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# Division of Intellectual Property in Divorce: Comparation of Cases in the World and Recommendations for Vietnam

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## ABSTRACT

*This article contributes to the existing literature by clarifying the conceptual distinction between intellectual property ownership rights and the allocation of economic benefits derived therefrom upon divorce, a distinction that remains insufficiently developed in Vietnamese law. The analysis is examined through a comparative international perspective, and focuses exclusively on the statutory marital property regime. The article explores the treatment of intellectual property in divorce through a comparative analysis of two representative cases in New Zealand and in the Republic of Korea. These cases illustrate the contrasting approaches adopted by common law and civil law systems toward intellectual property created or exploited during marriage. As a civil law jurisdiction, Vietnam currently lacks a clear legal framework on the classification, valuation, and division of intellectual property in divorce, resulting in inconsistent judicial outcomes. By comparing these two models, the article identifies lessons relevant to Vietnam and proposes targeted reforms, including clearer differentiation between ownership rights and economic interests, contribution-based division mechanisms, and more practical valuation guidelines for intellectual property rights, such as copyright and trademark in divorce proceedings.*

**Keywords:** intellectual property in divorce, marital property division, family law, copyright, trademark

## I. INTRODUCTION

### (A) Concept of Intellectual Property:

Intellectual property rights are essentially a form of property. Accordingly, intellectual property (IP), as a property, is widely regulated in many countries. Under the TRIPS Agreement, intellectual property rights are defined as “*the rights of one or more persons over the products of their intellectual creation.*” Within the European Union, intellectual property is recognized as intangible assets arising from creative activities of the human intellect. It encompasses two

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main categories: (1) industrial property, such as patents for new inventions, trademarks, industrial designs and models, as well as service marks and protected geographical indications; and (2) copyright and related rights, including music, literature, painting, and sculpture.<sup>4</sup> In Japan, the Basic Act on Intellectual Property defines the term "*intellectual property*" as inventions, devices, new plant varieties, designs, works of authorship, and other assets created through human creative activity (including discoveries and solutions to natural laws that are industrially applicable), trademarks, trade names, and other signs used to indicate goods or services in business, as well as trade secrets and other technical or commercial information useful for business activities.<sup>5</sup>

Generally, intellectual property as the subject matter of intellectual property rights is not defined in an abstract or comprehensive manner in most national legal systems; instead, it is typically addressed in an approach consisting of listing specific protected subject matters. As a result, it is particularly difficult to provide a precise definition of intellectual property, as most existing definitions merely list examples of intellectual property rights or the subject matters of such rights, rather than identifying the essential elements that constitute intellectual property. Countries enact laws to protect intellectual property rights for various reasons, among which two principal justifications stand out: First, such laws aim to legally recognize the moral and economic rights of authors over their works, as well as the rights of the public to access those works. Second, they seek to promote creativity, as well as the dissemination and application of its results, as a deliberate public policy objective, while encouraging fair commercial practices, thereby contributing to economic and social development.<sup>6</sup>

Accordingly, it may be affirmed that intellectual property constitutes property created by human intellectual activity, manifested in a specific legally recognizable form of expression, and capable of offering both economic and moral benefits upon its owner. Under Vietnamese law, intellectual property (IP) is recognized as a form of intangible property and constitutes an important category of civil rights. IP rights encompass both moral rights and economic rights, which arise either upon the creation of the intellectual asset or upon its registration, depending on the subject matter. The Law on Intellectual Property of 2005 defines IP rights as the rights

<sup>4</sup> European Union. (n.d.). *Intellectual Property*. EUR-Lex. Retrieved December 29, 2025, from <https://eur-lex.europa.eu/EN/legal-content/glossary/intellectual-property.html>

<sup>5</sup> World Intellectual Property Organization. (2002). *Intellectual Property Basic Act (Act No. 122 of December 4, 2002)*, Japan. WIPO Lex. Retrieved December 29, 2025, from <https://www.wipo.int/wipolex/en/legislation/details/2664/english-text/>

<sup>6</sup> World Intellectual Property Organization. (2004). *WIPO intellectual property handbook: Policy, law and use* (WIPO Publication No. 489 (E)). Geneva: World Intellectual Property Organization. Retrieved December 29, 2025, from [https://tind.wipo.int/files/wipo\\_pub\\_489.pdf](https://tind.wipo.int/files/wipo_pub_489.pdf)

of organizations and individuals to intellectual assets, including copyright and related rights, industrial property rights, and rights to plant varieties (Article 4(1)). The division of intellectual property in divorce involves determining whether the moral rights, economic rights and assets derived from the exploitation of economic rights constitute common or separate property.

