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RCEP – E-commerce and Intellectual Property

Tran Manh Hung | 3-4 May, 2022

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E-commerce

The e-commerce provisions under RCEP are general and fundamental, which cover the following issues:

Promote paperless trading, e-authentication & esignature

Promote online consumer protection (including anti-spam)

Promote online personal information protection

Build domestic regulatory framework for ecommerce [1]

No customs duties for e-transmissions

Promote crossborder e-commerce by: not requiring computing facilities localization

not restricting cross-border transfer of information by electronic means



Vietnam has complied with most of the RCEP provisions.



Vietnam's compliance status can be summarized below:

Basically in compliance but can improve:



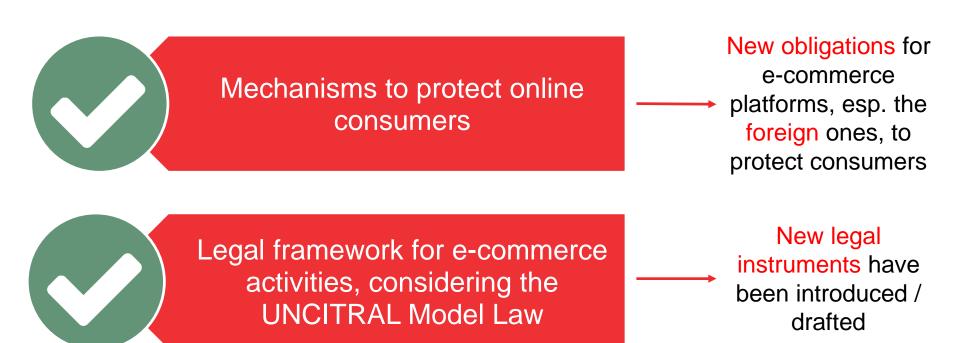
Regulations to promote paperless trading, e-authentication & e-signature

There're still
restrictions
when it comes to
recognizing esignature's legal
validity



No customs duties on etransmissions

Already in compliance but changes are still underway:



Non-compliance:



No comprehensive legal framework for the protection of online personal information





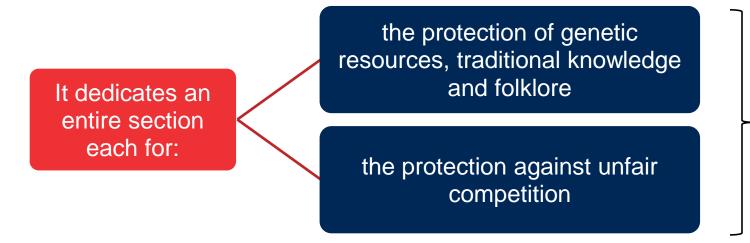
Data localization requirement applying to both domestic and foreign enterprises

Vietnam relies on the public policy exception under the RCEP

Intellectual Property

Overview of the RCEP's IP chapter

- It was built on the bones of its predecessors: TRIPS, Berne Convention, Paris Convention, CPTPP, other FTAs that the ASEAN has entered.
- However, it still has unique features:



despite their broad & unspecific terms

Some noteworthy IP provisions

that have potential effects on Vietnam's current IP framework

Copyrights and related rights

- Vietnam is obliged to accede to the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty ("Internet Treaties").
 - Vietnam has joined the former but not the latter.
- While Vietnam's IP legal framework has already adapted to the Internet age, further changes following the Internet Treaties will be seen in the upcoming Amendments to the IP Law.
 - Expected to be passed in June 2022.

Trademark

All notable changes imposed by the RCEP may be adopted by the upcoming **Amendments to the IP Law**, including:



protection of sound marks



removal of 3 criteria determining well-known marks

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bad-faith filing

1 criterion in the bad-faith filing test [1]

refusal of applications filed in bad faith

- (i) registered in the concerning party / another jurisdictions;
- (ii) included on a list of well-known marks; and
- (iii) given prior recognition as being well-known.

Patent

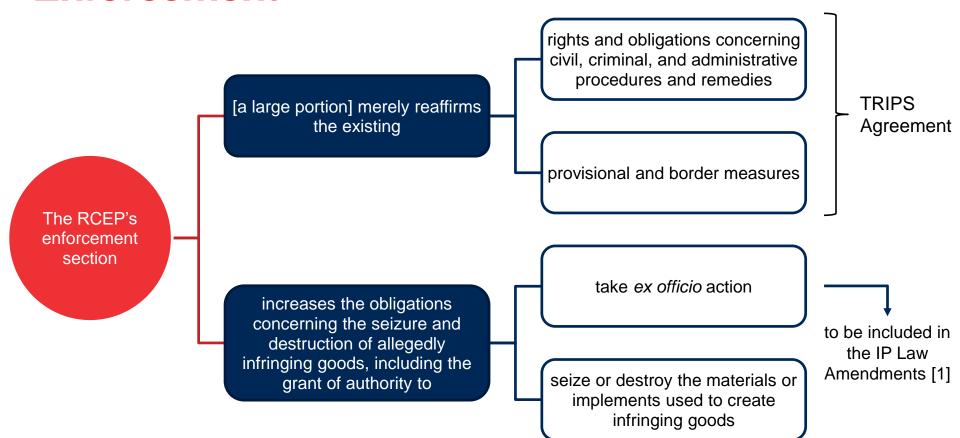
Parties will have to allow the use of a patented invention for experimental purposes (Bolar provisions)

However, they are generally free to determine what acts fall within the meaning of "experimental purposes."

Design

- Vietnam is required to provide for protection for partial designs, i.e., outward appearance of a part of an article.
 - The IP Law Amendments will have a mechanism to protect partial design.
- While the RCEP obliges the Parties to provide special treatments for textile design, these treatments are not seen in the latest draft of the IP Law Amendments.
 - Further review of the future guiding instruments is needed to see if Vietnam complies with this provision.

Enforcement



Enforcement

- Notably, while the RCEP provisions on criminal procedures and penalties are not as extensive as those of the CPTPP, the RCEP similarly calls for criminal procedures and penalties for unauthorized camcording in cinemas.
- The agreement also confirms that the laid-out civil and criminal remedies must also be available for infringement of copyright or related rights and trademarks, in the digital environment.
 - Currently, there is no plan in sight to amend the Penal Code of Vietnam.
 - Further updates are needed to find out how Vietnam is going to comply with RCEP's requirements on criminal actions.



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