
7. Some Thoughts on Copyright in Today's Publication

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First of all, I would like to express my sincere thanks to the Organizers for giving me this opportunity to be on behalf of my colleagues in Kim Dong Publishing House, to share with you some of our thoughts on this issue, especially practical experiences of our Publishing House over the past years.

“Copyright” has been repeatedly mentioned in Viet Nam’s mass media in recent months. Particularly since late October 2004 after Viet Nam signed Berne Convention, “Copyright” and its related issues have been intensively covered by televisions, radio, newspaper and even daily chat among ordinary people. This demonstrates that copyright has been a popular topic in the community. However, we still lack of understanding and knowledge on copyright and there remains shortcoming in enforcing copyright in general and Berne Convention in particular.

1. General views on the implementation of copyright in Viet Nam

In fact, copyright is not a brand new topic in Viet Nam. From the early years of the establishment of publication and press sector, rights of authors and agencies publishing their work have received due awareness. However, for a long period of time, copyright appeared to be understood as same as an royalty, and when speaking of author’s rights, people quickly thought of whether that publishing house would pay royalty for their publication and author would receive payment for their work to be published. As written in memoirs of To Hoai, a famous writer, in the early of 40’s, when he started his career as a writer and collaborator with magazines and newspapers, he did not receive any payment for his published short stories. It was explained that authors were stories. It was explained that authors volunteered to send their work to the publishers, so the publication of their work was already a good prize for them. Therefore, publishing houses did not need to pay any royalty to authors. Only writer Vu Ngoc Phan gave writer To Hoai an royalty when his story was published, which was considered by To Hoai a

good gesture of writer Vu Ngoc Phan and a honour for himself.

The success of the 1945 August Revolution opened up a new era in the national history. In the first year, the first Constitution of the State of the Democratic Republic of Viet Nam was adopted in November 1946. Among the stated human rights, the Constitution contains author-related rights, including freedom of speech and publication of citizens. The State pledges to protect intellectual rights and respect private ownership. Proceeding from these humanitarian policies, over the years, detailed regulations on rights of the author in general and on royalty in particular have been enacted. Along the line, Vietnamese authors’ works published by the State’s publishing house and newspaper received adequate royalty during the war and early years of peaceful time. The royalty scheme was built based on values of works in different schools of arts. Publishing houses assessed the value of each work and based on that and quantity, they paid royalty to the author. Though, royalty paid in this way was limited and on an unilateral basis (the author accepted rates offered by publishing house), this was a good practice.

For the translation copy of foreign works, publishing houses would paid royalty to translators not authors. This can be explained in two ways. Socialist countries understood Viet Nam’s difficult situation, they were willing to allow Viet Nam to translate and publish writings of their authors without claiming copyrights. And Viet Nam only translated and reproduced classical works of Western countries of which the protection period had expired. For contemporary Western works, due to the long past war and its late international integration, Viet Nam could not contact and fulfill copyright-related duties.

This was practiced for a long period of time until Viet Nam launched the reform process (*Doi Moi*) and transform into a market economy. In the new context, there has been a significant change in public

awareness on many issues, including copyrights. In principle, a market mechanism should drive the implementation of rights towards “an agreement made by the seller and buyer” and “for the mutual benefits”. However, in particular cases, author has the right to ask for his/her legitimate interests, both economically and mentally, before permitting the publication of his/her works. Along that line, authors can publish their works by their own money, including valuable ones, which was impossible during the period of centrally-planned mechanism.

However, negative aspects have emerged in the market mechanism regarding the publication and the implementation of copyrights. Many commercially oriented writings have been published, adversely affecting the reading culture. Some have financial resources to publish author’s works without their permission or even without paying any royalty paid. Translated versions of foreign works have been widespread. Many foreign literature, arts and scientific works have been translated and reproduced in the same manner without ensuring the quality of contents and cover designs (even without permission from the authors). This has adversely affected the authors’ prestige, including those conferred Nobel Prize, as well as Viet Nam’s image in the international arena.

Against that backdrop, the Vietnamese Government and competent agencies have made great efforts to address these problems. Since 1986, the Ministers’ Council (now called the Government) issued Decree 142/HDBT on author’s rights. This is the first special document on author’s rights ever introduced in Viet Nam. In parts 6 and 7, Article 1 of the Viet Nam’s Civil Code introduced in 1994, there are 36 specific provisions on Copyrights and other related issues. At the end of 2004, the National Assembly adopted the revised Law on Publication to replace the previous outdated Law. The revised Law on Publication will be effective on 1st July 2005, which marks a new progress made by Viet Nam in the legal system. To step up its international integration, Viet Nam has signed bilateral agreements on exchange of author’s rights, bilateral trade agreement with the U.S. and Agreement on Copyrights Protection with the Federation of Switzerland. Especially, Viet Nam has signed the Berne Convention on the protection of copyrights of literature and arts works on 26 October

2004. This is an important development in the cultural field of Viet Nam, especially in publication and for the published works. A Viet Nam’s Law on Copyrights is being drafted and submitted to the National Assembly for adoption in November 2005. The signing of Berne Convention and the Law on Copyrights will help promote the protection of author’s rights in Viet Nam, including both Vietnamese and foreign arts and literature works.