In the context of marriage, the classification of IP as common or separate property requires careful consideration of the nature of the rights involved and the timing of their formation whether before marriage, during the marriage, or upon its termination. Vietnamese law distinguishes clearly between moral rights, which are inherently personal and constitute separate property, and economic rights, which may give rise to shared financial interests. While economic rights over IP created during marriage are generally classified as the separate property of the creating spouse, income derived from the exploitation of such rights during the marriage is treated as common property. This legal framework forms the basis for addressing intellectual property issues in marital property relations and divorce proceedings.

### **(B) Characteristics of Intellectual Property:**

*First*, intellectual property does not possess a physical form; it is intangible and non-material in nature. This constitutes a fundamental distinction between intellectual property and tangible property. As a result, its existence cannot be perceived through ordinary human senses; rather, it exists in the form of information and knowledge embodying human's knowledge of nature, society, and humanity. Each object of intellectual property may exist independently, be distinguishable from other objects, and be manifested through specific material media such as language, drawings, photographs,... and different forms of expression.

*Second*, intellectual property may be used independently by multiple subjects in different spaces and at different times. Due to its intangible nature, intellectual property is easily disseminated and is not confined to a single physical location. Multiple users may simultaneously exploit the same intellectual property, and such concurrent use may either interfere with or have no impact on one another's use.

*Third*, intellectual property can be valued in monetary terms and traded, thereby enabling creators to generate income through the transfer of intellectual property rights to other individuals or organizations. For example, holders of intellectual property can earn income by selling or granting rights to use an IP for other subjects.

*Lastly*, intellectual property constitutes an asset of significant economic value. Especially with companies, intellectual property provides some competitive advantages, which could enhance brand prestige, and contributes to global trade. Enterprises leverage intellectual property as a

strategic asset, generating revenue streams through licensing, commercialization, sale, or strategic partnerships.<sup>7</sup>

## II. OVERVIEW OF THE DIVISION OF PROPERTY IN DIVORCE ACCORDING TO VIETNAMESE LAW

### (A) Concept of the division of property in divorce

The division of spousal property that constitutes objects of intellectual property rights refers to the principled, equitable, and equal allocation of the portion of property that each spouse shall own, based on the common marital property accumulated during the subsistence of the marriage. Under current Vietnamese law, legislators recognize two matrimonial property regimes, namely the statutory property regime and the agreed property regime (which must be established prior to marriage). Spouses are granted full autonomy to choose the property regime that best corresponds to their intentions and needs.

Under the statutory property regime, marital property is classified into two categories: common property and separate property. Common property is understood as property formed during the marriage, irrespective of each spouse's contribution, or property agreed by the spouses to be common property. Accordingly, the common property of spouses includes: (i) property created by either spouse, income from labor, production and business activities, fruits and profits arising from separate property, and other lawful income generated during the marriage; (ii) property jointly inherited or jointly gifted to the spouses, as well as other property agreed by the spouses to be common property; and (iii) land use rights acquired by either spouse after marriage, except in cases where such rights are separately inherited, separately gifted, or acquired through transactions funded by separate property (Law on Marriage and Family of Vietnam 2014, Art. 33).

Meanwhile, separate property may be established either before or during the marriage, depending on the time and method by which such property is formed. The law provides that the separate property of a spouse includes: (i) property owned by each spouse prior to marriage; (ii) property separately inherited or separately gifted during the marriage; (iii) property allocated separately to a spouse in cases of division of common property during the marriage; and (iv) property serving the essential needs of a spouse and other property that, pursuant to law, belongs to the separate ownership of the spouse (Law on Marriage and Family of Vietnam 2014, Art. 43). The term "other property" is further specified in Article 11 of Decree No. 126/2014/NĐ-

<sup>7</sup> The Legal School. (n.d.). *Nature of intellectual property: Meaning, characteristics & types*. The Legal School. Retrieved Dec. 22, 2025. From: <https://thelegalschool.in/blog/nature-of-intellectual-property>

CP, which enumerates three categories, including “property rights in respect of objects of intellectual property in accordance with intellectual property law.”

