
Introduction and Proceedings

Introduction

The “National Workshop for the Production and Utilisation of the Vietnamese Version of “Asian Copyright Handbook” was co-organised by the Asia/Pacific Cultural Centre for UNESCO (ACCU), Copyright Office of Viet Nam, Ministry of Culture and Information and Kim Dong Publishing House (KDPH) from 15 to 18 March 2005, at the Hotel Nikko in Hanoi, Viet Nam, in cooperation with Japan Copyright Office (JCO) of the Agency for Cultural Affairs and Viet Nam National Commission for UNESCO.

Prior to this workshop, ACCU, since its inception in 1971, has been promoting copyright among publishers and creators in Asia and the Pacific through training programmes and by providing the latest information through magazines and websites. Under these circumstances, ACCU and Japan Copyright Office (JCO) produced a handbook titled “Asian Copyright Handbook” in English in 2004 for those engaged in book production such as writers, illustrators, editors and publishers in Asia, to disseminate basic information about copyright.

The workshop was conducted as first of the series of workshops planned in several Asian countries to produce vernacular versions of the handbook and to plan a scheme for their dissemination and utilization. Its objectives were to promote better understanding of the concept of copyright through the “Asian Copyright Handbook (hereinafter called Handbook)” among the people engaged in publishing activities in Viet Nam. In particular, it aimed:

- (1) To introduce and promote better understanding of the handbook by reviewing a draft Vietnamese version and to identify points and sections where more explanation would be necessary for the handbook to be useful in Viet Nam
- (2) To share information about the current situation and problems regarding copyright protection in the publishing business in Viet Nam
- (3) To draft additional explanation for the points and sections identified above, which will be appended as a supplement to the Vietnamese version of the handbook
- (4) To develop an action plan, including an activity

schedule and responsible organizations, for compilation, publication, distribution and utilization of the handbook in Viet Nam

In the Workshop, more than 100 writers and editors of publishing companies participated from most of the 50 publishing companies existing in Viet Nam. It was also attended by Vietnamese experts and administrators from organizations such as the Viet Nam Copyright Corporation, Viet Nam Publishers Association, Viet Nam Literary Copyright Centre, Viet Nam Centre for Protection of Music Copyright and Recording Industry Association of Viet Nam along with resource persons from UNESCO, Japan Copyright Office (JCO), Agency for Cultural Affairs, and international publishing companies and academic institutions from France and Japan.

Proceedings

Day One: 15 March 2005

The four-day workshop was commenced by the opening ceremony. Mr. NAKANISHI Koji, Director-General, Asia/Pacific Cultural Centre for UNESCO (ACCU), first made a speech and thanked co-organisers and resource persons for their cooperation. Then, he explained that 14 years ago in Viet Nam, ACCU organized a national training course on book production for children. ACCU also invited Vietnamese publishing specialists to the “Tokyo Training Courses.” He then explained ACCU’s activities as placing special emphasis on Intangible Cultural Heritage and introducing means and know-how on intangible heritage management. Finally, he expressed his belief that this workshop would cater to the local needs and situation, and wished the workshop tremendous success.

Mr. Tran Chien Thang, Vice Minister of Culture and Information, thanked co-organisers and Japan Copyright Office (JCO). Then, he introduced Viet Nam’s legal provisions on copyright and a draft Vietnamese version of “Asian Copyright Handbook.” He hoped that the participants would discuss thoroughly issues on production and utilisation of the Vietnamese version of the “Asian Copyright Handbook.” Then, he expressed his belief that the

workshop would produce fruitful results, contribute to the protection of the handbook in Viet Nam, and create a favourable environment for creators.

