

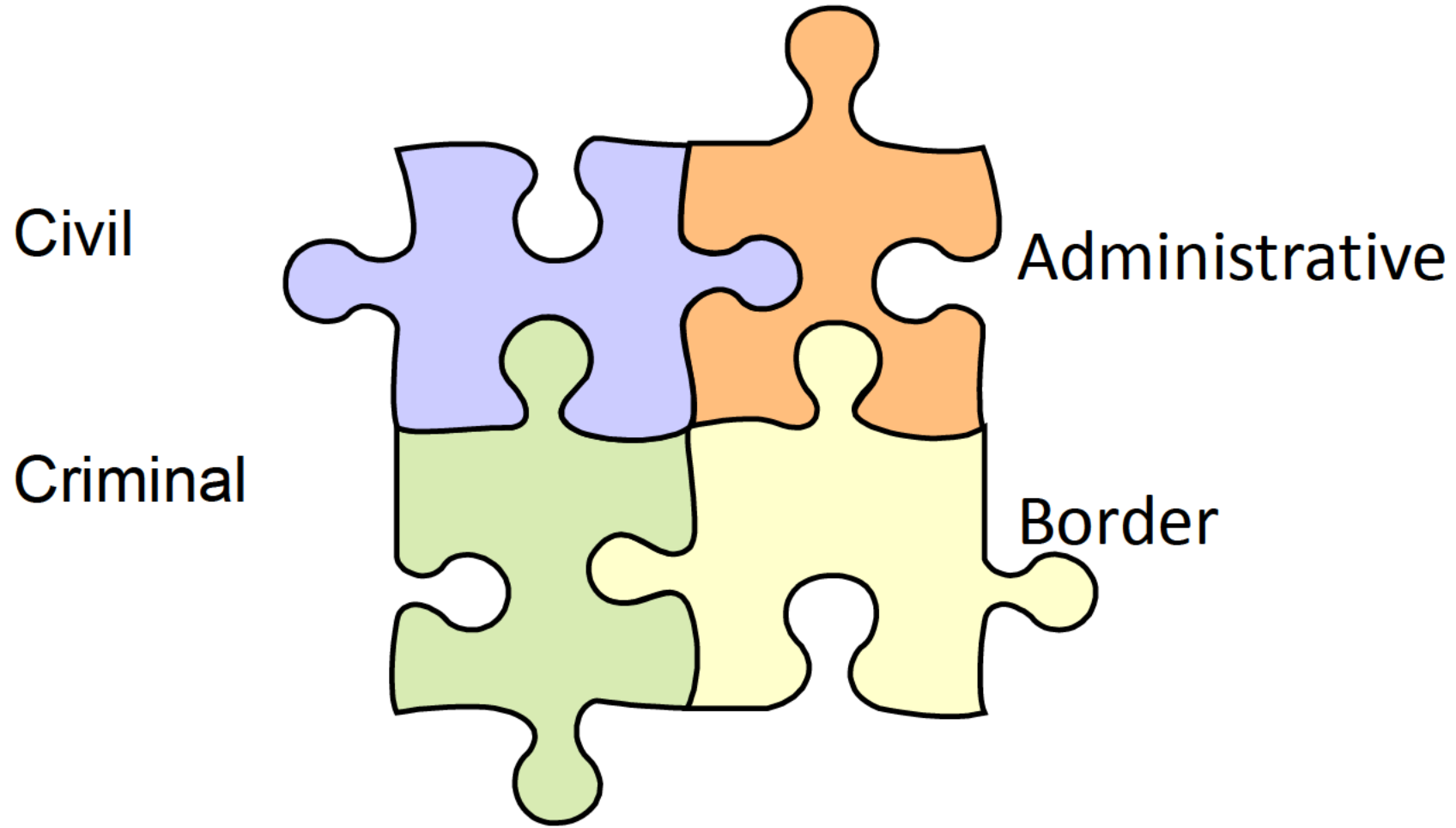


ADMINISTRATIVE ENFORCEMENT AGAINST COUNTERFEIT GOODS

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IPR ENFORCEMENT MEASURES



APPLICABLE CASES

- ❑ Administrative measures applicable to handling the following acts of infringing upon intellectual property rights (Art. 211 of Vietnam IP Law):
 - ✓ Infringements of intellectual property rights which cause damage to authors, owners, consumers or to society;
 - ✓ Producing, importing, transporting or trading in intellectual property counterfeit goods or assigning others to do so;
 - ✓ Producing, importing, transporting or trading, possessing stamps, labels or other articles bearing counterfeit trademarks or geographical indications, or assigning others to do so.
- ❑ Agencies competent to handle administrative violations: People's Committees; economic police; market surveillance agency; custom agency; and specialized inspectorates (including science and technology inspectorate, culture, sport and tourism inspectorate, information and communication inspectorate).

COMPETENCE

Inspectorate of the Ministry of Science and Technology:

- ✓ Competent to handle and impose administrative sanctions for all acts of infringing upon industrial property rights;
- ✓ Typical infringements: infringement of rights to patents, industrial designs, unfair competition (especially cases related to domain names), trade names, enterprise names.

COMPETENCE

Inspectorate of the Ministry of Culture, Sports and Tourism

✓ Acts of infringing upon copyright and related rights;

✓ Advertisements infringing upon intellectual property rights.

Inspectorate of the Ministry of Information and Communications

Unfair competition related to domain names.

COMPETENCE

Market surveillance agency

(i) Violations in trading and transporting goods bearing signs of infringing upon trademarks, geographical indications, trade names, industrial designs and counterfeit goods of trademarks and geographical indications;

(ii) Acts of unfair competition in industrial property;

(iii) Violations at production facility for counterfeit goods of trademarks and geographical indications and for goods bearing signs of infringing upon trademarks, geographical indications, trade names or industrial designs if in the process of handling violations, the manufacturer of such goods is identified.

COMPETENCE

❑ **Economic police**

✓ Detect, verify, collect information and evidences of industrial property rights infringements and provide them to other IPR enforcement agencies;

✓ Handling:

(i) Violations of regulations on sealing and temporary seizure of material evidences and means of violation during inspection and examination;

(ii) Manufacture, import, trade, transport, store for sale of counterfeit goods and stamps, labels and articles bearing counterfeit trademarks and geographical indications.

COMPETENCE

□ Provincial and district People's Committees

Handling and imposing administrative sanctions for acts of infringing upon intellectual property rights in the locality.

MAJOR PENALTIES

- ❑ Warnings and fines
- ❑ The maximum fine applicable for violating organizations is five hundred million Vietnam Dong (500,000,000 Dong) and that for violating individuals is two hundred and fifty million Vietnam Dong (250,000,000 Dong).

SUPPLEMENTARY PENALTIES

- ❑ Confiscation of counterfeit goods, raw materials, materials and means used mainly for producing and trading of counterfeit goods;
- ❑ Suspension of business activities in the field in which the violation is constituted for a certain period of time.

REMEDIAL MEASURES

- ❑ Forcible destruction or distribution or bringing into use without commercial purpose for counterfeit goods provided such act does not affect the exercise of the industrial property rights by their holders;
- ❑ Forcible bringing out of the Vietnamese territory for transit goods infringing upon industrial property rights or forcible re-export for counterfeit goods, imported means, raw materials and materials used mainly for producing or trading of these goods after infringing elements on these goods are removed.

Preventive measures to secure enforcement of administrative penalties

Temporary detention of persons; Temporary custody of infringing goods, material evidence and means; Body searches; Searches of means of transport and objects; searches of places where infringing goods, material evidence and facilities are hidden.

ADVANTAGES & DISADVANTAGES OF ADMINISTRATIVE MEASURES

ADVANTAGES

- Time and money saving
- Quickly put an end to the violation
- Serves as a basis for more effective judicial measures

DISADVANTAGES

- Low effective in deterrence and prevention
- Right holders are not entitled to compensation

TENDENCY

- ❑ Administrative measures continue to be applied; shifting to judicial processing – Courts, civil and criminal (Amending Law on Intellectual Property, National Strategy of Intellectual Property to 2030)
- ❑ Promote coordination between agencies: administrative handling agency - administrative handling agency; administrative handling agency – judicial handling agency (Program 168)

CONTACT INFORMATION

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