### **(B) Principles of the division of property in case of divorce**

The division of spouses' common property upon divorce constitutes one of the most important issues in divorce proceedings, as it directly affects the material interests claimed by the parties. The Law on Marriage and Family of 2014 provides that the settlement of property upon divorce shall be based primarily on the agreement of the spouses; where no agreement can be reached, the court shall resolve the matter by dividing the common property equally between the husband and wife, while also taking into consideration other relevant factors, including:

- (i) the circumstances of the family and of each spouse;
- (ii) the contribution of each spouse to the creation, maintenance, and development of the common property;
- (iii) the protection of the legitimate interests of each spouse in production, business activities, and professional pursuits, so as to enable them to continue working and generating income; and
- (iv) the fault of each spouse in violating the rights and obligations of spouses (Article 59(2)).

In addition, the law simultaneously recognizes the principles of “prioritizing the protection of conditions for professional activities and production or business operations” and “giving priority to division in kind” (Article 59(3) of the Law on Marriage and Family 2014).

Furthermore, under the principles governing the division of property upon divorce, Vietnamese law distinguishes between separate and common property based on ownership and contribution. Article 11 of Decree No. 126/2014/ND-CP classifies intellectual property rights as the separate property of the spouse who directly creates the work, granting that spouse full moral and economic rights, while the other spouse is entitled only to income generated during the marriage. This approach, however, may undermine fairness in divorce, as it insufficiently accounts for indirect contributions by the non-creating spouse. Such treatment appears inconsistent with Point b, Clause 4, Article 7 of Joint Circular No. 01/2016/TTLT-TANDTC-VKSNDTC-BTP, which recognizes unpaid domestic labor as a contribution equivalent to income-generating labor. This tension highlights a lack of coherence in applying the principle of equitable contribution in the division of intellectual property upon divorce.

## **III. VIETNAMESE LEGAL PRACTICE**

The legal framework governing the division of marital property upon divorce in case of intellectual property, although attempted to regulate this issue, still reveals numerous

shortcomings that require further supplementation and improvement.

*First*, Article 11 of Decree No. 126/2014/ND-CP stipulates that: "Property rights in respect of intellectual property objects in accordance with intellectual property law constitute the separate property of the husband or wife." Accordingly, if one spouse directly creates an intellectual property asset, that spouse has full moral rights and property rights over the work created, while the other spouse is only entitled to the income generated from such property during the marriage. In cases where marital conflicts lead to divorce, this approach may result in the interests of the spouse who did not directly participate in the creation of the intellectual work being insufficiently protected, even though that spouse may have made certain contributions to the creation of the work. This appears to be inconsistent with Point b, Clause 4, Article 7 of Joint Circular No. 01/2016/TTLT-TANDTC-VKSNDTC-BTP, which provides that "a wife or husband who stays at home to take care of children and the family without engaging in paid employment shall be considered as contributing labor with an income equivalent to that of the spouse who is employed." This provision recognizes domestic labor as a form of contribution to the formation of property.

*Second*, from the perspective of marriage and family law, a marriage is established on the basis of the mutual consent of both spouses. During the period of marriage, both spouses are expected to fulfill their rights and obligations to the fullest extent of their abilities in order to ensure family life. In reality, spouses usually maintain a close and intimate relationship and are willing to create favorable conditions for the other to pursue his or her professional activities. Therefore, the rule of "intellectual property" being a separate property of one spouse appears questionable, given that marriage is the result of the joint efforts and mutual support of both. Even if one spouse does not directly create the intellectual work, that spouse may still have contributed labor, care, and support that facilitated the creation of the work. As such, their interests deserve legal protection. This concern becomes particularly acute in situations where the "income derived from such separate property is the sole source of livelihood of the family." In the event of divorce, the spouse who did not directly participate in the creation of the work would not be entitled to property rights arising from the intellectual property during the marriage, potentially leading to economic hardship and instability in maintaining and rebuilding their life after divorce.

