



USAID-Funded *STAR-VIETNAM* Project Technical Assistance for Improving IPR Protection in Vietnam

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What is *STAR-Vietnam*



- *STAR-Vietnam* supports implementation of the U.S.-Vietnam Bilateral Trade Agreement and accession to the WTO
- *STAR* is the first major USAID-funded TA contract in post-war Vietnam, commencing in September 2001
- *STAR* is the first USAID-funded contract designed specifically to support implementation of a U.S. trade agreement, in cooperation with USTR and the State Department
- *STAR* coordinates with other US agencies and organizations, including the USVTC
- *STAR* contributes not only to liberalizing the trade and investment regime, but also supports systematic advances in the rule-of-law, good governance, and protection of property rights



- **TA Tailored to Each Counterpart's Needs –**
 - Activities are demand-driven; Supervised by Government Steering Committee and USAID
 - Unprecedented access to 46 counterparts: Most Ministries, National Assembly Committees, the Party, the Supreme Peoples Court, 10 People's Committees, the VCCI

- **Working at the Frontier of Legal and Policy Reforms –**
 - Engaged at all stages of law making: drafting, approval and implementation
 - Provides detailed legal analysis and recommendations; supports seminars and workshops, reference materials, research reports, domestic and international study missions

- **Working with the Vietnamese Government, USTR and Embassy –**
 - The two governments implement the BTA and negotiate WTO accession; STAR provides professional, objective TA to Vietnamese counterparts to support these processes
 - Firewall for STAR relative to the two Governments



- **43** Laws and Regulations Supported by STAR
- **19** Approved Laws and Regulations Supported by STAR
- **112** Policy Seminars and Training Workshops Supported by STAR
- Over **9,450** Government Officials and Business Representatives Participating in STAR Activities
- **43,500** STAR-Supported Reference Materials Published and Distributed
- STAR-Supported Study Missions: **12** missions for **77** people.



- The BTA, effective on **December 10, 2001**, is built upon a WTO framework and positioned as a stepping stone for WTO accession
- BTA contains **comprehensive requirements** on:
 - trade in goods
 - commercial law and dispute settlement
 - intellectual property right protection
 - trade in services
 - investment (WTO Plus)
 - business facilitation
 - transparency and the right to appeal
- Accelerated lawmaking schedule for 2005 WTO accession



BTA and TRIPS are essentially the same, involving:

- Substantive rights
- Procedural rights
- Incorporating international IPR treaties
- Upgrading judiciary
- Improving enforcement
- Transparency



- December 10, 2001: Enforce existing IP laws
- Month 12 (Dec. 2002): Patents and Trademarks
- Month 18 (June 2003): Copyright and Trade Secrets
- Month 24 (Dec. 2003): Layout designs, Industrial designs, Berne Convention, UPOV, and Enforcement Provisions
- Month 30 (June 2004): Satellite Signals, Brussels and Geneva Convention



- Legal deficiencies: too lenient penalties, inadequate definitions and coverage relative to international IPR treaties, etc.
- Poor enforcement:
 - Mostly administrative; limited judicial remedies due to weak court systems and inadequately trained judges
 - too many “cooks” and lack of coordination
- Lack of strong right holder associations
- Lack of public awareness on the importance of IPR protection



- Fix legal framework: substantive and procedural laws
- Strengthen enforcement: both administrative and judicial
- Strengthen Vietnamese IP stakeholders
- Raise public awareness and support
- 3 of STAR staff specialize in IPR



- **Part VI of Civil Code:** to be approved in June 2005
 - **Key objective** -- TA recommended shifting key substantive aspects of IPR law from Part VI of the Civil Code to a new, systematic IPR Law to be consistent with international treaty commitments, international best practice and Vietnam realities
 - Part VI designed to enable new IPR Law: 65 articles in current Part VI, down to 45 articles and now to 22 articles in most recent draft (copyright articles still an issue)
 - Three years of intensive support to Ministry of Justice (MOJ), National Assembly Law Committee (LC) and Internal Affairs Commission (IAC) (Part of systematic TA on revising the overall Civil Code)
 - TA included detailed legal analysis and recommendations, and multiple workshops and retreats with leaders in the MOJ, LC and IAC



