GOOD VS. EVIL: ATTRIBUTION OR PLAGIARISM
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ABSTRACT: Ensuring high-quality human capital/resources in the Fourth Industrial Revolution based on Digital Technologies requires a commitment to, and implementation of, firm personal, institutional and governmental foundations in education and training. The Organisation for Economic Co-operation and Development (‘OECD’) suggests that for each year of extra education, as a population, a 9% increase in GDP per capita follows. Unfortunately, associated with the digital age and the promises of “a better tomorrow” advanced by the Industrial Revolution 4.0, a cancer has emerged and is growing rapidly throughout educational institutions worldwide. That cancer is plagiarism and is capable of eliminating substantially all of the recent GDP growth if left unchecked. Plagiarism, the practice of taking someone else’s work, language, thoughts or ideas and passing them off as one’s own, runs rampant in the digital age of the Internet – a “cut-and-paste” society. Studies indicate that nearly half of all university undergraduates have paraphrased and/or copied information from the Internet without attribution, citing the original source. Plagiarism is theft – theft of the Intellectual Property (IP) of another. Globalization in the digital age ushered in the adoption of various global norms for the treatment of IP, including works embodying language, thoughts and ideas. An examination of the legal ramifications of plagiarism, as viewed through these global norms, is presented. Similarly, the legal roles of the student, the institution, and the country (Vietnam) are discussed. Within the current environment efforts, tools and techniques to reduce and/or eliminate plagiarism are reviewed. Finally, recommendations are proposed to limit the respective liabilities amongst the three aforementioned parties (students, institutions, and government) with regards to plagiarized materials.

Keywords: Plagiarism, Attribution, Intellectual Property (IP).

I. INTRODUCTION

The Digital Age of the Internet and the future Internet of Things (IoT) [Fourth] Industrial Revolution 4.0 have exacerbated, and accelerated, the theft of someone else’s work, language, thoughts or ideas. (DELOITTE, 2018) Furthermore, this digital environment has made it easier to claim such stolen work, language, thoughts or ideas, as one’s own. This is the very definition of plagiarism. (PLAGIARISM.ORG, 2020).

Unfortunately, most associate plagiarism strictly with academics - educational pursuits. The native view that plagiarism stops with the completion of an education is woefully inaccurate. Although academia is well suited for teaching and establishing well-reasoned anti-plagiarism policies and characteristics, academia is not, and cannot be, the only institution for promoting anti-plagiarism pursuits. Furthermore, anti-plagiarism should be instilled as a lifelong virtue in students at a very young age and reinforced throughout a student’s education, training, and career. Yet, something so simple as anti-plagiarism appears to be so elusive. For example, one globally recognized journalist that received his Bachelor’s of Arts (BA) from Yale University and his Doctor of Philosophy (Ph.D.) from Harvard University (THE WASHINGTON POST, 2020) repeatedly plagiarized fellow journalists’ material. (OUR BAD MEDIA, 2014; BYERS, 2014; COOPER, 2014) The offenses were so egregious that he was suspended from his high-power, high-visibility, and lucrative career – a career in which he was paid over U.S. $100,000.00 for a one-hour speaking engagement. (SPEAKERBOOKINGAGENCY, 2020) Knowing that both Yale University and Harvard University have rigorous codes of conduct that forbid plagiarism and cheating, one wonders how often this CNN journalist plagiarized materials during his educational career.

The literature is replete with information, articles, and books discussing plagiarism in an academic environment from an educational perspective. (MCCABE, 2005) The emphasis of this paper relates to plagiarism in educational environments, but focuses on that plagiarism from a legal perspective. In brief, plagiarism is presented as the theft of someone’s Intellectual Property (IP) – a violation of that someone’s Intellectual Property Rights (IPR). Examining plagiarism under the rubric of law provides a fresh and novel approach to the discussion of plagiarism within educational institutions in Vietnam. Furthermore, it requires an analysis of both domestic and international laws. As such, well-reasoned legal arguments and writing typically follow a prescribed legal model of presentation. The legal model selected is referred to as “MIRAT”.

