

Copyright and Goods: The Right Distinction for Effective IP Protection at Vietnam's Borders

Why can a company holding a valid copyright certificate be denied customs supervision measures? A recent case involving a Korean copyright owner and Vietnamese customs has exposed a frustrating gap between legal theory and practical IP enforcement. When a request for customs supervision was submitted based on a [Copyright Registration Certificate](#) for the packaging of the "FOELLIE INNER PERFUME" product, the Customs Department temporarily refused, declining to accept the customs supervision request.

What is the core issue? Customs officials argued that copyright, unlike trademarks or patents, does not specify the particular types of goods it protects. This, they claim, leaves them with no basis to accept a customs supervision request for a copyright. Is this a reasonable approach based on the practical conditions for supervising intellectual property infringing goods, or is it a misunderstanding of the nature of copyright protection?

This case has sparked a debate both academic and practical: Does requiring a link between copyright and specific products accurately reflect the nature of copyright protection, which is designed to protect creative expression in all its forms, regardless of whether it exists on paper, fabric, or cosmetic packaging? The outcome of this case may very well reshape how copyright is protected at Vietnam's borders.

1. Is Copyright Protected at the Border?

Copyright is established to protect original expressions such as artwork, packaging designs, and logos, but it does not specify the type of physical product containing that expression. This is a fundamental difference between copyright protection and the [protection mechanisms for trademarks or patents](#). The absence of specific product identifiers in a copyright certificate makes it difficult for customs authorities to identify and handle infringement at the border.

From an operational perspective:

- **Copyright:** Focuses on protecting works of expression, without being tied to a specific product.
- **Customs:** Requires physical identification marks, product codes, names, and packaging details for inspection and control.

Article 6.8 of Decree No. 17/2023/ND-CP stipulates that applied art is eligible for copyright protection. However, enforcement effectiveness at the border still depends on the ability to link the registered work to the goods in circulation. In the absence of identifying information, customs' inspection and supervision procedures cannot be implemented effectively.

Although the customs authorities' argument reflects a practical need in border management, from the perspective of the rights holder, this is a bottleneck that makes it difficult to stop infringement, especially when a protected work is being illegally used and blatantly copied on imported/exported goods and circulated across the border without being prevented.

2. Copyright and Goods: Can Trademark or Industrial Design Standards Be Applied?

As stipulated in Articles 6 and 14 of the 2022 amended Law on Intellectual Property, copyright is established automatically upon the creation of a work and its fixation in any material form, regardless of whether the work is associated with a specific product or not.

Unlike trademarks or industrial designs, which are protected in connection with specific goods or services, [copyright protects original](#), creative expressions such as artistic works, logos, and graphic designs. The legal value of copyright lies in the work itself, independent of where or how it is used. Therefore, if a customs authority requires a copyright registration certificate to list a specific catalog of related goods, this demand is inconsistent with the legal nature of copyright.

Current law does not impose an obligation on the rights holder to specify which tangible products a work is used on. This is further reinforced by Decree 17/2023/ND-CP, which protects applied art as a subject of copyright without requiring it to be tied to a specific list of goods.

The core of copyright enforcement, especially at border checkpoints, is the ability to identify and address the unauthorized copying and use of a protected work, regardless of the medium of expression, rather than cross-referencing it with a pre-listed catalog of physical products. The fact that a certificate does not specify

attached products cannot be a legal basis for refusing to apply customs supervision and inspection measures.

3. Customs Control Measures Under Vietnamese Law: Is Copyright Protected at the Border?

The question of whether copyright is protected at Vietnam's borders is not an open one; it has been clearly answered by current legal provisions. Contrary to the view that only industrial property rights can be enforced at the border, Vietnam's legal system has established a comprehensive [legal mechanism](#) to protect all intellectual property rights, including copyright, directly at the customs control line. Specifically:

[i] The 2014 Law on Customs: A Foundation for Border Enforcement

Section 8 (Articles 73–76) of the 2014 Law on Customs specifically regulates the inspection, supervision, and suspension of customs procedures for imported and exported goods upon request for IP rights protection. There are no limitations that exclude copyright from this scope. Customs authorities are empowered to: (i) postpone customs clearance; (ii) conduct physical inspection; (iii) confiscate and apply administrative measures when there are grounds to believe the goods are infringing IP rights, including pirated goods.

[ii] The IP Law: The Legal Basis for Copyright Protection at the Border

- Article 216.4 of the 2022 amended IP Law affirms that if customs authorities discover intellectual property counterfeit goods - including unauthorized copies of works - they have the duty and authority to apply administrative remedies under Article 214. The following articles provide detailed guidance:
- Article 217: Specifies the obligations of the rights holder to provide evidence and a description of the suspected infringing goods.
- Article 218: Establishes the procedures for suspending customs procedures, the duration of application, and related responsibilities.
- Article 219: Guides the process for supervision and inspection to detect and handle infringement at the border.

[iii] Decree No. 17/2023/ND-CP: Specialized Guidance for Copyright

Beyond the basic legal framework, Decree No. 17/2023/ND-CP dedicates an entire chapter, Chapter VI (Articles 86–91), to detailing the process for enforcing copyright and related rights at the border. Key points include:

- Article 86: Grants the copyright holder the right to request inspection, supervision, or suspension of customs procedures for suspected infringing goods.
- Articles 87–88: Identify the competent receiving agency and the time limits for processing requests.
- Article 89: Empowers Customs Sub-Departments to proactively suspend customs procedures when there are clear grounds to identify infringement.
- Articles 90–91: Guide the process for issuing suspension decisions and controlling goods with signs of infringement, ensuring consistency between Decree 17 and the Law on Customs.

Conclusion

Vietnamese law does not exclude copyright from the scope of border control measures. On the contrary, a comprehensive and interconnected legal system has been established to ensure that [copyright](#) is enforced not only through civil, administrative, and criminal measures, but also directly at the import and export stage.

The issue is not whether a protection mechanism exists, but rather how enforcement agencies—particularly customs - apply the law correctly and properly understand the legal nature of copyright in practical border control situations.

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