*Third*, the factors relevant to the division of marital property such as "the contribution of each spouse to the creation, maintenance, and development of the common property" and "the fault of each party in violating the rights and obligations of spouses" - remain vague and insufficiently specified. As a result, judicial decisions or determinations by competent

authorities may vary significantly, depending on the perceptions and reasoning of individual adjudicators. This lack of clarity may lead to inconsistent rulings among judges and create difficulties in ensuring a persuasive, fair, and equitable division of marital property.

#### IV. COMPARISON OF CASES IN THE WORLD AND LESSONS FOR VIETNAM

##### 1. *The first case: New Zealand 'Alalääkkölä v Palmer [2025] NZSC 9'*

In New Zealand, under the Property (Relationships) Act 1976 (PRA), intellectual property created during a marriage, including copyright in artistic works, can be considered relationship property. The PRA defines “property” broadly, encompassing intangible assets, interests, and other property rights, making copyright suitable to be treated as relationship property if created during the marriage<sup>8</sup>. This principle was clearly affirmed in the case of *Alalääkkölä v Palmer [2025] NZSC 9*, a landmark decision of the New Zealand Supreme Court<sup>9</sup>.

In this case, Sirpa Alalääkkölä, an artist, and Paul Palmer were married in 1997 and separated in 2017. During the marriage, Ms. Alalääkkölä created numerous artistic works, which became the family’s primary source of income. While the physical artworks were clearly considered marital property, the legal debate focused on the copyrights attached to these works.

Although the material (tangible) form of the works (the physical copies) was clearly regarded as relationship property, the legal controversy centred on the copyright subsisting in those works. The key issue was whether the proprietary rights (copyright) attached to that property constituted relationship property under the Property (Relationships) Act (PRA). Accordingly, through the course of the proceedings, the Family Court initially determined that copyright constituted separate property. Subsequently, both the High Court and the Court of Appeal overturned this view, holding that copyright should be characterised as relationship property. Ultimately, the Supreme Court reaffirmed the conclusion of the Court of Appeal and, in addition, articulated an important legal principle<sup>10</sup>.

<sup>8</sup> Section 8, Property (Relationships) Act 1976, New Zealand — “Relationship property defined”: “Relationship property shall consist of ... (e) subject to sections 9(2) to (6), 9A, and 10, all property acquired by either spouse ... after their marriage ... began; ... (l) any income and gains derived from, the proceeds of any disposition of, and any increase in the value of, any property described in paragraphs (a) to (k).”

<sup>9</sup> More at: <https://www.courtsrnz.govt.nz/assets/cases/2025/MR-2025-NZSC-9.pdf>

<sup>10</sup> Media release, Background: “The Family Court determined the copyrights in the artworks were the appellant’s separate property. The High Court disagreed, finding the copyrights to be relationship property. The Court of Appeal agreed with the High Court and determined that while the respondent should receive compensation for their value, the copyrights should be retained by the appellant. The respondent now accepts that this should be the case. However, the appellant was granted leave to appeal to the Supreme Court. The approved question was whether the Court of Appeal was correct in determining two questions of law: whether the copyrights are “property” for purposes of the PRA and, if so, how they should be classified under the PRA. The Court also sought submissions as to what orders should be made as a consequence of its answers to the two questions of law.” <https://www.courtsrnz.govt.nz/assets/cases/2025/MR-2025-NZSC-9.pdf>

The Supreme Court held that copyright constitutes property under the PRA, and therefore can be classified as relationship property, regardless of whether the artist possessed the underlying skills or personal attributes prior to the marriage. The Court emphasized that although the moral rights of the author remain personal and non-transferable, the economic rights associated with copyright can be valued, offset, or divided during the division of relationship property. The creation of works during the marriage is treated as an “acquisition” under the PRA, and the artist’s creative effort, intertwined with the marital context including both spouses’ indirect contributions supports classifying the copyright as relationship property <sup>11</sup>.