MIRAT is an acronym for Material (M) facts, Issues (I), Rules (R) or laws, Application (A) of the rules, and Temporary (T) conclusions. (WADE, 1990) Many law schools present a modified version of MIRAT as “IRAC”, where (I) stands for issues, (R) stands for rules or laws, (A) stands for the application of rules, and (C) stands for

conclusions. (CSUN, 2020) Obviously missing from the latter acronym are material facts and the ability to represent temporal changes in conclusions, e.g., temporary conclusions. Therefore, MIRAT was selected.

II. M: MATERIAL FACTS

A. Intellectual Property

The World Intellectual Property Organization (WIPO) indicates that “[i]ntellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories”. (WIPO, 2018) The first category is Industrial Property. Industrial property consists of patents, trademarks, industrial designs and geographical indications (GI). The second category is Copyright. Copyright consists of literary works, films, music, artistic works and architectural design. Associated with each form of IP is a set of rights. These rights are referred to as Intellectual Property Rights (IPR). Creators and/or owners of IP are allowed to benefit from their own work or investment in IP, as stated in Article 27(2) of the Universal Declaration of Human Rights:

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (GA 1948).

The following paragraphs provide a very brief description of the characteristics of patents, copyrights, and trademarks.

**Patents:** A patent is an exclusive right granted for an invention - a product or process that provides a new way of doing something, or that offers a new technical solution to a problem - lasting for a limited period, generally 20 years.

**Copyrights:** A copyright is an exclusive right granted for the human creativity and innovation of authors, artists and creators of works such as literary works, video works, visual works, and the like. This exclusive right typically lasts for 50 years from the death of the author, artist, and/or creator of the work.

**Trademarks:** A trademark is a mark used to identify the source of goods or services. Trademarks have been used for centuries to indicate a craftsman’s work. Today, as in ancient times, a trademark helps consumers to identify and purchase a product or service based on whether its specific characteristics and quality - as indicated by its unique trademark - meet their needs.

Notwithstanding the importance of all forms of IP, this paper’s IP focus is copyright, in particular, the copyright aspects of education. The above three categories (Patents, Copyrights, and Trademarks) of IP are reflected in many countries domestic IP law. However, without a unifying force to normalize each country’s domestic IP law it would be difficult, if not impossible, to expect substantially similar IP law, and treatment of such law, from country to country. One of the major benefits of the World Trade Organization (WTO) is the solution to this very problem through Annex 1C of the WTO founding documents referred to as, the Trade-Related Aspects Of Intellectual Property Rights (TRIPS Agreement), as discussed below.

B. World Trade Organization

After World War II political advisors from the U.S. and England met at Bretton Woods to develop “a comprehensive plan to set up mechanisms dealing with international trade, investment and foreign exchange. The two key prongs of the Bretton Woods system were the IMF and the International Bank for Reconstruction and Development (World Bank).” (PRYLES, 2004) Later, a detailed proposal to establish the International Trade Organization (ITO) was developed. The ITO gave way to the General Agreement on Tariffs and Trade (‘GATT’). For the purpose of this paper, “the GATT and its successor the World Trade Organisation are the most important trade-oriented institutions as they shape domestic import and export laws that directly affect all international sale of goods transactions”. (PRYLES, 2004)

The WTO was established on 15 April 1994 through the Marrakesh Agreement Establishing The World Trade Organization. (WTO, 1994) Vietnam became a member of the WTO on 11 January 2007. (WTO 2007) The preamble to this treaty defines the motivation of the drafters of this treaty that pertain to this paper, as listed below.

- **Recognizing** … the field of trade and economic endeavour should be conducted with a view to raising standards of living…,
- **Recognizing** … there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade …,
- **Being desirous** of … the substantial reduction of tariffs and other barriers to trade …,
- **Resolved,** … to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade …

Five articles of the WTO Charter indicate the importance of the WTO to education. Article 1 establishes the WTO as an organ of the United Nations (‘UN’) with repository and data functions similar to those of the UN. (UN, 1977) Article 2(1) obligates the signatories to the harmonizing effects of the TRIPS Agreement found in Annex 1C. Article
3(3) provides the dispute mechanism that has proven effective in numerous jurisdictional patent disputes, not infringements. Article XVI(4) defines the clear difference between the TRIPS Agreement and the older Paris Convention. The Paris Convention was adopted as law by the domestic jurisdictions whereas the TRIPS Agreement obligates the signatory to modify its existing domestic law to conform to the content of the TRIPS Agreement. Finally, Article XVI(5) prohibits reservations, thus ensuring the harmonizing effect of the TRIPS Agreement.