Mr. Le Manh Hung, Secretary of the Central Youth Committee (CYC) spoke on behalf of CYC, and welcomed all to this workshop and hoped it would be a great success. He said that CYC was fully aware that publishing agencies of the Youth Union Central Committee (YUCC) are indispensable. With its functions and tasks, publishing is an important tool and means of education for the Youth Union, juvenile groups and national teenager movement. YUCC, during the past many years, has carried out various measures to promote the role and renew the activities of publishing inside the YUCC. It is affirmed that almost all the works published by the YUCC have improved in terms of content and illustration, and are welcomed by teenagers nationwide. This is attributable to the efforts of their staff, Kim Dong Publishing House (KDPH) and Youth Publishing House. CYC always have high appreciation for the effective and active assistance of ACCU in the field of publishing books for children in the past 14 years. This workshop is vivid evidence. Within the framework of this workshop, the issue of raising publishers' awareness on copyright by disseminating and using the "Asian Copyright Handbook" is a topical issue and suited to Viet Nam's condition. For HCMYUCC, the governing unit of KDPH, CYC totally support and would create favourable conditions for publishing agencies to participate in the implementation of copyright, production and utilisation of this Handbook. Publishing agencies of YUCC are now facing many challenges such as competition in information, consumers' high need. CYC hoped that by improving the quality of the works they would attract more readers. CYC also focus on training devoted, excellent editors and reporters; and continue to invest in modern facilities.

On behalf of Viet Nam National Commission for UNESCO (VNCU), Mr. Ho Minh Tuan, Vice-General Secretary of Viet Nam National Commission for UNESCO, wished all a warm welcome. He said that VNCU highly appreciated the initiative of ACCU and JCO to hold this workshop, a new step in cooperation between ACCU and KDPH to protect copyrights in Viet Nam. Over the past years, ACCU has cooperated closely with Viet Nam's agencies and organisations in the fields of UNESCO's authority including education,

and cultural heritage protection. All this is highly appreciated by Viet Nam and UNESCO. He expressed the hope that after 4 days, the workshop could map out a plan of action including the schedule for activities and coordination among concerned agencies on the production and utilisation of the "Asian Copyright Handbook" in Viet Nam.

On behalf of KDPH and nearly 50 agencies operating in the publication, circulation and copyright business in Viet Nam, Mr. Pham Quang Vinh, Director of Kim Dong Publishing House, thanked the Ministry of Culture and Information and affiliated agencies, Central Committee of Viet Nam Youth Union and Viet Nam National Commission for UNESCO. He also thanked Mr. NAKANISHI Koji, Ms. OHNUKI Misako and other colleagues for ACCU's endless efforts during the last 34 years to promote the development of culture and education, and cultural exchange in Asia-Pacific countries. As part of ACCU's efforts to improve public awareness of copyright, the "Asian Copyright Handbook" was finalized in English in 2004. This will be of great use as a professional assistance tool for copyright experts, editors, poets, authors, painters, etc. Viet Nam is honoured to be selected as the country where the initiative is first implemented. Then, he explained that this workshop was important because it aimed to seek comments on the handbook's contents, create supplementary aspects applicable and appropriate for Viet Nam's present situation, and figure out ways and means to make the handbook most useful in Viet Nam. He also mentioned that the workshop received active support from Mr. Anazawa of JCO, and thanked all the speakers, VCO and people who worked closely with KDPH. Finally, he said that he was convinced that "Asian Copyright Handbook" would be most welcomed in Viet Nam.

Mr. ANAZAWA Kazuo, Deputy-Director, International Affairs Division, Japan Copyright Office, Agency for Cultural Affairs, spoke about Japan's copyright strategy and international trends in his speech, along with a slide presentation.

After a coffee break and group photo session, the workshop resumed with the presentation "ACCU Activities and Workshop Orientation" by Ms. OHNUKI Misako, Director of Culture Division, ACCU. In her presentation, after introducing ACCU and its activities, she explained about the adaptation process of the handbook, goals and schedule of the workshop, and

future plans for distribution and networking.

As a representative of UNESCO, Ms. Petya Totcharova, Legal Advisor, Cultural Enterprise and Copyright Section, Division of Arts and Cultural Enterprise, Sector of Culture of UNESCO, explained UNESCO's activities relating to copyright. Along with supplementary information about UNESCO's Universal Declaration of Cultural Diversity and Global Alliance for Cultural Diversity, she mainly explained about UNESCO's activities in the following areas,

- (1) Information and awareness-raising
- (2) Training and teaching
- (3) Studies and research
- (4) Enforcement and management of rights

In the question-and-answer session after Ms. Totcharova's presentation, a question was asked about importance of copyright education at primary schools. Ms. Totcharova emphasised that education for copyright protection was important and should be targeting children. She said that she welcomed the idea of raising children's awareness as to how important it is not to infringe creator's rights. However, UNESCO at present only has copyright training programmes targeting adults. As far as she knows, there are no countries in the world that have such a teaching programmes at the primary education level. Colombia just launched a wide campaign for copyright awareness among children. UNESCO has cooperated with the Colombian government in developing a handbook aimed at a child audience on copyright awareness. This manual will also be published in other countries interested in the subject.

