

Special Alert

THE SPECIAL 301 REPORT AND OFFICIAL TELEGRAM 38: INTELLECTUAL PROPERTY RIGHTS PROTECTION AND ENFORCEMENT IN VIETNAM – IMPLICATIONS & ACTIONS

June 2026

On 5 May 2026, the Prime Minister issued Official Telegram No. 38/CD-TTg (Urgent) on intensifying the direction and implementation of measures to combat, prevent, and strictly handle intellectual property rights infringement (“**Official Telegram 38**”). Official Telegram 38 was promulgated against the backdrop of mounting pressure from the United States regarding the protection and enforcement of intellectual property rights (“**IPRs**”) in Vietnam.

According to the **2026 Special 301 Report** (“**Special 301 Report**”), the Office of the United States Trade Representative (“**USTR**”) designated Vietnam as a **Priority Foreign Country** (“**PFC**”) - the highest and most severe level of classification. This designation was made following an extended period of bilateral engagement between the United States and Vietnam, during which key concerns relating to the protection and enforcement of IPRs in Vietnam remained unresolved.

This article highlights the five principal grounds relied upon by the USTR in designating Vietnam as a Priority Foreign Country, while also analyzing the notable implications of the Special 301 Report and Vietnam’s responses and subsequent actions in reaction to this designation.

Key Takeaways

- **USTR Designates Vietnam as a Priority Foreign Country (PFC):** Vietnam was the only country designated as a PFC, based on five key areas of concern primarily relating to ineffective and inconsistent IPRs enforcement.
- **Potential Implications:** The USTR’s assessment highlights the gap between Vietnam’s legal framework and its enforcement capacity, posing significant challenges amid the rapid growth of the digital economy and cross-border commerce.
- **Vietnam’s Actions and Practical Implementation:** Official Telegram 38 demonstrates Vietnam’s swift and

determined response, including targets to increase enforcement actions by at least 20%, signaling a likely tightening of IPRs enforcement in the near future.

- **Actions for Businesses:** Businesses - particularly those operating in the digital sector, e-commerce, and export activities to the United States - should urgently review and strengthen their internal intellectual property compliance measures.

USTR Designates Vietnam as a Priority Foreign Country (PFC)

Following its review of more than 100 trade partners, Vietnam was the only country designated as a “**Priority Foreign Country (PFC)**” in the Special 301 Report. The USTR’s designation was based on the following five key concerns:

- **Online Copyright Infringement:** Vietnam continues to be regarded as a significant source of online copyright infringement and as a hosting location for large-scale infringing platforms and websites, including those distributing pirated films, television programs, and English-language digital content targeting global users. According to the USTR, the current enforcement measures have not yet created a sufficient deterrent effect.
- **Widespread Counterfeit Goods:** Counterfeit goods remain widely and openly sold at traditional markets, particularly in major cities and tourist destinations. More concerning, counterfeit products are increasingly being sold through e-commerce platforms and social media channels, with livestream sales emerging as a particularly difficult trend to control due to their ability to reach a broad audience rapidly and on a large scale.
- **Limited Effectiveness of Border Control Measures:** Although the amended Intellectual Property (“IP”) Law grants Customs authorities the power to proactively suspend customs procedures for goods suspected of being counterfeit or pirated without requiring a request from rights holders, such authority has reportedly been exercised only to a very limited extent in practice. In addition, the current legal framework does not comprehensively provide for inspection and enforcement powers in relation to in-transit goods suspected of infringing IPRs.
- **Use of Unlicensed Software:** The use of unlicensed software in the business environment remains prevalent. Over the past three years, Vietnamese authorities have undertaken few significant inspection, enforcement, or sanctioning activities in relation to such conduct, resulting in limited deterrence and the continued persistence of violations.
- **Unauthorized Access to Cable Television and Satellite Signals:** The Criminal Code currently lacks criminal provisions addressing the unauthorized decoding of encrypted satellite signals, despite the fact that such conduct is recognized under the IP Law as an infringement of related rights. Both instruments also remain silent on the unauthorized interception or theft of cable television signals.