C. Trade-Related Aspects of Intellectual Property Rights

The WTO maintains the TRIPS Agreement, as previously mentioned. The framers of the WTO understood, and foresaw, the importance of intellectual property as a trade-related topic. They desired to: (1) reduce distortions and impediments to international trade, (2) provide effective and adequate IPR, and (3) ensure IPR enforcement measures and procedures do not become barriers to trade. The framers of the TRIPS Agreement were determined “to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights”. This reduction in “distortions and impediments” was achieved through “a multilateral framework of principles, rules and disciplines dealing with international trade”, a principal factor relied upon in cross-border copyright works – harmonization of domestic copyright laws.

Two other major objectives of the TRIPS Agreement are (1) “the special needs of the least-developed country Members” that prove to provide exploited points of access to regional communities, and (2) “reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures” that provide an indicator of jurisdiction legal compliance with international norms.

Articles from the TRIPS Agreement are not enforceable in any WTO Member State jurisdiction. What is enforceable in the WTO Member States is the domestic law derived from compliance with the TRIPS Agreement. Articles 9(1) provides that “[M]embers shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto.” Article 9(2) also states that “[C]opyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.” Article 10 specifically protects “Computer Programs and Compilations of Data”.

The single most important benefit derived from the TRIPS Agreement, as defined above, is the assurance of legal compatibility and conformity in copyright protection within all WTO Member States’ jurisdictions.

D. WTO And Dispute Settlement

In addition to the copyright registration and copyright protections afforded in the WTO Member States, disputes regarding the TRIPS Agreement are handled through the WTO’s Dispute Settlement Body (DSB). (WTO, 1994) The Dispute Settlement Understanding (DSU) (WTO, 1994) governs the rules and procedures employed by the DSB during dispute settlement proceedings. The DSU was established in conjunction with the establishment of the WTO to settle disputes quickly and ensure that such disputes do not become impediments to international trade, as indicated by the WTO.

A dispute arises when a member government believes another member government is violating an agreement or a commitment that it has made in the WTO. The authors of these agreements are the member governments themselves -- the agreements are the outcome of negotiations among members. Ultimate responsibility for settling disputes also lies with member governments, through the Dispute Settlement Body (WTO DSU, 1994).

The DSB has adjudicated a number of disputes between WTO Member States without regard to Member States’ size and/or economic status. For example, Vietnam, as of the date of this paper, served as the complainant in five disputes: DS404, DS429, DS496, DS536, and DS540. On 1 February 2010, Vietnam requested consultations with the United States concerning a number of anti-dumping measures on certain frozen warm water shrimp from Vietnam. In addition to several administrative and new shipper reviews, the request for consultations concerns several US laws, regulations, administrative proceedings and practices, including zeroing. (Vietnam WTO Dispute DS404, 2010) At its’ meeting on 18 May 2010, the DSB established a panel. The Report of the Panel was issued to the parties on 19 May 2011 and was circulated to Members on 11 July 2011. The Panel repeatedly upheld Vietnam’s claims in its report and on 2 September 2011 the panel report was adopted. At the DSB meeting on 27 September 2011, the United States stated that it intended to implement the DSB’s recommendations and ruling in a manner that respects its WTO obligations. The United States added that it would need a reasonable period of time to do so. On 31 October 2011, Vietnam and the United States informed the DSB that they had agreed that the reasonable period of time for the United States to implement the DSB recommendations and rulings should be 10 months. Finally, on 18 July 2016, Vietnam and the United States notified the DSB that they had reached a mutually agreed solution.
E. Size And Scope

The number of students in Vietnam’s universities in 2018 was 1,526,111. (VN-GSO 2020a) The number of teachers in Vietnam’s universities in 2018 was 73,312. (VN-GSO 2020b) Simple mathematics (1,526,111/73,312) yields a student to teacher ratio of 20.8 in Vietnam’s universities in 2018. Vietnam’s General Statistics Office (‘VN-GSO’) indicates that during the 2018-2019 school year the average class size in primary and secondary education was 33.2 students. (VN-GSO 2020c) During that same timeframe the student to teacher ratio was 20.6 for Vietnam’s primary and secondary educational systems. Therefore, one may deduce that during 2018 Vietnam’s tertiary educational system had an average class size of between 20.8 and 33.2 students. Based on this deduction this paper will use the average of the previous two numbers, or an average of 27.0 students per university class.

