

goods rather than limiting penalties to those who directly make unauthorized copies. In addition, the CPTPP establishes several requirements to ensure timely and effective criminal enforcement: allowing prosecution *ex officio* (i.e., without a complaint from the right holder), and mandating the seizure and destruction of infringing goods as well as the primary tools and equipment used to commit the offense. Notably, the CPTPP contains a specific provision requiring criminal penalties for unauthorized camcording in movie theaters, aimed at combating the illegal distribution of films. These stringent standards compel Vietnam to review and supplement its domestic criminal law to ensure consistency with the copyright-related obligations set out in the agreement.

Fifthly, the digital environment and the liability of Internet Service Providers (ISPs). Both the CPTPP and the EVFTA place special emphasis on copyright enforcement in the digital environment. The CPTPP requires that civil, administrative, and criminal measures be effectively applied to infringements occurring online. Notably, Article 18.81 of the CPTPP sets out specific obligations for Internet Service Providers (ISPs): upon receiving a valid notice or having a reasonable basis to know that digital content on their systems clearly infringes copyright, ISPs must act to remove or disable access to such content as soon as possible. This mechanism parallels the “notice-and-takedown” procedure established under the U.S. Digital Millennium Copyright Act (DMCA), designed to limit the rapid dissemination of infringing content online. For the EVFTA, Article 12.55 provides similar obligations by requiring the parties to establish domestic mechanisms that limit the legal liability of intermediary service providers for copyright infringements committed by third parties. In other words, if an ISP complies fully with the prescribed procedures such as promptly removing infringing content upon notification they may benefit from a system of “conditional safe harbor.” This approach encourages ISPs to actively cooperate in protecting copyright while simultaneously creating a transparent and predictable legal environment for digital service providers in the context of a rapidly expanding digital economy.

Sixthly, other requirements and international cooperation. Beyond the measures above, the CPTPP contains a unique commitment requiring member governments to use only legally licensed computer software in all public agencies. This reflects an effort to set an example within the public sector regarding compliance with software copyright. As for the EVFTA, in addition to aligning with many of the CPTPP’s protection standards, the agreement also includes commitments on strengthening bilateral cooperation in intellectual property enforcement. The European Union and Vietnam will collaborate through information sharing, technical assistance, and training activities to enhance the effectiveness of copyright enforcement. The EVFTA also requires Vietnam to implement the standards of the WCT and WPPT (WIPO Performances and Phonograms Treaty) within three years from the agreement’s entry into force. This means that Vietnam must extend protection terms and strengthen the rights of authors, performers, and phonogram producers in accordance with WIPO treaty standards, as well as clarify violations relating to technological protection measures and rights management information in domestic law. In summary, the CPTPP and EVFTA establish very high thresholds for copyright protection and enforcement.

These commitments not only motivate Vietnam to improve its legal framework but also present significant challenges, requiring the domestic enforcement system to upgrade itself in line with regional and international standards.

3. Current Situation and Emerging Issues for Vietnam in the Context of International Integration

In recent years, Vietnam has made significant progress in improving its legal framework on copyright to meet international commitments and adapt to global and digital trends. A key driver of this process is Vietnam’s accession to several foundational multilateral treaties on copyright, such as the Berne Convention for the Protection of Literary and Artistic Works, the TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights, the Geneva Convention for the Protection of Producers of Phonograms, and the Brussels Convention on the Protection of Satellite Signals. Participation in these treaties not only demonstrates Vietnam’s commitment to the international legal order but also provides a solid foundation for protecting the lawful rights and interests of authors and right holders in a context where works are increasingly exploited across borders.

Notably, 2022 marked a major milestone as Vietnam officially acceded to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). These treaties play a central role in copyright protection in the digital environment, as they expand rights of communication to the public via the Internet, strengthen protection for performers and phonogram producers, and establish more effective enforcement mechanisms for online infringements. The process of adopting and domesticating international standards combined with Vietnam’s participation in new-generation treaties has significantly contributed to building a modern, coherent, and digitally compatible copyright system^[6].

The National Assembly has also amended the Intellectual Property Law in 2009, 2019, and 2022 to partially implement obligations under the CPTPP and EVFTA. More recently, the Government issued Decree No. 17/2023/ND-CP detailing copyright and related rights, including provisions dedicated to copyright protection in the digital environment. These revisions bring Vietnam’s legal framework closer to new-generation FTA standards. However, gaps remain between legislation and practice. Some provisions of the current IP Law are still not fully aligned with CPTPP and EVFTA commitments for instance, the criteria for determining damages in online infringement cases or the specific procedures for notice-and-takedown mechanisms for ISPs, which remain insufficiently clear. Consequently, Vietnam must continue revising its IP legislation and issuing detailed regulations on digital copyright to fully comply with FTA obligations.

Despite the ongoing improvement of the legal framework, copyright infringement on the Internet in Vietnam remains widespread and increasingly sophisticated across various sectors. Content industries such as film, television, music, e-books, and especially sports broadcasting continue to be targeted by infringing websites. According to the Ministry of Information and Communications (2024), more than 400 websites show signs of copyright violations, nearly 100 of which illegally broadcast sports events or provide unauthorized streaming services for movies and music. Major sports events such as Euro 2024 and Copa America 2024 witnessed a surge of piracy websites sharing

unauthorized live-match content, seriously undermining the commercial exploitation rights of copyright holders and posing major challenges for digital enforcement authorities [7].

