
5. Increasing the Effectiveness of Public Administration System for Copyright Protection in Viet Nam

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It is complicated and difficult to study, draft, submit and promulgate a system of copyright laws and regulations that fits in Viet Nam's context and complies with international standards. Over 20 years now Viet Nam has invested its intellects in this important task. Basically Viet Nam now has had a system of copyright law capable of regulating social relations around the creation and protection of products of creative labor, satisfying the requirements by international integration. It is, however, more important to enforce the laws; otherwise advanced and humane copyright ideas reflected in copyright legal regulations would only be in paper. That means importance should be attached to, first and foremost, the role of the enforcement apparatus, including the administrative management system, judiciary system, public administration system for copyright, and copyright consultation services. Within this workshop, this report mentions the public administration system for copyright.

1. General understanding of Public Administration System for Copyright

Authors of works have the rights to allow or forbid the utilization of their works. It means that copyright management and exploitation belong to the owners of rights, as reflected in the international standard and Vietnamese State's regulations in the Civil Code, its related-laws and instructions. But copyright management and exploitation by their owners prove to be ineffective in some areas. An author cannot follow all acts of using his works. Meanwhile, organizations using some forms of works are not in good position to ask for the authors' permission or negotiation with all authors for the use of copyright works. This is more the case in the present whirlwind development of science and technology that brings about new forms of disseminating and using works, such as the digital environment, internet, and satellites. Therefore, many countries for hundred of years now have organized Associations to manage copyrights collectively. Through copyright transfer

contracts, right owners (authors, owners of works) transfer their individual rights to the public administration Organizations to manage and exploit the rights on the formers' behalf. These public administration organizations are in charge of licensing the use of works, collecting and distributing royalties to the copyright owners. Besides, these Organizations can help encourage creative activities; because by implementing their tasks, they assist individuals and legal entities in exploiting and using works of authors and copyright owners easily. All copyrights owners, such as Writers, Musicians, Painters, Photographers, Directors, Performers, etc., can voluntarily join a respective Copyright Public Administration Organization. Members have to state their details and the works they create to the Copyright Public Administration Organization. The information is stored in the organization's "Bank" of works that serves as a database for the licensing of works and paying the royalties to the members. This "Bank" of works is also the reference database for the "Bank" of works of the respective international copyright collective management Organizations in mutual protections of rights between countries.

The systems of Public Administration Organizations for copyright are different among countries, depending on different rights of groups of rights. Countries normally have collective management organizations respective to specific groups of rights, but the number of these organizations varies, depending on countries' context (for example the US has 13, Canada 38, Switzerland 5, Japan 6, Bulgaria 9, Rumania 6, Russia 4; Latvia 4, Thailand 3, Republic of Korea 5, Australia 7). Generally these following rights are under collective management:

- Copyrights of authors and composers;
- Copyrights of authors of literature works;
- Rights of public performers;
- Rights of producers of phonographic programmers;
- Rights of broadcasting organizations;
- Rights to perform in stage works.

To link these activities world-wide, some international organization came into being, e.g. the International Federation of Reproduction Rights Organizations (IFRRO), protecting rights of writers and publishers, based in London, UK; the International Confederation of Authors and Composers (CISAC) based in Paris, France; the International Federation of Phonographic Industries (IFPI) based in London, UK. In Europe, there are the Association of European Performers Organizations, the International Federation of Actors and Actresses (FIA), the International Federation of Musicians (FIM), etc.

Many forms of copyright public administration systems exist, the “traditional” form of which is Association. Under this form, the copyright collective management organization gives licenses, negotiates on and collects royalties on its members’ behalf, and redistributes to its members. Members with copyrights do not participate in these tasks. Another form is Centers and Companies, under which the terms and payments for using works is set by members for the Centers and Companies to follow in giving licenses. This form acts as Agency for members, and owners of rights set the terms and royalties accordingly. The “one stop” form is the combination of different copyright collective management organizations. It is a new, growing trend, because more and more multimedia products that need various permissions (e.g. products comprising of, or created by, many works or types of works, including by computer software). This form of collective management centralizes different tasks of licensing, negotiation for use of works and collection of royalties. Thus, all activities related to using works are done quickly and easily.

Legal basis for copyrights have been put in place in Viet Nam, serving as a safe legal corridor for creation, publication and dissemination of works, protection of copyrights and related rights. The legal basis for the establishment of non governmental organizations, including copyright collective management organizations, was provided in Decree 102/SL-L004, dated 20th May 1957 on the right to associations, and in the Government’s Decree 88/2003/NĐ-CP dated 30th July 2003 on the organization, operation and management of associations.

2. Public Administration System for Copyright in Viet Nam

Article 60 of the Constitution of the Socialist Republic of Viet Nam provides that: “Citizens have to right to conduct scientific and technological researches, invention, innovation, initiatives in technological improvement and rationalization of production, literature and art creation and commenting, and participate in other cultural activities. The State protects copyrights and industrial property rights”.

