

Barriers to the implementation of the copyright protection of folklore works in Vietnam

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Abstract — In the article, the author has studied and analyzed the content of legal provisions relating to copyright of folklore works in intellectual property law, as well as investigating objective and subjective factors leads to some provisions of copyright law for folk works with unclear content or between legal provisions still containing conflicting content, some important content related to copyright protection for folklore works has not been clearly defined. There is still a contradiction between legal regulations when determining who owns the copyright, or if the copyright owner is identified for folklore works, there is a major shortage. Legal provisions are inconsistent, because when using folk works, if the user fulfills his legal obligations under the provisions of this law, he must pay royalties, but if the user actually By presenting his legal obligations under another law, he does not have to pay royalties but only needs to identify the source of the work. Regulations on the protection of ownership of copyright owners have not been clearly defined, important issues to ensure the implementation of protection for folklore is not clearly defined in copyright law. Copyright law does not stipulate rights and obligations to those who hold folklore works, does not regulate the legal relationship between the derivative author and the original author for folklore works.

Keywords — *the copyright protection, folklore work, obstacles, legal provisions, Copyright law*

I. INTRODUCTION

In the context that the assignment of intellectual work is a frequent and increasingly serious risk. Preventing this risk, creating an intellectual property protection system and seriously adhering to the intellectual property protection management system will be prerequisites for the sustainable economic development of each country. In this paper, the author analyzes three reasons hindering the implementation of copyright protection for folklore works. These are such as:

Firstly, the possibility of legislators is weak, therefore, they cannot foresee some of the general relations that will arise in the future; some legal rules are not clear, not specified and are not universal. As a result, some provisions of the Intellectual Property Law are insufficient, inconsistent, unclear, and some provisions are difficult to apply in practice.

Secondly, many government agencies to ensure the protection of copyright in folklore works, as well as government officials and officials of these bodies were not trained in their professional knowledge of their field of

management, therefore some actions of these bodies impede the protection of copyright to folklore works.

Thirdly, Vietnam is a socialist country, therefore for a long time people have become accustomed to viewing collective assets as their assets, and vice versa. This habit was previously legalized and was considered legal customs. At that time, the author of folk works is the community where the work was born. Thus, as a result of a vague understanding of copyright along with the old custom, subjects assume that by default they use and exploit folklore works, because they consider this to be collective property.

The purpose of this article is to analyze in order to indicate the reasons that hinder the implementation of copyright protection, to offer the best solutions for the protection of copyrights to folklore works. This article will even become a reference source for improving the provisions on copyright and related rights in intellectual property law.

II. LEGAL PROVISIONS ON THE PROTECTION OF COPYRIGHT ARE INSUFFICIENT, CONTRADICTORY, UNCLEAR, AND SOME DO NOT CORRESPOND TO REALITY

Many provisions of the Law "On Intellectual" no longer correspond to the current socio-economic conditions and even the conditions of the next stage of the country's development because: The civil relations under copyright and neighboring rights have changed significantly; the implementation of copyright and related rights in each country is developing rapidly; and also as a result of ensuring the implementation of international treaties and conventions many new legal situations appear (these new situations are objective factors that lawmakers cannot know before creating the law, therefore they did not envisage, or provided but not clearly or not according to reality). This is an objective reason that impedes the implementation of copyright on folklore works.

The system of intellectual property rights also has many different "classes" and "levels" that regulate many different objects in the Law "On Intellectual Property", therefore there are many problems in implementation. Laws, after their publication, should wait for the emergence of new guidance documents, greatly affecting their feasibility. This shows that lawmakers are not yet professional when creating new acts. When adopting a law, it is required that the language used is accurate, understandable, the law resolves existing social relations in a timely manner and is able to regulate social

relations arising in the future. However, when the Law on Intellectual Property is applied, it must have accompanying documents (a governing document for the implementation of the law). Not only one guidance document is required, but many guidance documents for each specific content of the law. In the future, some public relations will arise that require lawmakers to anticipate, but due to limited opportunities they cannot foresee, leading to amendments to the recently adopted law. or it is necessary to immediately issue a sub-law document in order to quickly correct new public relations. Thus, it runs counter to the fundamental feature of the law - stability. Example: What is anonymous work? This concept was not provided for in the Civil Code and the Law on Intellectual Property, therefore it should be accompanied by Decree 22/2018 / ND-CP of February 23, 2018, which entered into force on April 10, 2018. Anonymous work is defined as: "Anonymous work - This is a work without an author's name (birth name or pseudonym) at work when it is published" [1]. As in the case of the Law "On Intellectual Property", there are provisions that provide for penalties for violation of copyright and related rights [2], but there is still a need for a written document that would guide the implementation of this content. This is Decree No. 109/2011 / ND-CP of December 2, 2011 on penalties for administrative violations of copyright and related rights. Thus, it can be understood that the language used in the law is not universal, there is a lack of transparency. This leads to the fact that the subjects will not equally understand the content of one and the same rule of law, leading to a violation of the rule of law and the objectives of the law.