The decision in *Alalääkkölä v Palmer* reinforced the principle that intangible property, such as copyright, if created during the marriage, is considered relationship property and may be divided or offset under the PRA. This ruling highlights the economic significance of intellectual property and ensures the principle of equitable sharing of marital assets while still protecting the creator’s control and moral rights over their work.

In all, New Zealand, under the Property (Relationships) Act 1976 (PRA), copyright is considered relationship property if created during the marriage, regardless of whether the creator possessed the underlying skills before the relationship. The PRA defines property broadly, including intangible assets, and the creation of a work is regarded as an “acquisition” during the marriage. The New Zealand Supreme Court emphasized that both direct and indirect contributions by the spouses to the circumstances enabling the creation of the work are relevant in determining relationship property, while the creator’s moral rights remain protected. New Zealand’s ruling does not separately exclude post-divorce income; the focus is on the economic rights of the copyright as relationship property at the time of creation.

## ***2. The second case: Case No. 2022 Na 2367 before the Intellectual Property High Court of the Republic of Korea [2023]***

Case No. 2022 Na 2367 before the Korean Intellectual Property High Court (2023) concerns a

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<sup>11</sup> Press release, Supreme Court decision “Can copyright be relationship property under the PRA? The Court held that copyright could be property “acquired” during a marriage and therefore relationship property under s 8(1)(e) of the PRA. In ordinary usage, “acquire” can mean “to get or obtain by any means”, which is a meaning wide enough to include things made or created by the owner. The PRA also appeared to use “acquired” in a broad sense, consistent with its expansive definition of property, to include property “created” during the relationship. Finally, copyright is a bundle of rights, each of which can naturally be said to have been acquired when a work is created (at [39]–[42]).

The author’s personal attributes and skills are not property, but their use during the relationship to create an artefact is. As a matter of fact, the use of those attributes and skills may be the product not only of the author’s personality and skills but also the division of effort within the marriage. That was true in this case: the appellant worked as an artist to earn income for the family. The artworks, and the copyrights in them, must be brought into account in the relationship property settlement (at [43]–[44]).” <https://www.courtsfnz.govt.nz/assets/cases/2025/MR-2025-NZSC-9.pdf>

trademark dispute arising after divorce. Although Case No. 2022 Na 2367 has not been officially published as a full judgment, it was disclosed and discussed at the 2023 WIPO Intellectual Property Judges Forum, reflecting judicial reasoning of the Korean Intellectual Property High Court and providing valuable insight into Korean judicial practice.<sup>12</sup> This case illustrates how Korean courts approach intellectual property disputes arising in the aftermath of marriage, particularly emphasizing a clear doctrinal separation between marital relations and intellectual property ownership.

During the marriage, the plaintiff and the defendant jointly operated a retail business using a trademark registered in the plaintiff's name. After their divorce, the plaintiff brought trademark infringement proceedings, alleging that the defendant continued to use the registered trademark without authorization. The defendant contended that she was the original creator and user of the mark and that the plaintiff had unilaterally registered it without her consent. At first instance, the Seoul Central District Court held that the defendant had consented to the transfer of all trademark rights to the plaintiff prior to registration, thereby confirming the plaintiff's lawful ownership. The court granted injunctive relief and awarded damages of approximately USD 40,000. On appeal, the Intellectual Property High Court referred the case to court-appointed mediation. As no voluntary settlement was reached, the court issued a Decision in Lieu of Mediation, prohibiting further use of the trademark and ordering the defendant to pay KRW 80 million (approximately USD 61,000). The decision became final and binding after neither party filed an appeal.

From a broader legal perspective, this case exemplifies the Korean judiciary's distinctive approach to disputes located at the intersection of marriage and intellectual property. Notably, the court refrained from treating the trademark as an object of marital property division, even though it had been exploited during the marriage and contributed to the couple's joint economic activities. Instead, once the marital relationship had ended, the dispute was recharacterized as a pure trademark infringement matter, governed strictly by intellectual property law.