After lunch break, the workshop resumed with the presentation "Current Status of Viet Nam's Copyright and Legal Framework" by Mr. SATO Keita, Professor, Chuo Law School, Chuo University. Mr. Sato mainly explained about the amendment of the Civil Code and drafting of Intellectual Property Laws in Viet Nam, and international agreements on copyright and intellectual property.

In the question-and-answer session following Mr. Sato's presentation, the following exchanges were made:

Q: Can you share with us more about Japanese experiences in building legislation on copyright?

A: All authors should have written contracts with publishers. If not, we can do almost nothing to protect their rights to their works. All contracts must be done in written form.

Q: Do authors and illustrators in Viet Nam have legal contracts with their publishers?

A: It depends. Negotiations with illustrators are needed when their illustrations are crucial to the works. In some cases, the Vietnamese publisher only has to negotiate with the main partner, namely the author of the books.

Q: There are many campaigns launched by UNESCO in promoting the protection of copyright issues. I personally think that publishers in Viet Nam still lack experience in negotiating for copyright contracts. On the other hand, authors, in some cases, care more about the wide popularization of their works, rather than getting the money from their rights. So should the organization play as a mediator, a bridge between publishers and authors so that we can identify the best way to deal with copyrights in each case?

A: UNESCO is doing its best to raise the public awareness of copyright issues. But UNESCO has nearly 200 member countries, so we can just do what is possible within our capability and budget. We are pleased to cooperate with Viet Nam more in raising awareness. Authors can allow publication of their works for free. An agency responsible for authorization of copyright-free works is still far from reality due to the complexity and diversity of copyright issues. So at the moment, cooperation and mutual understanding remain the key way to deal with copyright issues.

Q: Is the "Asian Copyright Handbook" compatible to copyright regulations of other regions?

A: They are the same all over the world. We are working for a harmonization. People throughout the world share similar cultures and values. The handbook is therefore based on the same foundations. We will show you some of the contract samples, legal contracts between authors and publishers. Many foreign books and Japanese books are translated into Vietnamese, sold at bookstores. The copyright legal system is basically the same throughout the world.

Q: Copyright issue is a great challenge for Viet Nam. As for my publishing house, we find numerous difficulties in contacting and negotiating with authors. Is it possible for UNESCO to help Viet Nam contact and work with foreign authors?

A: Tomorrow I will show you the best way to sell and buy author's rights. Today I'll tell you very briefly that the Internet is the best and fastest way to contact the authors and make your deal. It is the most convenient and cheapest means of communication that we have.

Q: How many steps should we take in the process of negotiations with authors?

A: Negotiations in Viet Nam are difficult. Administrative sanctions are more effective. My advice is that the legislation is the most important tool to regulate copyright activities related to publication.

Q: What is the difference between US and European authors' rights?

A: The basic difference between the two systems is authors' dignity rights.

Sessions of the first day were concluded with a presentation by Mr. Vu Manh Chu, Director-General, Copyright Office of Viet Nam, Ministry of Culture and Information. He explained about Viet Nam's legal framework for copyright and neighbouring rights.

In the question-and-answer session following Mr. Vu Manh Chu's presentation, the following exchanges were made:

Q: Let's imagine the work is finished one month before the accession of Viet Nam to the Berne Convention. Then, what will happen to existing intellectual property rights (IPRs) in Viet Nam?

A: IPRs will be protected during lifetime plus 50 years, regardless of the accession of Viet Nam.

Q: According to the new draft of the Civil Code, the term of IPR protection after author's death is extended to 75 years, is that a change?

A: We have two options, subject to comments of international experts.