Vietnamese agencies and publishing houses have made great efforts to actively respond to urgent demands on copyrights. Publishing houses like Kim Dong Publishing House, Youth Publishing House, Phuong Nam Cultural Company, Tri Viet Company, Vitek Company have signed copyrights contracts with both domestic and foreign authors. It is first time in Viet Nam that a publishing house bought all works of an author and a record made in paying royalty for a copyright of poem up to VND 100 million. These are examples of how copyrights have been implemented in Viet Nam.

2. Copyright at Kim Dong Publishing House

Kim Dong Publishing House is the only one agency specialize in publishing children’s book in Viet Nam. Immediately after its establishment, in July 1957, the House has emphasized its responsibility towards authors’ rights. Poet Pham Ho recalled, when his first poem collection “I like I love” was published by Kim Dong Publishing House, he was really surprised at the royalty on his work because it was too high compared to that time. Later he found out that it was the decision of the first Director, writer Nguyen Huy Tuong. Writer Nguyen Huy Tuong wanted to maximize the State’s regulation on royalty to pay for the work that Kim Dong published in order to encourage works for children. In addition, the house also focused on improving the quality of the book cover design and printing so as to satisfy the authors and children. Built on such a tradition, in the 55 years of its operation, the House always pursues the attitude of respect for the authors and their works, even during its hard time. When the country shifted to market economy, the house was in a better position to invest in good quality books to promote the reading culture among children and give the author the chance to publish and republish his/her works. The “Golden Book Shelf”, a collection of Viet Nam’s fine

literature and children's world, has been published hundreds of times under many titles. The book shelf "Poem for Childhood", a collection of the best poems written by Vietnamese top poets has also been published over a hundred times under many titles. These books are sold at discounted prices, affordable to the kids, however, the authors still get reasonable royalty.

This only happens when the publisher agrees to spend its own money to sponsor the publishing of those books. In order to diversify the children's book world and make it affordable to the children, for the past many years, Kim Dong Publishing House has made a lot of investment to sponsor books with high cultural and educational value. Those books include "Viet Nam's Folk Comics", book shelves like "Viet Nam's Art", "World's Famous Painters", "The Art of Architecture"... These books require high quality of drawing, printing, layout, illustration, but must be sold at an affordable price. Therefore, the money invested for the first time of publishing could double the printed price, and the money paid for the artist, author and editor accounts remarkably. This might be a paradox, but it is understandable. On the one hand, that is the only way children could have high-quality and interesting books. On the other hand, that is the reasonable payment that the artist, author should get for their contributed talent and effort to the publisher. For the publisher, the question here is how to run good business and obtain good marketing skills in order to be able to republish the works to compensate for the investment made earlier.

For authors who have died, Kim Dong Publishing House always pays great respect and take good care of their works. When publishing or reproducing works written by dead authors, publishing houses will contact their relatives or owners of these works. All payment schemes then are transferred to heirs. In case of no contact address, the Publishing House will ask the Center for Copyrights Development to serve as a bridge or disseminate the information in mass media. For the protection term of 30 years after the author's death in the past and 50 years at present, Kim Dong Publishing House always pays respect to those works and continues to pay royalty even the term has expired. This is in line with the motto "Drinking the water, remembering the source" practiced by the House. Vietnamese authors, especially the leading

modern authors like Ngo Tat To, Nam Cao, Thach Lam experienced disadvantages. Given many subjective and objective reasons like war, most of their works could rarely be published and reproduced over a long period. Now when their works are recognized with respect and there is a high demand for reproduction, many of their works have run out of protection terms. Our policy is to support and compensate for these authors. Kim Dong Publishing House will sign contract of copyright transfer with the eight leading authors of children books. This is a demonstration of our respect and attention paid to the development of children literature as well as our effort to implement the rights of authors.

Kim Dong Publishing House pays special attention to the copyrights of foreign works. We are proud to be the first publishing house in Viet Nam to sign contract of copyright transfer with a foreign publishing house. This contract is on the collection of *Doraemon* written by Japanese author Fujiko F Fujio published by Shogakukan Publishing House. Therefore, Kim Dong Publishing House has the exclusive right to publish the collection of *Doraemon* in Viet Nam and pay copyright to the author as agreed between the two parties.

