

12 March 2026

BSA COMMENTS ON THE DRAFT DECREE FOR THE IMPLEMENTATION OF THE INTELLECTUAL PROPERTY LAW ON COPYRIGHT AND RELATED RIGHTS

Respectfully to: The Copyright Office of Vietnam, the Ministry of Justice, and Government Office

On behalf of the Business Software Alliance (**BSA**),¹ I wish to take this opportunity to provide our policy recommendations relating to Vietnam’s ongoing review of the draft decree that amends and supplements the Government’s Decree No. 17/2023/ND-CP for the implementation of the Intellectual Property Law on copyright and related rights (**Draft Decree**).² BSA is the global trade association of the enterprise software industry. Our members are leaders in artificial intelligence (**AI**), cybersecurity, cloud computing, and other cutting-edge technologies. Over the years, we have actively engaged with various government agencies on technology regulations. BSA most recently commented on the draft Law on Artificial Intelligence (**AI Law**),³ the Draft Digital Technology Industry Law in September 2024,⁴ and April 2025.⁵

As AI technology continues to evolve, it is important to consider the role of copyright law in both encouraging innovation and protecting the rights of creators. We attach [BSA’s Position Paper on AI and Copyright Policy](#)⁶ which provides policy recommendations on responsible AI training and protecting the rights of artists and copyright holders, consensus-based technical mechanisms to respect copyright holder preferences on AI training, remedies if AI-generated works infringe, and copyright protection for users of AI systems.

Our comments and recommendations below are designed to assist the Government of Vietnam to refine the Draft Decree in a manner that is practical, aligned with internationally recognized best practices, safeguards the various stakeholders in the AI ecosystem, and fosters the growth of a vibrant and innovative digital economy. BSA’s recommendations are intended to ensure that Vietnam remains an attractive jurisdiction for AI development and deployment. We urge Vietnam to avoid introducing the proposed restrictions found in the Draft Decree on the operation of the statutory exception for collecting and using

¹ BSA’s members include: Adobe, Alteryx, Amazon Web Services, Asana, Atlassian, Autodesk, Avalara, Bentley Systems, Box, Cisco, Cloudflare, Cohere, Cohesity, Dassault Systemes, Databricks, Docusign, Dropbox, Elastic, EY, Graphisoft, HubSpot, IBM, Informatica, Kyndryl, MathWorks, Microsoft, Notion, Okta, OpenAI, Oracle, PagerDuty, Palo Alto Networks, PTC, Rubrik, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Trend Micro, TriNet, Workday, Zendesk, and Zoom Communications Inc.

² We refer to Draft 3 submitted for appraisal, dated 26 February 2026.

³ BSA Comments on the Draft Law on Artificial Intelligence, 20 October 2025, <https://www.bsa.org/policy-filings/vietnam-bsa-comments-on-the-draft-law-on-artificial-intelligence>

⁴ BSA Comments on Draft Digital Technology Industry Law, 4 September 2025, <https://www.bsa.org/policy-filings/vietnam-bsa-comments-on-draft-digital-technology-industry-law>

⁵ BSA Comments on the Draft Digital Technology Industry Law (Version Dated 22 March 2025), 28 April 2025, <https://www.bsa.org/policy-filings/vietnam-bsa-comments-on-the-draft-digital-technology-industry-law-version-dated-22-march-2025>

⁶ BSA’s Position Paper on AI and Copyright Policy, 30 May 2025, <https://www.bsa.org/policy-filings/global-artificial-intelligence-and-copyright-policy>

publicly available data for AI training. Ensuring that such an exception is clear, unencumbered by unhelpful or unnecessary limitations, will enhance the perception of Vietnam as an attractive jurisdiction for AI development or deployment.

On the Consultation Period

The consultation period for the Draft Decree was open from 3–8 February 2026, coinciding with the public consultation period of the implementing decree and Prime Minister’s decision of the AI Law. While we appreciate the Government of Vietnam’s commitment to public consultation on the Draft Decree, a six-day consultation period spanning the weekend is insufficient for meaningful stakeholder feedback. We respectfully recommend providing a longer consultation period to enable proper engagement to meaningfully incorporate industry perspectives. Maintaining active dialogue with the private sector will ensure well-informed, effective regulations that both safeguard copyright holders and AI businesses and support the growth of Vietnam’s digital economy.

Preliminary Recommendations

We offer preliminary recommendations below and welcome the chance to further discuss these issues.