Q: Since the accession of Viet Nam to the Berne Convention, there has been lots of feedback from the Vietnamese public. So what are your

comments on Viet Nam's accession? Do you think it is a totally good and right time for Viet Nam to be a member of the Berne Convention? How to make us more adaptable to provisions of the Berne Convention? How to deal with translations already finished before Viet Nam's accession?

A: The translation must be permitted by the original author. This practice has not been obeyed by Vietnamese translators for long. But now, once we signed a bilateral trade agreement and acceded to Berne Convention, asking for authorization is compulsory. However, translations published before Viet Nam's accession are not subject to punishments or financial compensation. About how right is the time for Viet Nam to accede to the Berne Convention, I think we yet need to fully assess the impact of this accession. But basically, it is a right decision. Viet Nam, however, should be treated differently, given its level of development. Viet Nam is one of very few countries which are not members of any IPR convention. Viet Nam cannot be an isolated island in terms of IPR. We are living in a big globalised world, and it is in Viet Nam's own interest to join the Berne Convention. So I don't think we should look back and question about whether it is the right moment for Viet Nam to join the convention. I personally think that this is the right time for Viet Nam, as it is preparing for WTO entry. Ignoring IPR is by no means good. Illegal duplications are harmful for honest business. It is not a fair competition. In brief, you should join the convention right now, rather than delay.

Q: I would like to clarify my question, I asked what are the foundations that Viet Nam can base on to fully observe the Berne Convention? The workload is huge, but it seems that Viet Nam is not well prepared for adhering to the Berne Convention. If we are well prepared, bad impacts can be minimized. As an expert having much experience working with Viet Nam, can you share with us your comments on the preparation of Viet Nam?

A: I agree that Viet Nam's stakeholders should have been more aware of the outcome of the accession. The Berne Convention is also a way to protect your own productions in foreign countries. From our own experience, the benefits of Berne Convention accession are reciprocated. If you want to save the prestige of the publisher, the

compensation for illegal publication should be paid in some cases, depending on the cost you have to suffer, and the benefits you'll gain.

Q: I understand that we have not yet received any special treatment since our entry to the Berne Convention, is that right?

A: Berne Convention Annex provides preferences for developing countries. Preferences for us relating to translation and duplication rights have come into effect. But to be fully accorded these preferences, Viet Nam's relevant agencies have to finish required procedures.

The welcome reception hosted by Mr. Nakanishi, Director-General, ACCU, was held in the evening of the first day.

Day Two: 16 March 2005

The second day of the Workshop started with the presentation by Mr. YAMATO Atsushi, Associate Professor, Yokohama National University on the copyright system in Japan. He mainly explained Japan's copyright protection system, comparing the Berne Convention and Copyright Law of Japan. He also talked about collective management system of copyrighted materials and efforts towards copyright education in Japan.

The following exchanges were made in the question-and-answer session after Mr. Yamato's presentation:

Q: When did Japan start to apply IPR's laws? At the very start, what was the Japanese situation? Did you have any difficulties like Viet Nam, could you please share with us? Is there any difference in applying IPR laws for teaching materials? Do you have any measures to prevent copying at home?

A: IPR's laws started in Japan more than 100 years ago. Since then, Japan has joined a number of conventions on IPRs. At the very start, we met similar difficulties to Viet Nam. We needed to build a legal framework to monitor the application of IPR laws and raise public awareness. But just around 20 years ago, Japan was able to make people really aware of IPRs. In Japan, using creative works teaching purposes must also be permitted by the authors. The content of textbooks should be compliant with the General Direction in

teaching, which is set out by the Ministry of Education. And the Ministry is the agency that pays the authors whose works are used in textbooks. Authors, however, cannot refuse to let their works be used in textbooks. Regarding how to prevent illegal copying at home, I think the authors should themselves monitor the use of their works. The transfer agency can also take this role. So there should be cooperation between authors and transfer agency.

Q: As a centre to protect IPRs, we cannot punish people violating IPRs. How to improve our role? And from Japanese experience, how much should be the share for the authors after selling the books?

