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## INSIDE

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### New finds this week

Copyright should not be treated as a lesser form of intellectual property in the context of border control. The effectiveness of Vietnam's IP enforcement system depends on harmonizing the legal recognition of rights with the practical realities of customs procedures, ensuring that creative works—whether on canvas, packaging, or digital files—receive the full protection they deserve at the border.

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# New finds this week

By Uyen Ngo, Nguyen Hoa Binh, et al.

## THE GAP BETWEEN COPYRIGHT LAW AND BORDER ENFORCEMENT IN VIETNAM

### Overview

An important question has recently emerged in intellectual property practice in Vietnam: why can a company holding a valid copyright registration certificate still be denied customs supervision measures? Instances where customs authorities decline to accept such requests highlight a gap between the theoretical protection guaranteed by law and the practical challenges of enforcement at the border.

This article examines the issue through legal and practical lenses, highlighting both the complexity of intellectual property enforcement and the need for greater clarity in the application of Vietnamese law.

### Copyright and the Nature of Protection

Copyright, by its very nature, protects creative expressions such as applied art, graphic design, packaging artwork, and other original works. It is not confined to a specific product type. Unlike trademarks, which are registered for designated goods or services, or patents, which clearly specify the scope of technical protection, copyright attaches to the work itself, regardless of the medium on which it appears.

This distinction creates difficulties in border enforcement. Customs officials must identify infringing goods by physical characteristics such as product codes, packaging descriptions, and shipment details. A copyright certificate does not provide such identifiers. Consequently, enforcement authorities face a practical dilemma: while the law grants copyright protection, operational procedures require tangible markers that copyright registration cannot supply.



## **Applying Trademark and Industrial Design Standards: A Misstep?**

Vietnam's Intellectual Property Law, as amended in 2022, makes clear that copyright arises automatically upon the creation and fixation of a work, without the need for association with specific goods. Decree 17/2023/ND-CP reinforces this principle by expressly protecting applied art, including packaging designs, without tying protection to product classes or categories.

If customs were to insist on treating copyright as though it were a trademark or an industrial design, this would mischaracterize its legal nature. The essence of copyright enforcement is not product-specific linkage but rather the prevention of unauthorized reproduction, adaptation, or use of the protected work in any form. By requiring a catalog of related goods, enforcement authorities inadvertently impose a condition not found in law.

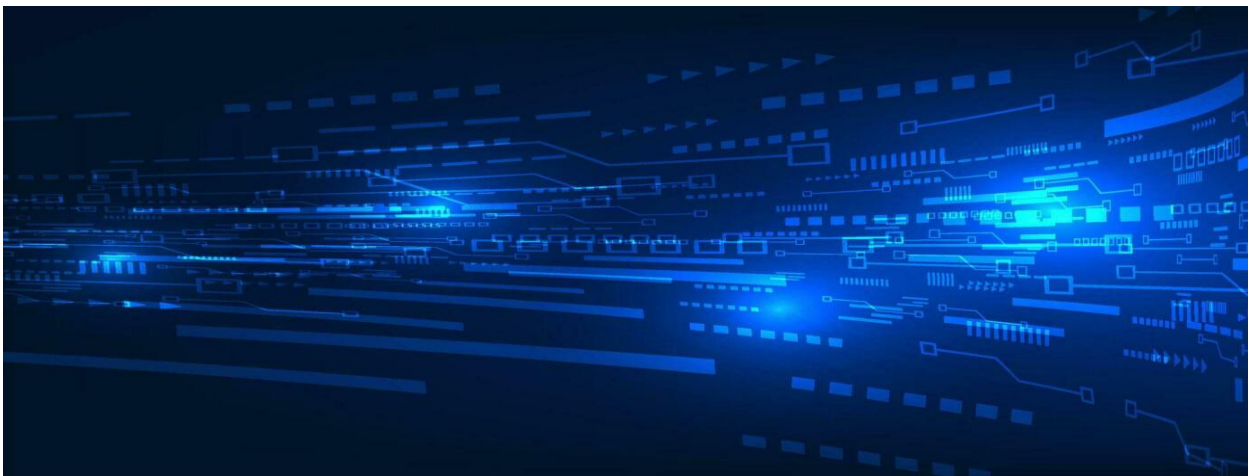
This approach risks undermining the very purpose of copyright protection: safeguarding creative expression across all tangible and intangible media.

## **Legal Framework for Border Enforcement of Copyright**

Vietnamese law does not leave copyright outside the scope of customs protection. On the contrary, a robust framework exists:

- Law on Customs (2014): Articles 73–76 empower customs to suspend clearance, inspect shipments, and apply sanctions when intellectual property infringement, including pirated goods, is suspected.
- Law on Intellectual Property (2022, amended): Article 216.4 explicitly includes unauthorized copies of works within the definition of counterfeit goods subject to border control measures.
- Decree 17/2023/ND-CP: Chapter VI dedicates provisions to copyright enforcement at the border, granting rights holders the ability to request inspection, supervision, and suspension of customs procedures.

These laws collectively establish that copyright is eligible for border protection. The question is therefore not whether a legal mechanism exists but how effectively customs officers interpret and apply it.



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### Conclusion

This issue illustrates the tension between legal theory and practical enforcement. On one hand, the rights holder may hold a valid copyright certificate for packaging or artwork; on the other, customs requires product-specific identifiers to execute supervision measures.

Resolving this tension requires two complementary approaches. First, customs authorities must receive further training and guidance to correctly understand the nature of copyright and its role in border enforcement. Second, rights holders may consider providing supplementary evidence—such as photographs, samples of infringing goods, or detailed descriptions—that help customs link the protected work to the goods in circulation.

Ultimately, copyright should not be treated as a lesser form of intellectual property in the context of border control. The effectiveness of Vietnam's IP enforcement system depends on harmonizing the legal recognition of rights with the practical realities of customs procedures, ensuring that creative works—whether on canvas, packaging, or digital files—receive the full protection they deserve at the border



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