Utilizing the results from the previous paragraph and assuming that each university teacher is required to teach an average of five (5) classes per semester with two semesters per year yields the following equation:

\[ n_{SC} = nT \times nC \times nP \times nS \]

where,

- \(n_{SC}\) is the number of Student Classes per academic year;
- \(nT\) is the number of university Teachers;
- \(nC\) is the average number of Classes taught by each Teacher;
- \(nP\) is the average number of Pupils in each Class;
- \(nS\) is the number of Semesters each year,

equals,

\[ 19,794,240 = 73,312 \times 5 \times 27 \times 2 \]

Dividing the above number by the total number of students, yields 12.97 or the average number of classes each Vietnamese university student during an academic year. Assuming that for each class a student takes, the student must: (1) sit a midterm exam, (2) sit a final exam, (3) complete and turn in at least one assignment per week for a total of 12 assignments, and (4) turn in a student project for the class; for a total of 15 student works per class. Therefore, during each academic year each student is responsible for creating 15 student works multiplied by 12.97 classes per academic year for a total of 194.55 student works.

A conservative calculation for the total number of student works created within Vietnamese universities each year is given by the following equation:

\[ n_{SPO} = aSCPY \times aSWPC \times tVNUS \]

where,

- \(n_{SPO}\) is the number of Student Plagiarism Opportunities per academic year;
- \(aSCPY\) is the average number of Student Classes Per Year;
- \(aSWPC\) is the number Student Works Per Class;
- \(tVNUS\) is the Total number of Vietnamese University Students,

equals,

\[ 296,904,895.05 = 12.97 \times 15 \times 1,526,111 \]

This astonishingly large number is a very conservative number of the number of opportunities for plagiarism that university students in Vietnam universities face each academic year. Each time a student creates a student work there is an opportunity for plagiarism. This astonishingly large number may be viewed positively as the academic output each academic year from Vietnam’s university students. Viewed in this light, Vietnam’s university students create nearly 300 million unique and novel works each and every academic year.

However impressive the above number is for student works created each academic year, one must remember that each and every one of those student works must be read, reviewed, graded, and corrected by a university teacher for the learning process to be effective. Each university teacher at Vietnam’s universities is, therefore, responsible for the reading, reviewing, grading and correcting of an average of 4,049.88 student creations each and every academic year – a truly Herculean effort.

The following section presents issues arising from the facts provided in this section.

III. I: ISSUES

There are a number of legal issues arising from the facts provided in the previous section. However, the major issue is simply whether or not student works are copyrighted works that are protected under Vietnam’s domestic law. A
The determination on that major issue affects how the other issues are viewed, and ultimately treated. For the sake of brevity an Issues Table, Table 1, is provided below.

<table>
<thead>
<tr>
<th>#</th>
<th>Type</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Major</td>
<td>Are student works protected by copyright under Vietnam law?</td>
</tr>
<tr>
<td>2</td>
<td>?</td>
<td>Are student works the legal property of the student that created them?</td>
</tr>
<tr>
<td>3</td>
<td>?</td>
<td>Are student works the legal property of the teacher teaching the class the student created them for?</td>
</tr>
<tr>
<td>4</td>
<td>?</td>
<td>Are student works the legal property of the university the student that created them attends?</td>
</tr>
<tr>
<td>5</td>
<td>?</td>
<td>Are student works the legal property of the government of Vietnam?</td>
</tr>
<tr>
<td>6</td>
<td>Major</td>
<td>Are teacher works (graded and/or corrected student works) derivative works under Vietnam law?</td>
</tr>
<tr>
<td>7</td>
<td>?</td>
<td>Are teacher works (graded and/or corrected student works) the legal property of the teacher that graded and/or corrected the student works under Vietnam law?</td>
</tr>
<tr>
<td>8</td>
<td>?</td>
<td>Are teacher works (graded and/or corrected student works) the legal property of the university that employs the teacher?</td>
</tr>
<tr>
<td>9</td>
<td>?</td>
<td>Are teacher works (graded and/or corrected student works) the legal property of the government of Vietnam?</td>
</tr>
</tbody>
</table>

The above table of legal issues is not exhaustive, but sufficiently large to create serious thought, and possibly discussion, regarding existing domestic and international law with respect to Vietnam’s tertiary educational system. The type column in the above table is only partially completed. Again, without a determination regarding the major issue it is virtually impossible to determine whether or not the incomplete types in the type column are major or minor issues.