A: In Japan, the share depends on the contract between the transfer agency and the author. There is no fixed price or percentage for the author. The larger the service fee to the transfer agency, the more effective the monitoring of compliance of IPRs is. So the price differs in each case. In many cases, the price is changed during the process of using. Regarding the use of creative works for teaching purposes, in Japan we have different level of payments for different kinds of material. The price also depends on the number of copies. But the price is basically lower than that for commercial purpose.

Q: As I know from your presentation, Japan has provided 3.8 million textbooks to pupils of grade 8 for free. Why only grade 8?

A: It is the agreement between the Japanese Ministry of Education and Ministry of Finance. It just happened to be Grade 8.

Q: What is the significance of education on copyrights in comparison with other kinds of education?

A: Education on copyrights is in place from primary to high school. But we have no record of ratio of classes. Pupils interested in education on copyrights can learn from offsite activities or outside the class. At my college, each year we have a training course in copyrights. About 500 out of 2000 students attend this course. Students majoring trade and law have one class per week in copyrights.

The question-and-answer session was followed by the

presentation by Mr. Vu Manh Chu, Director-General, Copyright Office of Viet Nam, Ministry of Culture and Information, about how to increase the effectiveness of public administration system for copyright protection in Viet Nam. In the subsequent question-and-answer session, the following exchanges were made:

Q: In what way can copyrights be transferred to these IPR protection organizations? How many rights can be transferred? Provision 753 in the Vietnamese Civil Code regulates the authors' rights not protected by public administration.

A: Rights holders sign the transfer contract with these organizations and the range of rights is clearly provided in the contract. It differs in different situations.

Q: There are two schemes of IPRs, and are they both transferable?

A: The moral rights of the author cannot be transferred.

Q: How much progress is there in the operation of such organizations out of our borders? Are they reliable in protecting Vietnamese authors' rights in foreign countries?

A: As prescribed in the Berne Convention, the rights Vietnamese authors hold are protected by the member countries (158 foreign countries). Authors themselves should protect their rights in an efficient manner. The public administration system would give them a hand when needed. Judicial agencies can provide Vietnamese citizens with information on IPRs. I, however, have never received any request from Vietnamese authors to protect their rights in foreign countries. In fact, literary works of Viet Nam, which bear no name of the publisher are illegally published by the Vietnamese community in foreign countries. So it is harder for us to track them and ask for compensation. In addition, our funding is modest, hence the limit of operation in foreign countries. We only charge authors a very little fee. Failure in certain cases is understandable. We are prepared to face huge difficulties in the first three years of operation.

After the lunch break, Ms. Sibylle Le Maire, Foreign Rights & Sales Manager, International Department, Bayard Jeunesse talked about copyright issues in the global publishing business. She explained in detail

about operations of copyright selling and terms in contracts with foreign publishers. This was followed by the presentation by Mr. Nguyen Huy Thang, Head of Scientific Book Department, KDPH on the current situation of the Vietnamese publishing business.

Following the two presentations by Ms. Sibylle Le Maire and Mr. Nguyen Huy Thang, the following exchanges were made in the question-and-answer session:

Q: What are the procedures in signing a publishing contract with Viet Nam?

A: The first Japanese comic book that KDPH published, "Doraemon", was possible thanks to our mediators. In cases where we wrote mail to foreign publishers, we received no answers. That is a true fact. And this gets complicated when foreign publishers say that they are not entitled to grant copyright of such books.

Q: When a French author has signed a contract with Bayard, does he have the right to transfer his right to other people? Does the author have the right to allow other publishers to print his book without asking Bayard?

A: According to the French legislation, when we sign a contract with an author, then Bayard can exploit the utilization of the book in France. The copyright is ours. In cases where the author gives Bayard the right to sell that book in other countries, then Bayard can. In Bayard-published books you can see the copyrights symbol (the little c). You can also find information as to whether Bayard has given other foreign countries the right to publish it in their own languages.

Q: Does France have a public administration system like that in Japan? Does the price differ when the same book is sold to different foreign publishers?

A: We do have such an association in France. We are willing to work with Viet Nam. We have worked with a lot of other countries, our goal is not commercial. We would not require the same royalties from Viet Nam as we did from other countries, given Viet Nam's circumstances.