On this occasion, we would like to acknowledge the goodwill of Shogakukan Publishing House and late author Fujiko F Fujio. Mr. Fujio, when still alive, and Shogakukan Publishing house, for deciding to contribute all of the copy right money for publishing the book in Viet Nam to join Kim Dong Publishing house in the establishment of a scholarship fund named "The *Doraemon* Fund". This fund has provided scholarships for hundreds of Vietnamese students who have overcome difficulties to achieve high academic results.

After the *Doraemon* series, Kim Dong Publishing house continued to sign copyright contracts to publish many other foreign books. Among them are the French Asterix series, some Japanese and Korean comics series, the mystery series of the American author Stine, and the Chinese book named 'Roses hidden in schoolbag', etc. At the present, we are speeding up the process to get access to the copy right of the reference book 'Eyes Witness', Dorling Kindersley Publishing house, England; 'The Chronicles of Narnia' of C.S Lewis, Harper Collins

Publishing house, The United States; Children's Encyclopedia, Nathan Publishing house, France; the poetry book 'Songs of the Heart' of the prodigy of poetry, Mattie Stepanek, etc. Since Viet Nam's signing of the Berne Convention, Kim Dong Publishing house, bound by the convention's spirit, has decided not to publish a translated book without the permission of its copyright owner. We understand that this is not only an opportunity for the publishing house to enhance fair and cooperative relations with foreign countries but also great challenges in the integration process. With efforts, we believe Vietnamese children will have more chances to get access to interesting translated books. However, this depends on not only us but also our foreign partners. We would like to return to this issue later.

3. The Berne Convention and the issue of author's right in Viet Nam

To some people, the Berne Convention was at first regarded as a challenge, even a 'burden' for Viet Nam in using and exploiting foreign works. In fact, after the Government of Viet Nam ratified the convention and showed its determination to implement its commitment, some Vietnamese publishing houses plunged into crisis. The reason for this was that translated books constituted a large proportion of up to one-third or even half of the number of books they published. Unofficial statistics show that the number of translated books published in Viet Nam after 26th October 2004 has reduced by 40%. This is in fact a problem to Vietnamese publishing houses, including our Publishing House.

On the other hand, the Berne Convention also brings the new behaviour of respecting others' intellectual works to Vietnamese in general and those involved in publishing works in particular. For every bunch of vegetable he grows, the farmer gets some money in return. It's such a paradox when a writer does not receive anything for many of the copies of a book that has consumed so much of his time and efforts. This paradox must be eliminated with the Berne Convention. Another paradox seemed to exist for a long period, but right at this moment, is being reviewed. Why are all procedures, from contacting with authors to signing contracts, required only for translated books but not for Vietnamese works? The Berne Convention will also change this attitude of

publishing in Viet Nam. By now, we have known that many Vietnamese publishing houses have set up the same regulations which include all copyright procedures in their cooperation with Vietnamese authors and writers as well as foreign ones. Perhaps the most important thing this convention can do is even more than that. From now on, the term 'copyright' will no longer be simply regarded as author's royalty. Instead, it is recognized, though not absolutely, as moral and property rights, in which author's royalty is just one factor that needs to be taken into account.

However, from our publishing house's experiences as well as views from other publishing houses, the realization of the Berne Convention is by no means an easy task. Despite our goodwill and desire to cooperate, we have faced a number of difficulties in exploiting foreign copyrights. Here are some of them:

1. Technical difficulties:

- Lack of experience in conducting transactions and signing contracts with foreign publishing houses,
- Lack of information on foreign publishing houses to make the best choice for each individual book,
- Difficulties in identifying business partners as many books are published by more than one publishing houses.

2. Difficulties in cooperation

- Not all publishing houses are willing to reply to our requests for cooperation,
- In principle, Vietnamese publishing houses do not have the responsibility to compensate for books that have been published before 26th October 2004, the date Viet Nam officially signed the Berne Convention. However, in copyright transactions on other books, foreign publishing houses still demand for compensations for previously exploited books.

3. Financial difficulties:

- Payments for copyright transfer in many cases is so high that they exceed the paying capacity of Vietnamese publishing houses. Once again, we would like to emphasize that Viet Nam is a developing country, thus, its people, especially its children, can not afford

books that are too expensive as compared to their incomes.

Viet Nam has officially entered the Berne Convention. Fully aware of the government's policy, publishing houses, including ours, are determined to act in conformity with the articles of the convention. In the international integration process in the field of copyright, it is an effective tool that enable us, on the one hand, to fulfill our responsibilities with Vietnamese and foreign authors, and publish valuable works for our children on the other. In order to achieve these aims, apart from our efforts, we look forward to continued assistance from other nations, international organizations, and cooperation of Vietnamese and foreign publishing houses and authors.