- **Do not limit the Text-and-data mining (TDM) exception to non-commercial use:** Article 37a.2.a) limits the TDM exception to non-commercial purposes. However, this is inconsistent with the Amended Intellectual Property (IP) Law, which allows organizations and individuals use of lawfully accessible works for AI training, provided such use does not unreasonably prejudice rights holders. We recommend amending the Draft Decree to be in line with the amended IP Law and to eliminate the limitation of the TDM exception to non-commercial uses.
 - 37a.2.a) “The use is only for the purpose of scientific research, testing and training of artificial intelligence systems **and not for commercial purposes;**”
- **Eliminate the requirement that the “output” of the AI system does not compete with the rights holders.** Article 37a.2.c) requires that training data may not be used if “the output of the artificial intelligence system does not replace the consumption market or the normal exploitation and related rights objects, and does not create unfair competition for the exploitation and use of copyright and related rights objects.” Conflating the relationship between the “input”, e.g., the training data, and the “output”, e.g., the content generated by an AI system in response to user prompts, is a common mistake among policy makers. But because any particular content used for training is combined with a vast set of other training data, “tokenized”, and analyzed for factual and statistical patterns that are not, in themselves, copyrightable, the training data has no legal or factual relevance to any particular output. Furthermore, entities involved in collecting and using training data for model development have little to no control over how end users direct the model’s outputs. Determining whether the interests of rights holders is affected is rightfully assessed by evaluating the “output” of a generative AI system on its own terms. More specifically, such outputs should be analyzed when they bear sufficient similarity to a copyrighted work to raise questions of infringement. When outputs infringe on copyright, liability for copyright infringement properly attaches under Vietnam’s existing copyright law. Please see [BSA’s Position Paper on AI and Copyright Policy](#) for more information. We recommend eliminating the section c) of Article 37a.2 altogether.

- **Remove impractical prohibition against collecting training data from “illegal sources”:** Article 37a.1.b) requires lawful access to training data and prohibits collection from “illegal sources”. BSA members avoid collecting publicly available information from websites that have been determined (e.g., by a court) to be making available infringing content without the rightsholders’ authorization. However, absent such a court determination, it is often impossible or difficult to know the legal terms under which a website offers access to publicly available content. Contractual terms for licensing such content are typically private and confidential, and thus not publicly available. For these reasons, we recommend removing the legal prohibition in Article 37a.1.b) of collecting training data from “illegal sources” and instead encourage “organizations and individuals” to avoid collecting training data from such sources.
 - Article 37a.1.b) “It is accessed through lawful acts; **and** is not restricted from use under Article 37b of this Decree **and is not collected from illegal sources;**
- **Remove the prohibition on transferring training data or training data processing results without right holders’ consent:** Article 37a.2.d) prohibits transferring training data to third parties for commercial use without the consent of rights holders. This obligation places a substantial burden on AI businesses to obtain consent from each right holder to transfer training data or training data processing results. This obligation also conflicts with existing doctrines of first sale under the copyright law. The obligation is akin to prohibiting a person from reselling a book that the person acquired legally. Such heightened restrictions would override longstanding legal doctrines under Vietnam’s copyright law. If anything, such heightened restrictions are even more improper in the AI training context, given that the collection and use, including transfer, of training data is not for the expressive content of the underlying training data, but to analyze such data to identify and evaluate non-copyrightable factual and statistical information contained within vast collections of training data.
- **Opt out mechanism from AI training should require a machine-readable standard:** Article 37b allows right holders to use any method to communicate a reservation of rights rather than a strictly machine-readable standard. This obligation will simply be unworkable at scale and will undermine Vietnam’s attractiveness as a jurisdiction for AI training. The Decree should require rightsholders who wish to communicate their preferences to use a widely used, internationally accepted, machine-readable format to allow AI developers to understand the preferences of the rights holders. We specifically urge Vietnam to refer to voluntary, industry-led standards for such opt-out mechanisms, such as the Robots.txt standard.
 - Article 37b “...The reservation must be clearly stated, using a widely used, internationally accepted, machine-readable format ensuring that organizations and individuals using it can be reasonably identified, ~~unless otherwise agreed by the parties.~~”

Conclusion

We thank the Copyright Office of Vietnam, the Ministry of Justice, and Government Office for considering our comments on the Draft Decree and hope that you will positively consider our recommendations. We urge the Government of Vietnam to continue to engage in dialogue with the private sector and to consider extending the timeline for consultation and the promulgation of the Draft Decree. We are available for a meeting to discuss our feedback further; please do not hesitate to contact me at waisanw@bsa.org if you require any clarification or further information. Thank you once more for your time and consideration.

Sincerely,

Wong Wai San
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