The second day was concluded with a presentation by Mr. DOMON Yasuo, Director-General, Juvenile Book Department, Kodansha Publishers Ltd. on copyright business practices of Japanese publishers. He

explained in detail business practices of buying and selling copyrights along with sample books and magazines translated from Japanese into foreign languages.

In the subsequent question-and-answer session, the following points were raised:

Q: How to identify the royalty in each case?

A: Usually, it is 10%.

Q: Does Kodansha order writers to write for it?

A: The editor will ask the author to write a book on a certain subject, and if the author agrees then the deal is on. Usually, they would agree on the number of pages and schedule.

Q: Does your publisher pay extra royalty for books that are bestsellers and are reprinted?

A: In that case, for the next 5000 copies we will pay 10%. But in Japan, it is very rare for a book to be published twice in a 2-year period.

Q: When you publish comic books, who are you targeting, the parents or the children themselves?

A: In Japan, comicbooks targeting children aged 7-8 are very easily sold. But for books targeting 10-year-olds, it is usually the parents who purchase.

Q: What are Kodansha's rights in the numbers of copies printed in Viet Nam?

A: It depends on the agreement made between the two sides. I think the number of copies will be decided by the publishers who bought copyrights.

Q: In Vietnamese books, we have a page for the information about the number of copies we printed, but we can't find that page in Japanese books, why is this so?

A: It is not our custom to have a page like that, however the author is informed of the number of copies and the extra copies made.

Q: In your publishing system, when you want to collect poems from different books to publish them in the same book, do you ask the authors' permission before or after such publication is made?

A: It depends on the deal made between the publisher and author. If it is said in the contract that his/her

work is allowed to be collected and published in a different book then that is okay. There are many examples of copyrights violations. A child's work is also copyrighted, therefore when we want to publish that work, we have to ask for the child's permission.

Day Three: 17 March 2005

On the third day of the Workshop, group work was conducted in order to prepare a supplementary Q&A section for the Vietnamese version of "Asian Copyright Handbook." The group work was conducted by using a method called KJ-Method, which was briefly explained before the group work by Ms. Ohnuki.

About forty participants were divided into two groups, Group A and B, and asked to work in the following steps with support from a facilitator, national and international resource person, ACCU staff member, interpreter and rapporteur assigned to each group.

For activities and results of Day Three, please see Chapter III: Group Work.

Day Four: 18 March 2005

The last day of the Workshop was started by presentations of group work results from Day Three by a representative from each group.

This was followed by orientation for Group Work 2. Group activities were conducted by the same group members as in Day Three.

In forming the action plan, which will serve as a reference for utilization and distribution planning of the Vietnamese version of the Handbook, members of each group were given the following preconditions:

1. Asian Copyright Handbook translated by Kim Dong Publishing House (KDPH)
2. Additional question-and-answer (Q&A) section drafted by this workshop (18 March 2005)
3. Additional Q&A section to be compiled into the Vietnamese version of the Handbook
4. 30,000 copies to be published by KDPH by 15 April 2005
5. The published copies to be distributed free of charge to the workshop participants and resource persons of the Workshop, and publishers and

other related organizations in Viet Nam by the end of June 2005.

In the action plan, the participants were asked to include the following items:

1. Time/Duration
2. Target Groups/Location
3. Distribution/Utilisation Methods
4. Necessary Resources
5. Partnership
6. Promotion Methods
7. Costs/Financing
8. Licenses and Permits
9. Competing/Impeding Factors
10. Other Factors

For more information about Group Work 2, please see Chapter III: Group Work.

After the reporting of results from Group Work 2 in plenary session, a concluding session was held. Two international resource persons who attended group work sessions, Mr. Domon and Ms. Le Maire, made comments on the Workshop.

In the closing ceremony, closing remarks were delivered by Ms. Ohnuki, Director of Culture Division, ACCU, Mr. Vu Manh Chu, Director-General, Copyright Office of Viet Nam, Ministry of Culture and Information and Mr. Pham Quang Vinh, Director, Kim Dong Publishing House.

In the evening of Day Four, a farewell party hosted by Mr. Nguyen Thang Vu, Chairman of Publishing Council, Kim Dong Publishing House was held.