The following section presents Vietnam’s Law On Intellectual Property, (VN-LAW, 2005) in particular copyright law that may be used to resolve the issues indicated in the above table.

**IV. R: RULES (THE LAW)**

The United States Embassy in Vietnam describes the general history of copyright law in Vietnam with the following excerpt.

Part Six of Vietnam’s 1995 Civil Code included the first provisions on copyrights. Since then, Vietnam has continued to devise legislation that would bring it in line with international standards under TRIPS and the Berne Convention. In 1996, Decree 76/CP provided explicit guidance on the implementation of copyright protection. Criminal penalties for copyright infringement were established under Section 131 of the 1999 Criminal Code. Circular 27/2001/TT-BVHTT of May 10, 2001 provided additional guidance to the Ministry of Culture and Information on implementation of copyright protection. The newly enacted Civil Code of 2005 reaffirms Vietnam’s commitment to copyright protection (US-EMBASSY, 2020).

Vietnam’s current law, Law No. 50, governing IP, in particular copyright, was enacted in November 2005 and entered into force on 1 July 2006. Again for brevity sake, a table is provided with the pertinent articles from this law, Law No. 50, employed in the next section to resolve the issues indicated in Table 2.

**Table 2. Pertinent Copyright-related Articles From Vietnam’s Intellectual Property Law**

<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Governing Scope</td>
<td>This Law provides for copyright …</td>
</tr>
<tr>
<td>2</td>
<td>Subjects of Application</td>
<td>This Law applies to Vietnamese organizations and individuals …</td>
</tr>
<tr>
<td>3</td>
<td>Subject matters of intellectual property rights</td>
<td>1. Subject matters of copyright include literary, artistic and scientific works …</td>
</tr>
</tbody>
</table>
| 4       | Interpretation of terms                                               | 1. *Intellectual property rights* mean rights of organizations and individuals to intellectual assets, including copyright … 2. *Copyright* means rights of organizations and individuals to works they have created or own … 6. *An intellectual property right holder* means an owner of intellectual property rights or an organization or individual that is assigned intellectual property rights by the owner … 7. *A work* means a creation of the mind in the literary, artistic or scientific domain, whatever may be the mode or form of its expression … 8. *A
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<table>
<thead>
<tr>
<th></th>
<th>Application of Law</th>
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<tbody>
<tr>
<td>5</td>
<td>1. Where there exist intellectual property-related civil matters which are not provided for in this Law, the provisions of the Civil Code shall apply. 2. Where there exist differences between this Law’s provisions on intellectual property and those of other laws, the provisions of this Law shall apply. 3. Where a treaty to which the Socialist Republic of Vietnam is a contracting party contains provisions different from those of the Law, the provisions of such treaty shall apply.</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th></th>
<th>Bases for the emergence and establishment of intellectual property rights</th>
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</thead>
<tbody>
<tr>
<td>6</td>
<td>1. Copyright shall arise at the moment when a work is created and fixed in a certain material form, irrespective of its content, quality, presentation, means of fixation, language and whether or not it has been published or registered.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Types of works covered by copyright</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>1. Literary, artistic and scientific works covered by copyright include: … a/ Literary and scientific works … and other works expressed in written languages or other characters … g/ Plastic-art works and works of applied art … j/ Sketches … l/ Computer programs and compilations of data … 2. Derivative works shall be protected … only if it is not prejudicial to the copyright to works used to create such derivative works … 3. Protected works defined in Clauses 1 and 2 of this Article must be created personally by authors through their intellectual labor without copying others’ work.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Subject matters not covered by copyright protection</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th></th>
<th>Copyright</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>Copyright to works provided for in this Law consists of moral rights and economic rights.</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th></th>
<th>Moral rights</th>
</tr>
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<tbody>
<tr>
<td>19</td>
<td>Moral rights of authors include the following rights: 1. To title their works. 2. To attach their real names or pseudonyms to their works; to have their real names or pseudonyms acknowledged when their works are published or used. 3. To publish their works or authorize other persons to publish their works. 4. To protect the integrity of their works, and to prevent other persons from modifying, mutilating or distorting their works in whatever form prejudicial to their honor and reputation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Economic rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>1. Economic rights of authors include … a/ To make derivative works … c/ To reproduce their works … 2. The rights specified in Clause 1 of this Article shall be exclusively exercised by the authors or copyright holders …</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Acts of infringing upon copyright</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>1. Appropriating copyright to literary, artistic or scientific works … 2. Impersonating authors … 3. Publishing or distributing works without permission of authors … 5. Modifying, mutilating or distorting works in such a way as prejudicial to the honor and reputation of authors … 6. Reproducing works without permission of authors … 7. Making derivative works without permission of authors … 8. Using works without permission of copyright holders … 11. Publishing works without permission of copyright holders …</td>
</tr>
</tbody>
</table>

