

# Problems with Intellectual Property and Solutions

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## 1. Free rider problem

Human intellectual property is on the incessant increase although the way to such property is not always smooth. One of the greatest troubles with these properties is the unruly use of them. This trouble is especially serious in developing economies where law systems are not perfect, information is not always available, and intellectual property rights are not affirmed. In such conditions, intellectual property rights are usually violated or illegally used. This situation is called free rider problem. It includes violations of know-how relating to manufacturing, using or selling products, or licensed methods without permission; and violations of registered designs and brand names for purposes of deceiving buyers and users.

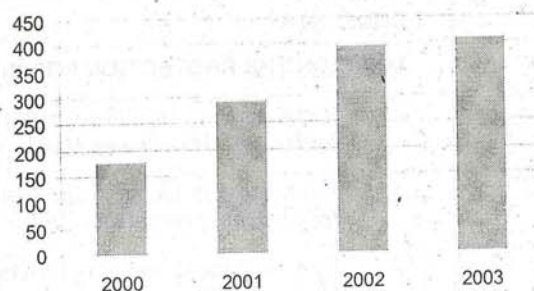
The biggest danger is that the intellectual fruits of individuals and organizations could be lost by illegal use of others. According to the Ministry of Technology and Sciences, only some 12,000 products have been registered among thousands copycat ones. In 2003 alone, some 200 copycat products were put on trial; and some 5,000 cases were handled by local authorities. In the first half of 2004, over 1,000 cases were reported and this number is on the increase in spite of efforts by the central government. Certain products from Vietnam have been imitated, such as Bến Tre coconut candy, Phú Quốc and Phan Thiết fish sauce and Trung Nguyên coffee. Many foreign products are also faked in Vietnam, such as La Vie mineral water, Nike sportswear, Am-

oro helmet, Ricoh photocopy machine, etc.

At present, only 10% of companies have had their intellectual properties (de-

stead of taking action in order to avoid making buyers confused when they haven't got enough information to tell real from fake products. This situation makes owners of intellectual properties losers.

Figure 1: Complaints against violations of intellectual property



Source: Intellectual Property Agency

## 2. Asymmetric information

Asymmetric information is found when sellers have much more information than buyers with the result that the latter are only ready to buy anything cheap without wondering whether they are real or copycat products. This situation causes difficulties for producers of real goods because of their higher production cost.

signs, brand names, copyrights, etc.) registered. Most of them find this job difficult and complicated. Even companies that have registered their properties are reluctant to take action against violations of their property because they are afraid of bad effects on their business performance or total sales. In other words, the company decides to keep silent in-

## 3. Different views on the intellectual properties

Developed and developing countries take different views on this matter. Developed ones want severer punishments for violations of intellectual properties while developing ones demand more time to apply international regulations because they need these properties to bridge the technological gap. Moreover, the laws systems in developing countries aren't perfect enough to protect intellectual property rights.

This difference is very common in research, education and health care services. Let's take pharmaceuticals as an example. Although developing countries commit to protect patents of pharmaceutical



Photo by Hoàng Tuấn





companies, they couldn't enforce the law properly because they are badly in need of many drugs to give better health care to the public. In addition, they are ready to violate patents because they think foreign pharmaceutical companies have made super-profits from these products for years (Brazil is a good example of this view.)

In the education service, developing countries agree to observe copyrights but they want to get access to researches for free, through Internet for example. And as a result, developed countries apply all possible barriers to prevent poor countries from getting access to their researches and studies.

#### 4. Legal infrastructure for intellectual property

The legal infrastructure for the intellectual property is rather perfect when this matter is included in Civil, Criminal and Administration Laws because Vietnam is trying for the WTO membership. However, its subordinate legislature is not perfect and detailed enough. There is no civil procedure relating to the intellectual property violations, and no officials specializing in collecting evidence. In addition, most of violations are

considered as civil problems and most cases end up with a fine. In 2003, some 3,000 cases were fined and some 100 cases were dealt with as criminal ones, and only 10 cases were tried at civil court. The act of fining make most companies consider imitation of designs and brand names as trivial or common among developing countries. Such a way of thinking leads to a widening gap between civil and criminal cases, which encourages the production of faked goods that are flooding the domestic market.

#### 5. Intellectual property

##### and foreign investment

The foreign investment is also a channel of technology transfer. Besides the soft infrastructure (laws, taxes and financial systems, etc.), policies on the intellectual property have important effects on foreign investors' decisions. In other words, foreign investors want their intellectual property to be protected in host countries. Violations of designs and brand names in Vietnam are obstacles not only to efforts to join WTO but also to flows of foreign investment to Vietnam. Many foreign investors have decided to make investment in China, Thailand or Malaysia instead of

Vietnam because of this issue. According to a 2003 survey by the Central Institute of Economic Management of 100 R & D centers, scientific research institutes, companies and governmental bodies, their estimate of worry about the intellectual property in Vietnam was 3.5 (5.0 is the highest level). This worry is a limit on foreign investors' trust in Vietnam.

#### 6. Need to protect the in-

Table 1: Violations of intellectual property

Object under protection	1998	1999	2001	2002
Patent			2	9
Design	20	41	93	108
Brand name	219	110	198	282
Total	239	151	293	399

#### lectual property

There are two reasons for developing countries to protect the intellectual property. Firstly, this policy will serve as an instrument for attracting foreign investment and technology transfer. Secondly, investment in R&D is essential to competitiveness of local companies and results of their researches must be protected. At present, local companies account for only 20% of the total investment in R&D in comparison with 81% in Japan in

1989 or 66% in Germany in 1990. In addition, investment in R&D in Vietnam is equal to only 0.2% of sales by companies of large and medium scale while this figure varies from 5% to 10% in developed countries. The lack of protection for the intellectual property will make local companies reluctant to innovate their technology with the result that they could compete against foreign rivals.

#### 7. Some suggestions

The main solution is to deal actively with the above-mentioned problems.

- To deal with the illegal use of intellectual property, the Government can encourage the public to boycott copycat products and make levels of fine much higher than profits from the illegal use of intellectual properties.

- Making information about products available for the public is a measure to deal with asymmetric information and signal to consumers and producers for violations of the intel-

lectual property.

- Vietnamese government and business circle must adopt the proper view on the protection for the intellectual property, especially since Vietnam is trying to join WTO and integrate into the world market and the flow of foreign investment to Vietnam is slowing down.

- Protection for the intellectual property must be included in Civil Law, Commercial Law, Sciences and Technologies Law. Moreover, WTO rules must included also. ■