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# **RCEP – E-commerce and Intellectual Property**

Tran Manh Hung | 3-4 May, 2022



# Agenda

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E-commerce

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Intellectual Property

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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 & e-signature

Promote online consumer protection (including anti-spam)

Promote online personal information protection

Build domestic regulatory framework for e-commerce [1]

No customs duties for e-transmissions

Promote cross-border 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 **e-**  
**signature's legal**  
**validity**



No customs duties on e-  
transmissions

# Already in compliance but changes are still underway:



Mechanisms to protect online consumers



New obligations for e-commerce platforms, esp. the **foreign** ones, to protect consumers



Legal framework for e-commerce activities, considering the UNCITRAL Model Law



New legal **instruments** have been introduced / drafted

# Non-compliance:



No comprehensive legal framework for the protection of online personal information



The **Personal Data Protection Decree** is being **drafted**



Data localization requirement applying to both domestic and foreign enterprises



Vietnam relies on the **public policy exception** under the RCEP



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# 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:



**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**

- (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.



bad-faith  
**filing**

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

refusal of  
applications filed  
in bad faith

# 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

## The RCEP's enforcement section

[a large portion] merely reaffirms the existing

rights and obligations concerning civil, criminal, and administrative procedures and remedies

provisional and border measures

TRIPS Agreement

increases the obligations concerning the seizure and destruction of allegedly infringing goods, including the grant of authority to

take *ex officio* action

seize or destroy the materials or implements used to create infringing goods

to be included in the IP Law Amendments [1]



# 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.



# Questions



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