The content of copyright protection of folklore in the Law on Intellectual Property is still insufficient to protect this right in practice. A number of questions were not clearly defined, for example: Which body is responsible for organizing the protection of folklore works? What is protected by these popular literary works? Protection is carried out in accordance with what mechanism? What types of folklore will be protected by copyright? These are very important issues affecting the protection of copyright on folklore works.

Collection and payment of copyright fees were not clearly defined. In particular, Article 23 of the Law "On Intellectual Property" requires the use of folklore works only with "references to the origin of this type of work and ensuring the preservation of the true value of the work" [3]. It can be understood that the Law only requires the fulfillment of a spiritual obligation to folklore works and does not require economic obligations, including royalties. With such rules, many people believe that collecting copyrights to folklore works is not necessary. This lack of clarity leads to difficulties in collecting and paying royalties. Further, it is worth noting that the issue of protection of property rights of copyright owners is not clear. In particular, paragraph 1 of Article 23 of the Law "On Intellectual Property" defines: "A literary-folklore work is a collective creation on the traditional basis of a group or individuals, reflecting the desire of society in accordance with their cultural and social characteristics, standards and values distributed by modeling or otherwise. " Then, paragraph 2 of Article 23 of the Intellectual Property Law provides: "Organizations and individuals when using literary-folklore works should refer to the origin of this type of work and ensure the preservation of their true value."

Thus, in accordance with the provisions of paragraph 2 of Article 23, literary and folklore works are protected as works belonging to the public, as provided for in Article 43 of the Law "On Intellectual Property". This means that the law protects only personal rights and does not protect the ownership of folklore works.

However, paragraphs 2 and 3, of Article 20, of Decree 100/2006 / ND-CP of September 21, 2006, the governments describe in detail a number of articles of the Civil Code and the Law "On Intellectual Property" provide: "The use of literary-folklore works specified in Clause 2 of Article 23 of the Law "On Intellectual Property", is a study to collect and present the true value of literary folklore works "and" users of literary folklore works referred to in paragraph 2 of this article, before It is necessary to agree on the remuneration of individuals who retain literary-folklore works and enjoy copyright on a part of their research and collections ".

Thus, paragraph 2 of Article 20 of Decree 100/2006 / ND-CP, defines "use" - this is the study, collection and familiarization with the true value of literary-folklore works. In essence, these are "non-commercial" actions; if non-commercial activities are to be remunerated, this is contrary to the provisions of Article 25 of the Law "On Intellectual Property". The current normative acts do not define who stores folklore works, there is no provision for a link between the author of derived works from original works of folklore works, and the current normative acts do not determine who keeps folklore works, there is no provision for a link between the author of derived works of original folklore works and books original folklore works (if these persons are identified). The Intellectual Property Act of 2005 does not mention communities, artisans, collectors who own copyright, only copyright owners and other related rights are mentioned.

Thus, the above analysis shows that the law does not provide for the necessary legal content or is not clear, even some of the stipulated contents are contradictory.

III. THE ACTIVITIES OF GOVERNMENT BODIES IN THE PROCESS OF IMPLEMENTING COPYRIGHT PROTECTION ARE INEFFECTIVE

The authorities responsible for ensuring the protection of the copyright of national literary works include: the Government; The Ministry of Culture, Sports and Tourism; Copyright and Literature Office; Specialized Inspectorate of the Ministry of Culture, Sport and Tourism and the Department of Culture, Sport and Tourism; Provincial or Central People's Committees; Customs; Market Management Agency; Economic police; Cultural security; Border guards [4]. Administrative measures [5] used to prevent acts of copyright infringement on folklore works, including: fines, revocation of certificates of copyright, etc. [6]. Many bodies have the same management functions to protect the copyright of folklore works, and each of them has the right to make administrative decisions in the process of their protection. Theoretically, this is an effective way to protect the copyright of folklore works. Each body has the right to make administrative decisions to prevent and eliminate violations. Thus, if there is a violation, it will be immediately prevented and processed. This is the goal in regulating the organizational structure and operational functions of these bodies. However, in fact, the organizational structure and functions of these

bodies themselves are a reason that impedes the protection of copyright on folklore works.