Potential Implications of the Special 301 Report

Being placed on the PFC list not only carries reputational and trade relationship implications, but also serves as a basis

for the United States to consider initiating an investigation under Section 301 of the Trade Act of 1974. Should these concerns remain inadequately addressed, Vietnam could face increased tariffs, restrictions on market access, or other trade retaliatory measures that may directly affect its key export industries.

A more detailed review of the five assessment criteria indicates that most of the concerns are supported by a reasonable basis. The challenge facing Vietnam today is not merely the development of the legal framework - which has been substantially reinforced through the IP Law, the E-Commerce Law, the Cybersecurity Law, and their implementing regulations - but also the effective enforcement of such laws in an environment where technology and infringement methods continue to evolve in sophistication. Three major challenges are particularly noteworthy:

- **Challenges in Enforcing Copyright Protection in the Digital Environment:** Pirated movie websites are often able to “reappear” almost immediately after being blocked through the use of backup domain names and servers prepared in advance. Blocking individual domain names alone is unlikely to produce sustainable results in the absence of measures to trace and take action against the organizations and individuals operating the infringing distribution networks behind such platforms.
- **Challenges in Controlling Counterfeit and IPRs-Infringing Goods:** The responsibilities imposed on e-commerce platforms in monitoring sellers have not kept pace with the rapid growth of the digital market. Many cross-border platforms still lack a sufficient legal presence in Vietnam, creating practical difficulties in verifying seller identities, collecting electronic evidence, and implementing enforcement measures against infringing activities.
- **Limited Awareness and Compliance with IP Laws:** A portion of businesses and individuals still regard the use of unlicensed software, unauthorized exploitation of digital content, or the trading of copied goods or products bearing another party’s trademark as “common practice”, without fully recognizing the unlawful nature of such conduct and the associated legal risks.

Vietnam’s Actions and Practical Implementation

Immediately following the publication of the Special 301 Report by the USTR, the Prime Minister issued Official Telegram 38, directing all competent authorities to simultaneously implement enforcement measures from 7 May 2026 to 30 May 2026 under the principle of “**no prohibited areas and no exceptions**”. The directives may be grouped into three principal lines of action:

- **Investigation and Prosecution:** The Ministry of Public Security was assigned to lead the verification and prosecution of cases involving infringements of copyright, trademarks, and geographical indications, as well as to dismantle large-scale copyright-infringing websites - particularly platforms distributing pirated films, music, games, and television content in both Vietnamese and English. The Supreme People’s Procuracy and the Supreme People’s Court were also instructed to intensify the prosecution and adjudication of representative cases with strong deterrent effect.

- **On-site Inspection and Enforcement:** The Ministry of Culture, Sports and Tourism is responsible for conducting inspections of software, film, and music copyright compliance at enterprises, while the Ministry of Industry and Trade and the provincial-level People's Committees are tasked with intensifying controls against counterfeit goods and products infringing IPRs. Both groups of authorities are required to **increase the number of enforcement actions by at least 20% compared to May 2025**.
- **Border Control and International Engagement:** The Ministry of Finance directed Customs authorities to proactively suspend customs clearance for goods with clear indications of counterfeiting, with a target of **increasing the number of suspension and enforcement cases by at least 20% compared to May 2025**. At the same time, the Ministry of Foreign Affairs was tasked with promptly providing information to international partners regarding Vietnam's IPRs enforcement efforts.

In implementation of Official Telegram 38, the Ministry of Culture, Sports and Tourism issued a plan to establish inspection teams to examine compliance with laws on copyright and related rights by enterprises, organizations, and individuals operating in sectors such as digital content services, media and advertising, film and music distribution, software and information technology, e-commerce, internet services, and social media platforms, particularly entities engaged in exploiting works and programs in the online environment. In parallel, the Customs Department has issued an urgent directive instructing all customs units nationwide to simultaneously implement enhanced control measures and intensify enforcement efforts against smuggling, trade fraud, counterfeit goods, and goods infringing IPRs.