- **New IPR Law** -- to be approved in Dec. 2005
 - STAR supported the Government and National Assembly to have a separate IPR Law
 - Support MOST in developing IPR Law – workshops and legal comments
 - Support MOCI in developing copyright part: weekly technical workshops to discuss key issues
 - NA Science and Technology Committee – Comments on on-going IPR-Law drafts and development of 5 Issue Papers for distribution throughout NA on TRIPS and BTA, copyright protection, unfair competition, determination of damages, and institutional arrangement for effective enforcement



- **Landmark Civil Procedure Code** – Approved in Dec. 2004
 - Major steps forward: More power, more independence, more modern operating procedures, and move toward adversary system
 - Provisional measures reinstated after extra-ordinary efforts to convince the leaders of the NA of their necessity for complying with the WTO and BTA
 - Three years of intensive work with the Supreme People's Court, LC and IAC, including legal analysis and recommendations on multiple drafts, workshops and retreats with high-level officials, “last-minute” memos at final stage of approval
 - Support implementation: Training more than 500 judges; legal comments on Implementing Guidelines



■ **Customs Border Measures**

- Customs Circular on border measure protection of industrial property approved in February 2005
- Proposed Revisions to Customs Law – focus on trademark counterfeit and copyright piracy, and ex officio power
- Providing on-going detailed legal comments and technical workshops



- **Judgment Enforcement Code**, possibly to be approved in November 2005
 - “Win the case but lose the battle” – ineffective enforcement of judgments
 - Intensive support with legal comments and workshops to MOJ, LC and IAC: first round in March; second round in May/June; study tour to U.S. in September 2005 with STAR/USVTC



- Law on Technology Transfer
- Decree on Remedies
- Decree on Administrative Penalties
- Criminal Law
- Optical Disk Regulations
- Ordinance on Procedures for Handling Administrative Cases



- Strengthening the Courts
 - 10 training courses and workshops for over 800 judges and court officials
 - U.S. study mission for the Chief Justice and senior judges; mission to Thailand on specialized IPR court
 - Establishing a core group of judges with IPR expertise -- 25 senior judges and court officials trained for 1 week in Vietnam with right holders and IPR experts and 2 weeks in Thailand with Thai IPR court and U.S. and Chinese judges
 - Developing a specialized IPR court
 - First-ever publication of Judicial Council court decisions



- Strengthening coordination and capacity of enforcement agencies
 - Two 3-day training courses for over 300 economic police officers
 - Advise Ho Chi Minh City on coordinating enforcement agencies – developing a Decision on IPR enforcement coordination
 - Support Ministry of Public Security to develop case studies and text books for training economic enforcement agents



- Strengthen coordination between enforcement agencies and right holders
 - Encourage right holders and enforcers to work together by organizing workshops and training courses where right holders actively participate and network with enforcers (economic police, market management training courses, etc.)



- Support to Copyright Center: supported workshops and provided technical advice on collective rights management
- Collaboration with Recording Association and other IPR associations



- Trade fair on anti-counterfeit technology in HCMC Oct. 2004: 15,000 IPR handouts distributed
- 4 trademark protection workshops for businesses throughout Vietnam attended by more than 600 participants
- Various training courses and workshops for government officials and businesses



- **Encouraging signs**
 - Legal: IPR law, CPC, Border Measures and other legal reforms
 - Enforcement:
 - More raids and fines
 - Better coordination through anti-counterfeit and smuggling boards
 - The court starts to function better
 - Right holders organizations:
 - Domestic anti-counterfeit association established in 2004
 - Recording association established in 2004
 - Foreign anti-counterfeit association established in April 2005
 - Rising public awareness and support:
 - National IPR conference chaired by DPM Vu Khoan
 - Numerous seminars, TV shows and newspaper articles targeted at increasing Vietnamese awareness of the need to protect IPR
- **Daunting reality** -- Vietnam still has one of the highest pirating and counterfeiting rates in the world



- Many positive reforms and rising commitment for improving IPR protection (a sea change in 3 years)
- These reforms and sentiment have yet to translate into substantially better IPR protection
- WTO accession and domestic needs will drive the reform process
- STAR is fully engaged in this process