Based on that supreme legal regulation in the Constitution, copyright provisions are made in the Civil Code of Viet Nam in Chapter I, Sections 6 and 7. Related provisions are contained in other specific laws, such as Press Law, Publication Law, Law on Cultural Heritage, Ordinance on Advertisement; Customs Law and also in the Civil Code. Under these laws are instructional documents by the Government, the Ministry of Culture and Information and some other ministries and agencies for national enforcement of the laws. The administrative, civil and criminal sanctions provided in the normative documents are educational and deterrent. Thus, basically Viet Nam has had a legal system on copyright to regulate most of social relations in this important and complicated area. Many of its copyright provisions have been met international standards, and consequently have satisfied the need for copyright protection in Viet Nam and in international integration in recent years.

In parallel with building the legal system on copyright, the enforcement apparatus has been step by step put in place and completed. The copyright administrative management competence in Viet Nam’s administrative system is reflected in the Constitution, the Law on the Organisation of Government and other related laws. At national level, Government is the State’s highest administrative body managing all economic and social areas, including culture, information and copyrights. The Ministry of Culture and Information is the Government body accountable to the Government for copyright management. Assisting to the Ministry of Culture and Information in this area is the National Office of Literature and Art Copyrights, whose predecessor was

the Copyright Protection Agency established in 1987. At sub-national level, People's Committees of provinces and central-level cities are responsible for monitoring and supervising the enforcement of copyrights in their administrative areas, with the assistance of the Department of Culture and Information. In addition, some ministries, Offices and Departments of the Ministry of Culture and Information, and sub-national Departments also provide administrative management in copyrights in their respective scope of responsibility (e.g. the General Administration of Customs examines copyright-related imports and exports, the Ministry of Trade manages copyright-related products in markets, etc.)

People's Courts are judiciary body that is formed in compliance with the Constitution and the Law on the Organisation of People's Court. Depending on the nature of the case, the Administrative Court, the Civil Court or the Criminal Court will take the file and proceed.

Copyright consultation services have been formed, assisting authors and owners of works in executing and protecting their legitimate rights and interests within the legal framework. Both State-owned and private enterprises work in this area.

Thus, the enforcement system and the enforcement-supportive one in copyrights have been put in place. However, by the standards of other countries, especially those with developed copyright industry, Viet Nam's copyright public administration system has not been strong enough. As a result, enforcement is difficult and protection not yet satisfactory.

Other countries' experiences shows that the copyright collective management organization is important to the enforcement system, and plays a unique role in all activities related to copyright protection. It is a non-governmental organization, protecting legal rights and interests of its members and working on non-profit basis. Through trustee contracts by right owners, the copyright collective management organization gives copyright license for the usage and exploitation of members' works, collect and redistribute royalties to right owners as regulated by the law and the Organisation. By so doing, the

copyright collective management organization acts as a bridge between member authors and organizations and individuals using their works, thus facilitating the use of works and effectively exploiting the rights of author members.

As a State management body in copyright, the Ministry of Culture and Information is fully aware of the purposes, significance and role of copyright collective management organizations. As a result, it has made several preparatory steps in terms of public awareness and intellectuals of this area. Some workshops on copyright collective management have been held, and study tours for officials to countries with rich copyright experiences have organized under the sponsorship of the World Intellectual Property Organisation (WIPO), the International Confederation of Authors and Composers (CISAC), the International Federation of Phonographic Industry (IFPI). Efforts have been made to study and draft documents on the establishment of Viet Nam's Association of recording industry and Viet Nam's music copyright. In recent time, some Seminars and Workshop on the plan for the establishment of those Associations are conducted among relevant agencies, cassettes and CD producers and musicians, etc. Many questions have been raised in these seminars and workshops. International experiences are valuable lessons that Viet Nam can study and apply in its context.

It is worth notice that in Viet Nam, professional associations have already been set up with the State's permission in almost all areas of culture, arts and sciences. There are as many as 12 professional Associations in arts and culture at national level (for example Viet Nam's Writer Association, Viet Nam's Musician Association, Stage Arts Association, Pictures Association, Fine Arts Association, Association of Photographers, Association of Dancers, etc. There are 61 Association of Literature and Arts in 61 central-level cities and provinces. Ho Chi Minh City alone has 12 independent Associations in Arts and Literature. Hanoi also has its own professional art and literature Associations. In their principles, Associations all aim to protect their members' rights. To the members of these Associations, their most important right is that their art, literature and scientific works, the results of their creative labour, are protected by the law. These Associations and copyright collective management organizations were

set up on the legal basis of the Ordinance N0 102/SL-L004 dated 20th May 1957 on the right to association and Decree N0 88/2003/ND-CP dated 30th July 2003 by the Government.

In April 2002, Viet Nam Center on the Protection of Musical Copyright (VCPMC) was established, under the Viet Nam Association of Musicians, after many years' preparation, especially in terms of awareness. This is the first copyright collective management organization in Viet Nam, born to manage the rights of word and music composers. Within two years, the Center signed copyright trustee contracts with around 400 and 500 professional musicians to earn royalties from works used in musical performances, publication and production of audio and video programs and pay musicians. The Center is now negotiations with TV broadcasters, hotels, restaurants and mobile phone services on copyright for royalty collection. The Center now has a branch in Ho Chi Minh City and is going to set up another in Vinh City, Nghe An province. The International Confederation of Authors and Composers (CISAC) has made interest-free loans to the Center to support the latter's operation in the first years.