Even at the initial stage of implementation, the competent authorities moved quickly to issue numerous directives and enforcement plans with a notably high level of determination, while many businesses, organizations, and individuals also proactively began reviewing and strengthening their compliance measures. Nevertheless, the protection and enforcement of IPRs should not be viewed merely as a temporary solution or a short-term response to international trade pressure.

Actions for Businesses in Response to the Special 301 Report

Businesses should urgently review their internal compliance status, particularly in relation to the issues highlighted by the USTR, including: the legality of software currently in use; the use of images, trademarks, packaging, and promotional content; as well as the origin and lawful right to use data, designs, technical materials, digital works, and marketing content.

- **Digital platforms, e-commerce, hosting services, and social media operators:** These businesses should strengthen their content control and seller moderation procedures, enhance mechanisms for receiving and handling IPRs infringement complaints, and promptly remove products, storefronts, or content showing clear signs of infringement. Platform operators should also review their terms of use, seller/user verification mechanisms, data retention procedures, and internal coordination processes to ensure timely handling of IPRs-related requests, particularly as the digital environment increasingly becomes a focal point of enforcement efforts.
- **Businesses operating in media, advertising, content creation, and livestreaming:** This group is currently exposed to a high level of copyright and related rights risks. Businesses should review the legal basis for all

content exploited for commercial purposes, including music, images, videos, and content provided by influencers (KOLs/KOCs) or advertising and media service providers, while also establishing verification mechanisms and maintaining records evidencing their lawful rights to use such content.

- **Businesses using software and digital content for internal or commercial operations:** Businesses should review the licensing status of all software currently in use, including office software, design software, technological tools, work-support applications, and internally deployed digital solutions. They should also verify the lawful right to use images, videos, music, fonts, design templates, and other digital content used for marketing, communications, training, or commercial activities. It should be noted that content supplied by third parties or obtained from publicly available sources does not automatically grant a lawful right of use.
- **Businesses exporting to the United States:** In addition to reviewing IP compliance, these businesses should strengthen information transparency, digitize records, and enhance traceability throughout the supply chain. Preparing IP compliance documentation in advance is essential for future USTR reviews. Such businesses should also assess their level of dependence on the U.S. market, review IP-related commitments in agreements with partners, suppliers, and subcontractors, and prepare contingency plans in the event of additional monitoring or trade control measures arising in the bilateral trade environment.
- **Foreign-invested enterprises (FIEs):** FIEs should pay close attention to risks arising from IPRs infringement committed by local partners or suppliers, as such conduct may negatively affect supply chains and brand reputation in international markets.

Conclusion

The Special 301 Report candidly highlights long-standing shortcomings in the protection and enforcement of IPRs in Vietnam. Conversely, Official Telegram 38 demonstrates Vietnam's relatively swift, proactive, and determined response, reflecting - at least in part - the country's commitment to strengthening IPRs protection, improving the investment environment, and addressing concerns raised by international trade partners.

To achieve meaningful and sustainable progress, enforcement efforts must be maintained on a consistent, coordinated, rigorous, and long-term basis. The implementation outcomes of Official Telegram 38, together with the USTR's subsequent response - including the possibility of the United States initiating a Section 301 investigation should no substantive improvements be recognized - will serve as an important indicator in assessing whether Vietnam may be removed from the PFC list in next year's review cycle.

In addition, public awareness and education efforts aimed at enhancing understanding of the consequences of IPRs infringements should be implemented through more innovative, accessible, and user-friendly approaches. At the same time, cooperation and international engagement initiatives should be strengthened to facilitate easier access to legitimate sources of content, thereby gradually reducing the demand for infringing content.

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