The following section employs the laws presented in this section and the facts presented in a previous section to resolve the issues previously presented.

**V. A: APPLICATION OF RULES (“APPLICATION OF THE LAW TO THE ISSUES AND FACTS”)**

The major issue under consideration in this section is whether or not domestic copyright law in Vietnam protects the student works created in Vietnam’s universities by their students. The corollary to this issue is whether or not the student works created by a given student is the legal property of that student. A careful examination and application of Vietnam’s intellectual property law, follows.
Step 1. Article 1 of Law No. 50 indicates that it is the appropriate law governing copyright in Vietnam.

Step 2. Article 2 of Law No. 50 indicates that it applies to individuals, such as university students.

Step 3. Article 3 and 14 of Law No. 50 indicate that Vietnam’s copyright law covers the literary, artistic and scientific works that university students create during university studies at Vietnam’s universities.

Step 4. Article 4(2) Law No. 50 defines “works they have created or own,” where they refers to individuals such as university students; as Copyright.

Step 5. Article 6 of Law No. 50 indicates that the Copyright of Article 4(2) shall “arise at the moment when a work is created and fixed” in a certain material form, irrespective of its content, quality, presentation, means of fixation, language. In brief, as soon as a university student places pen to paper a Copyright is created.

It appears from the previous five steps that the major issue is resolved, i.e., student works are protected under Vietnam’s domestic intellectual property law, Law No. 50, as copyrighted works. However, Article 14(3) clearly indicates that in order to be afforded the benefit of copyright protection under Vietnam law the author must personally create the work through his/her own intellectual labor without copying others’ work. In brief, any plagiarism on the part of the student bars the student’s work from copyright protection under the law.

Does the grading and/or correcting of university students’ works by a university teacher constituted a derivative work under the law, is the second major issue. The analysis for this issue is substantially the same as for the previous issue. The analysis begins with Steps 1 and 2 that are the same as in the previous analysis.

Step 1. Article 1 of Law No. 50 indicates that it is the appropriate law governing copyright in Vietnam.

Step 2. Article 2 of Law No. 50 indicates that it applies to individuals, such as university students.

Step 3. Article 3 and 14 of Law No. 50 indicate that Vietnam’s copyright law covers the literary, artistic and scientific works that university students create during university studies at Vietnam’s universities.

Step 4. Article 4(7) Law No. 50 defines a work as “a creation of the mind in the literary, artistic or scientific domain, whatever may be the mode or form of its expression.” The work in this case is the university student’s student works.

Step 5. Article 4(8) Law No. 50 defines a derivative work as “a work which is translated from one language into another, adapted, modified, transferred, compiled, annotated or selected.” In this instance, the process of grading and/or correcting student works is assumed to adapt, modify and/or annotate the original student works.

Step 6. Article 14(3) of Law No. 50 indicate that Vietnam’s copyright law covers the literary, artistic and scientific works that university students create during university studies at Vietnam’s universities.

Step 7. Article 14(2) Law No. 50 allows a derivative work to be protected “only if it is not prejudicial to the copyright to works used to create such derivative works.”