This approach reflects a strong doctrinal commitment to the autonomy of intellectual property law within the Korean legal system. The court emphasized that, notwithstanding the economic value of intellectual property and its factual connection to marital assets, legal ownership must be determined in accordance with the specific statutory requirements of trademark law, particularly the registration principle. Marital considerations, such as joint business operation

<sup>12</sup> See further at: WIPO Intellectual Property Judges Forum 2023, available at <https://www.wipo.int/meetings/en/2023/judgesforum2023.html> (accessed 29 December 2025).

or spousal contribution in case of trademark ownership, were not permitted to override or dilute these legal standards.

At the same time, the court did not entirely disregard the marital context. Factors such as each party's contribution during the marriage and the existence of any prior agreement between the spouses were considered as background circumstances to clarify intent and the factual basis of ownership. However, these elements functioned only as contextual support, not as independent grounds for reallocating intellectual property rights.

Overall, the case demonstrates a nuanced and pragmatic Korean judicial approach: while acknowledging the complex realities of post-divorce disputes involving intellectual property, the courts maintain a clear separation between family law and intellectual property law. This separation serves to enhance legal certainty, prevent excessive conflict in asset division, and ensure that intellectual property rights are enforced consistently with their specialized legal framework.

### ***3. Comparative approaches to Intellectual Property in marital relations***

New Zealand, operating within the common law legal tradition, places significant weight on judicial interpretation and precedent in clarifying statutory concepts. Under the Property (Relationships) Act 1976 (PRA), the notion of "property" is defined broadly and functionally, expressly encompassing intangible assets. As affirmed in *Alalääkkölä v Palmer* [2025] NZSC 9, intellectual property, specifically copyright created during the marriage, may constitute relationship property subject to division. The Supreme Court's reasoning reflects a distinctive feature of the common law approach: a strong emphasis on economic substance, fairness, and the social realities of marital life. Rather than focusing solely on formal ownership or the personal attributes of the creator, the Court recognized that intellectual property formed during the marriage is the result of both direct and indirect spousal contributions. At the same time, the Court preserved the creator's moral rights, thereby achieving a balanced reconciliation between family law objectives and intellectual property protection.

By contrast, the Republic of Korea despite also facing disputes arising from marital contexts adopts a markedly different approach rooted in its civil law tradition. In Case No. 2022 Na 2367, the Korean Intellectual Property High Court deliberately separated marital relations from intellectual property ownership. Once the marital relationship had terminated, the dispute was reclassified as a pure trademark infringement case, governed strictly by trademark law principles, particularly the registration doctrine. Although the court acknowledged the factual background of joint business operations during the marriage, such considerations were treated

merely as contextual elements rather than decisive legal grounds. Ownership of the trademark was determined exclusively according to intellectual property law, thereby reinforcing legal certainty and the autonomy of specialized legal regimes.

#### ***4. Implications for Vietnam's Legal System***

Vietnam, as a civil law jurisdiction, occupies an intermediate position between these two models. The Law on Marriage and Family 2014 recognizes intellectual property rights as assets and, in principle, allows them to form part of marital property. However, Vietnamese law remains underdeveloped in providing concrete rules on how intellectual property, particularly intangible rights, should be classified, valued, and divided upon divorce. In judicial practice, courts frequently encounter difficulties in determining whether intellectual property constitutes common or separate property, how to address income generated during and after marriage, and how to reconcile family law principles with the technical requirements of intellectual property law. These challenges reveal both normative gaps and practical enforcement problems.

The comparative experience of New Zealand and Korea offers valuable guidance for Vietnam. The New Zealand model demonstrates the advantages of recognizing intellectual property as a divisible marital asset to ensure substantive fairness and protect the economic interests of both spouses. Meanwhile, the Korean approach highlights the importance of maintaining legal certainty, preventing excessive judicial discretion, and respecting the autonomy of intellectual property law.

For Vietnam, the optimal path does not lie in mechanically transplanting either model, but rather in selectively integrating their core insights. Vietnamese law should distinguish clearly between (i) ownership of intellectual property rights, which must comply with intellectual property legislation, and (ii) economic benefits arising from the exploitation of such rights, which may fall within the scope of marital property division.

### **V. SOME RECOMMENDATIONS TO IMPROVE VIETNAMESE LAW**

#### ***1. Clarifying Ownership of Intellectual Property Assets***

Vietnamese law should more clearly and transparently define ownership status with respect to intellectual property assets within marriage. Clear identification of ownership not only helps prevent disputes at the time of divorce but also provides a stable legal basis for post-divorce exploitation and enforcement.