Online piracy in Vietnam is not limited to large-scale illegal websites but is also pervasive on social media and video-sharing platforms, where individual users upload copyrighted films or music without authorization. Notably, recent years have seen a spike in unauthorized translation and dissemination of foreign comics and books online, drawing complaints from international publishers. Several foreign organizations, such as Japanese publishing houses have directly engaged with Vietnamese authorities, warning of severe economic losses caused by online copyright violations and requesting timely intervention.

In practice, Vietnamese authorities face numerous difficulties in detecting and handling online copyright infringements. The anonymity and cross-border nature of the Internet make it challenging to trace and identify offenders, especially when many piracy websites host servers abroad. Even for domestic sites, existing sanctions lack sufficient deterrence: administrative penalties remain low compared to the substantial profits generated from online advertisements and illegal betting services, leading to repeated violations.

The intellectual property enforcement system also remains fragmented, with limited coordination among agencies such as cultural inspectors, information authorities, economic police, customs, and the courts, resulting in delays or failure to address violations. Technical and human resources are insufficient, and monitoring tools capable of detecting infringing content online remain inadequate, forcing authorities to react only after violations have already spread widely. Moreover, public awareness of digital copyright remains low, causing many users to unintentionally support piracy websites. These challenges demonstrate that Vietnam must implement more comprehensive and robust solutions to enhance the effectiveness of copyright enforcement in the context of integration and digital transformation.

Some Lessons Learned for Vietnam

Drawing from international experience and the requirements of FTA commitments, Vietnam can identify several strategic directions to enhance the effective enforcement of copyright in the digital environment:

Firstly, a specialized legal framework. Vietnam should continue updating and detailing copyright legislation to adapt to the digital era. Many experts suggest adopting a standalone Copyright Law rather than maintaining copyright regulations within the current Intellectual Property Law similar to the approach taken by various countries, thereby allowing for more comprehensive and specialized provisions on online copyright protection. New legislation must also anticipate emerging technological issues, such as works generated by artificial intelligence (AI), to ensure timely regulation before these forms of digital creativity proliferate. A clear, transparent, and digitally responsive legal framework forms the essential foundation for effective enforcement.

Secondly, the deterrent effect of sanctions. Alongside improving legislation, Vietnam should promptly revise administrative penalties for copyright infringements to ensure sufficient deterrence. Current fines should be significantly increased relative to the illicit benefits gained

by infringers so that “violating is no longer cheaper than complying.” Administrative preventive measures such as revoking licenses or suspending repeat-offending websites should be applied more decisively. In terms of criminal enforcement, Vietnam must ensure that large-scale online reproduction and distribution of copyrighted works for commercial purposes are strictly prosecuted in accordance with CPTPP standards.

Thirdly, apply modern technology and strengthen international cooperation. Given the high-speed nature of online infringements, advanced technology must become a central enforcement tool. Vietnam should invest in developing automated systems to detect infringing content on the Internet (e.g., web-crawling tools, AI-based image/audio recognition systems) to promptly block access to piracy websites. Simultaneously, cooperation with major digital platforms (such as YouTube and Facebook) should be enhanced to ensure rapid takedown procedures and information sharing on infringers. As online infringements are inherently cross-border, international cooperation is indispensable. Vietnam should actively participate in regional and global copyright enforcement networks, exchange information with foreign enforcement agencies, and collaborate with organizations such as WIPO and Interpol. Such cooperation facilitates the tracking and dismantling of piracy websites operating overseas.

Fourthly, develop human resources and raise public awareness. Human capacity is a decisive factor in effective copyright protection. First, enforcement officers (inspectors, police, prosecutors, judges) must receive specialized training in investigating and assessing online infringement cases. Knowledge of digital technology and cybersecurity should be regularly updated to keep pace with emerging copyright-related offenses. In parallel, public education campaigns must be strengthened to promote copyright awareness among businesses and citizens particularly young people, who are the most frequent Internet users. Vietnam may even consider incorporating digital copyright literacy into school and university curricula. When Internet users understand the law and respect copyright, they are more likely to avoid or reject infringing content, thus helping cleanse the digital environment. The combination of robust sanctions and high public compliance successfully demonstrated in many developed countries is an important lesson for Vietnam moving forward.

Conclusion

The enforcement of copyright in the digital environment is both a major challenge and an inevitable requirement for Vietnam in its process of international integration. The high-level commitments under the CPTPP and EVFTA have created positive pressure, compelling Vietnam to upgrade both its legal framework and enforcement mechanisms. In recent years, Vietnam has made significant progress, such as acceding to WIPO treaties, amending the Intellectual Property Law, and strengthening inspection and enforcement activities. However, the gap between legal provisions and practical implementation remains considerable, requiring coordinated efforts from the State, businesses, and the user community. In the future, Vietnam must continue improving its legal framework in alignment with international standards, while making substantial investments in enforcement technologies and human resources. Effective copyright enforcement not only helps

Vietnam meet its international obligations but also contributes to fostering innovation, developing cultural and digital content industries, enhancing national competitiveness, attracting international cooperation, and gradually building the image of a country that respects intellectual property rights in the digital era.

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