It appears from the previous eight steps that the second major issue is resolved, i.e., teacher works may be protected under Vietnam’s domestic intellectual property law, Law No. 50, as derivative works. However, as stated above, this is only true if and only if “it is not prejudicial to the copyright to works [student works] used to create such derivative works [teacher works].” In the event that the teacher did not have permission to grade, correct or annotate the student works then it would be deemed prejudicial and the teacher works would not be protected under the law, in fact, the teacher works would be infringing works. Indeed, the term prejudicial is arguable. Some may argue that it prejudicial includes any negative comments regarding the work. Clearly, such an interpretation of prejudicial would dramatically limit the ability of the teacher to correct student works.

VI. T: TEMPORARY CONCLUSIONS

The legal analysis performed in the previous section arguably indicates that university students’ works in Vietnam universities is protected under Vietnamese copyright law, as long as plagiarism was not involved in its creation. The second major issue is dependent upon the original students’ works. In the event that plagiarism was involved in the creation of these works then protection for the derivative works is not possible under the law. However, in the event that no plagiarism was involved in the creation of these works then protection for the derivative works may be possible under the law. The determining fact in this event is whether or not the creator of the original works permitted the teacher to grade, correct and/or annotate the original works. Simply put, if yes then yes – if no then no.

The major issues appear resolved. However, there are two situations that may change the determination made herein. First, within each jurisdiction the age of a person may bar that person from owning property, including intellectual property. Second, within each jurisdiction a defined set of exemptions and limitations may apply. Vietnam is no exception, as indicated below.
Article 7(2) Law No. 50 declares that “[t]he exercise of intellectual property rights must neither be prejudicial to the State’s interests, public interests, legitimate rights and interests of other organizations and individuals, nor violate other relevant provisions of law”.

Similarly,

Article 7(3) Law No. 50 declares that “[i]n the circumstances where the achievement of defense, security, people’s life-related objectives and other interests of the State and society specified in this Law should be guaranteed, the State may prohibit or restrict the exercise of intellectual property rights by the holders or compel the licensing by the holders of one or several of their rights to other organizations or individuals with appropriate terms”.

As indicated above, Articles 7(2) and 7(3) may be used to alter the temporary conclusions articulated in this section.

VII. CONCLUSIONS AND RECOMMENDATIONS

To the best knowledge of the author there is neither a countrywide, blanket IP release for university students in Vietnam’s universities, nor any governmental limitation and/or rulings on student works that delay the legal analysis provided herein. Therefore, one must assume that under current conditions each and every university teacher in Vietnam is infringing a minimum of 4,049.88 student works by grading (modifying, mutilating, distorting, reproducing, using and possibly publishing) student works without express permission to do so. In brief, university teachers in Vietnam are unknowingly engaged in mass copyright infringement totaling nearly 300 million infringements per academic year!

The government of Vietnam may use Articles 7(2) and 7(3) to alter the well-reasoned legal analysis of the previous sections. However, the international community may view such alterations as contravening the intent, purpose and function of the Trips Agreement and result in a dispute being lodged against Vietnam for such. A simpler and cleaner legal solution would be to have a countrywide IP release for all university students to sign when entering university studies within Vietnam. Associated with a university student IP release should be a countrywide university policy on IP. Regarding a university student IP release, such a release could be as simple as stating that the university is granted a royalty-free, non-transferrable license to student works strictly for educational purposes. It would also be necessary for the release to grant permission for university teachers to create derivative works from student works under the same terms and conditions as the student IP release. The student IP release would provide a contractual solution to this potentially complex problem that would avoid the potential of a Trips Agreement dispute and eliminate the potential need to either invoke Articles 7(2) and 7(3) of the domestic IP law (Law No. 50) or modify the domestic IP law to avoid these infringements.

The implementation of a countrywide student IP release form could easily be managed through the Ministry of Education and Training. (MOET, 2019) The student IP release could be included with university admissions and enrollment documents.

Finally, there are numerous references to automated plagiarism detection systems in the literature. TurnItIn is one such system. These systems alone will not, and cannot, help resolve the problems discussed above. On the contrary, these systems would simply exacerbate the problem by creating more infringements, i.e., use of student works without proper authorization.

VIII. REFERENCES