From a practical standpoint, the law may encourage or, for certain categories of intellectual property, require spouses to establish written agreements regarding ownership at the time the

asset is created or during its commercial exploitation. In addition, where feasible, ownership information may be disclosed or registered with competent authorities in accordance with intellectual property law. These measures are realistic and consistent with Vietnam's existing administrative framework, particularly in areas such as copyright registration and trademark ownership.

## ***2. Refining the Classification of Common and Separate Property***

More detailed regulations are needed to distinguish between moral rights, property rights, and income derived from intellectual property. Drawing from comparative case law, moral rights are closely tied to the creator's personality and should generally be classified as separate property. By contrast, transferable property rights and income derived from exploitation may constitute common property if the intellectual property was created during the marriage. Rather than broadly categorizing "property rights over intellectual property objects" as separate property under Article 11 of Decree No. 126/2014/NĐ-CP, Vietnamese law should adopt a more nuanced approach based on the timing of creation and exploitation: *First*, where intellectual property is created before marriage but generates income during the marriage, the property right remains separate property, while income earned during the marriage should be considered common property. *Second*, where intellectual property is both created and exploited during the marriage, both the property rights and income derived therefrom should be treated as common property, regardless of which spouse directly created the asset. *Third*, where intellectual property is created during the marriage but generates income after divorce, post-divorce income should still be subject to consideration in property division, as both spouses contributed to the marital conditions enabling the asset's formation. These distinctions are not only doctrinally sound but also practically feasible, as they align with existing principles in Vietnamese marital property law.

## ***3. Improving Division Mechanisms Based on Contribution and Fault***

For disputes involving income from intellectual property exploitation, Vietnamese law should provide clearer mechanisms for division, grounded in Clause 2, Article 59 of the Law on Marriage and Family 2014. With respect to *contribution*, specific and objective criteria such as time, form, and degree of contribution should be established to guide courts in determining division ratios.<sup>13</sup> This approach is particularly important for protecting the interests of the economically weaker spouse, who may have contributed indirectly through household labor or

<sup>13</sup> Nguyễn Thị Hồng, "Determination and Division of Property upon Divorce: Certain Shortcomings and Recommendations," *Vietnam Lawyers Journal*, accessed on 14 November 2025. <https://lsvn.vn/xac-dinh-phan-chia-tai-san-khi-hon-mot-so-bat-cap-va-kien-nghi-a92860.html>

family support. Regarding *fault*, clearer standards should be introduced to assess its relevance and impact on property division. Fault should be considered primarily where it causes demonstrable material harm or plays a decisive role in the breakdown of the marriage, thereby reducing subjective and inconsistent judicial assessments.

#### **4. Establishing Guidelines for Valuation of Intellectual Property**

Finally, to enhance practical adjudication, Vietnam should develop specific guidelines for valuing intellectual property in divorce cases. These guidelines should take into account the time of creation, income generated during the marriage, market potential, and the extent of marital contribution to the asset's development and exploitation. The establishment of such valuation mechanisms would enable courts to handle disputes involving intellectual property more effectively, ensure that economically valuable intangible assets are properly reflected in marital property division, and promote consistency and fairness in judicial practice.

## **VI. CONCLUSION**

The division of intellectual property in divorce presents complex legal challenges due to the intangible nature, high economic value, and close connection between intellectual creation and personal contribution. Vietnam, as a civil law jurisdiction, currently lacks clear and detailed rules governing the classification, valuation, and division of intellectual property upon divorce. Drawing from international experiences, Vietnam should adopt a balanced approach: clearly distinguishing between ownership of intellectual property rights and economic benefits derived from their exploitation, refining criteria for determining common and separate property, and developing practical valuation and division mechanisms based on marital contribution. Such targeted reforms would enhance fairness, predictability, and consistency in divorce proceedings involving intellectual property, while maintaining coherence between family law and intellectual property law. Ultimately, improving the legal framework in this area would better protect the legitimate interests of spouses and reflect the economic realities of intellectual property in modern marital relationships.

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