First, due to the fact that many bodies have the function of processing copyright infringements, the violation can be handled by many different administrative decisions taken by many different bodies. This means that a violation can be dealt with several times with various sanctions. In addition, the law on the protection of copyright is still not complete, unclear. Some rules are no longer relevant to the practice, or some have contradictory content. This will lead to a lack of legal basis in making administrative decisions. Thus, the basis for these bodies in making administrative decisions is their subjective reasoning for each specific violation. This leads to the fact that administrative decisions duplicate and trample each other. Sometimes the content of the decisions may be contradictory, or the decisions may be illegal or unconstitutional. One violation can be considered many times, at many stages, but to no avail, which leads to large expenditures of money and time [7], to violation of legal order. Thus, the copyright was not protected, but also limited. This is contrary to the original goal of regulating the organizational structure of these bodies.

Secondly, civil servants and law enforcement officials on copyright protection currently do not generally have legal knowledge of copyright, but are authorized to manage the process of ensuring the protection of copyright [8]. This is unwise, because the person who is authorized to govern, but not sure what to control and in what ways. This means that they will judge, correctly or incorrectly, based on their own understanding, and the common psychological method is a common method. Thus, the law was changed in accordance with their individual will, and the law will no longer be universal. Since then, public order will be changed. This is a reason that impedes the implementation of copyright to folklore works.

IV. SUBJECTS DO NOT RECOGNIZE THE RULE OF LAW

Legal consciousness is an understanding of the laws of the subjects, so that they can act in their favor when participating in legal relations. Legal knowledge of subjects can be associated with training, self-study or other approaches, such as propaganda in the media, etc.

At present, knowledge of society and subjects involved in copyright relations on folklore works is still limited, because: Society and interested parties are not yet aware of the advantages that the law gives them, and this law can help them to limit risks associated with these legal relationships; people's habits consist in the fact that only when legal events turn out to be directly related to their rights and duties, will they learn the content of the relevant law or seek the help of legal organizations.

Legal consciousness is formed from the legal knowledge of the subjects in conjunction with the behavior of the subjects, which consists in the observance of and compliance with the law. Therefore, the rule of law is that every citizen must abide by the law, in other words, citizens can only do what the law does not prohibit [9].

Vietnam built the country in a socialist way, therefore the Constitution (1959; 1980; 1992) provides that in the economic regime there are only two main forms of ownership: collective ownership and state ownership [10], private property is not

prohibited, but not recommended. Private property is recognized only in the 1992 Constitution, and in the Constitutions of 1959 and 1980 this form of ownership is not recognized.

And so, for a long time the Vietnamese law prohibited the regime of private property. This means that citizens should not have their property, all property belongs to the collective, the state, therefore people perceive the collective assets, the state is also their property and vice versa. Such perception is mandatory because it has been legalized and is considered a legal practice. Currently, the law recognizes many forms of ownership. The same forms of ownership are equally protected by law, but the habit of perception of collective assets, the state also as its property has not changed. In the absence of an understanding of the copyright of folklore works, as well as the result of old habits, subjects will understand that folklore works are collective property, therefore, subjects, by default, use and exploit them. They believe that this is the right action, because it is in accordance with customary law. Thus, due to the lack of legal knowledge of copyright, along with old habits, the subjects acted against the law, violating the copyright to folklore works.

In order to effectively implement the process of ensuring the protection of copyrights to folklore works, in addition to the relevant provisions of the law, the effective work of the public administration staff, the awareness of people's observance of laws, the determination of the reasons that hinder the process of ensuring copyright protection is also very important. This will help lawmakers have a comprehensive and thorough understanding of how to build a law on the path to perfection and greater stability. Government will reorganize the organizational structure and functions appropriate to reality in order to work more effectively. Finding out the reasons will help to take concrete measures to improve people's legal awareness. This is the result that the author of this article wishes, so that the implementation of the protection of copyrights to folklore works becomes more and more effective in practice.

Acknowledgment

In this article, the author has focused on researching and analyzing Vietnam's current legal provisions, as well as the content of relevant international agreements that Vietnam has participated in, thus pointing out Specific provisions on protection for literary and artistic works, and folklore works.

Art and literary works will be protected in Vietnam when: It is the result of the author's creative intellectual work; The work must have the original nature of the work that cannot be reproduced in any form; The work must be created in the form of a certain text or object; The works do not contain content against the state, or distort national history.

Folklore is also a literary and artistic work so to be protected in Vietnam, it also needs to meet the conditions as a work in general. However, folklore works have their own characteristics, so the following specific rules are required: The works will naturally be protected without guarantee of originality; Automatic protected work without dependency needs to be presented in a fixed format.

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