In August 2003, just over one year after the inception of the VCPMC, Viet Nam set up the Viet Nam's Association of Recording Industry (RIAV). RIAV was the result of 10 years' mobilization, full awareness of rights and duties of producers of recording programs and the role of this Association in self-protection activities by leading agencies. Almost all CD, video and cassettes producers, Viet Nam Television and Voice of Viet Nam are members of the Association. The establishment of RIAV, following VCPMC, has formed a new enforcement system in copyright collective management of the copyright enforcement Apparatus in Viet Nam.

VCPMC and RIAV are partners in protecting the rights of word and music composers and recording program producers. Their interests can only be protected effectively when satisfying the need to enjoy national and world's music. On 25th August 2004, Viet Nam Literature Copyright Center came into being. With those three organizations, Viet Nam has gradually put in place a collective management system of copyright.

Authorised agencies are following, instructing and monitoring the activities of these two copyright collective management organizations. Their experiences will be good reference for other collective management organizations to be set up.

3. Orientations and ways to organize and operate Viet Nam's copyright public administration system.

3.1. On the organization of the copyright public administration system.

From the experiences of other countries and based on the specific context of Viet Nam, there have been two orientations in building a copyright collective management system:

Orientation 1: setting up some copyright collective management Centers under national Associations of Literature and Arts to manage those rights that are difficult to be managed by the right owners (authors) themselves.

As such, not all national Associations organize copyright collective management Centers. The form of copyright collective management is chosen in the presence of these two following facts:

- It is very hard for right owners themselves to manage their rights;
- It is easier for organizations and individuals to exploit and use the works quickly, conveniently, effectively and at the same time fulfill their duties to right owners.

These two facts are two sides of the same coin in the relations between the right owner at one side and the duty-bearer at the other side when aiming to help the public enjoy creative works. Applying this management form allows easy exploitation of works and hence, facilitates business, thus guarantees that one's duties to right owners are seriously implemented. Moreover, right owners' interests are protected when mechanisms friendly to exploitation of works are applied. Following this direction, Viet Nam organized the VCPMC, and possibly in the coming time, the Literature Copyright Management Center under Writers' Association, and Performers' Rights Management Center under Association of

Stage Artists and Dancers' Association.

Orientation 2: organizing an association to provide collective management in areas in which the activities are both artistic and technological, which is common in almost all countries. Following this direction, Viet Nam has organized the Recording Industry Association of Viet Nam

The public administration system for copyright in Viet Nam can be described as including these following organisations:

- Music copyright center (established, under the Musicians' Association)
- Literature copyright center (to be set up under the Writers' Association)
- Performers right center (to be co-managed by the Association of Stage Artists and Dancers' Association)
- Recording Industry Association to protect the rights of phonographic producers (established)

Along the time, depending on specific situation and its requirement, it is possible to organize different forms of collective management organizations in certain areas.

The orientations above, however, are just suggestions. Whether such organizations will be put in place depends on the right owners, since such organizations are non-governmental, working on voluntary, self-managing and self-funding basis.

The public administration organizations for copyright are to do these main tasks:

- Signing copyright transfer contracts with members who are right owners for management;
- Building a "Bank" of works by members who have signed the copyright transfer contract for the purpose of management;
- Negotiating and signing licensing contracts to organizations and individuals that need to use works of the authors already transferring their rights; collecting and distributing royalties for the authors;
- Protecting members' rights
- Participating in making copyright protection laws, mechanisms and policies;

- Cooperating with international organizations and respective organizations of other countries to protect members' copyrights;
- Encouraging creative organizations and joining other social activities

3.2. Ways to further develop Viet Nam's copyright public administration system

- Intensifying education and outreach activities to people with related rights and duties in copyright, copyright collective management in general and national and international law in this area in particular;
- The Ministry of Information and Culture and the Ministry of Home Affairs work together to build directions and plans in forming a system of copyright collective management organizations in Viet Nam to be implemented step by step;
- The Ministry of Culture and Information, Ministry of Home Affairs and Ministry of Finance directly involve in organizing and assist the operation of the copyright collective management organizations that are planned to be set up by the State and reflect the aspirations of right owners;
- The Ministry of Culture and Information guides, instructs and supervises existing copyright collective management organizations; deals with law violations by copyright collective management organisations within its authority and recommends authorized agencies to deal with those violations;
- The Ministry of Culture and Information and Ministry of Home Affairs conduct regular stock-take of the activities of copyright collective management organizations, draw lessons and consider and allow other collective management organizations to be set up in a cautious but not perfectionistic manner;
- Effectively making use of cooperation and assistance by the World Intellectual Properties Organisation (WIPO), international copyright collective management organizations and those of countries with high level of development in copyright;
- Sending officers from related State agencies and copyright collective management organizations to Meetings, Workshops, Training courses and study tours in copyright collective management to other countries.