

Folk Culture, Characteristics and Role of the Process of Protecting Intellectual Property Rights for Folklore Works in Vietnam

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ABSTRACT

In this article, the author has focused on research and analysis with the aim of clarifying the nature of folklore works, the basic difference between folklore and other works of art; Analyze why the authors of folk works are not specific individuals, differences in copyright of folklore works compared to copyright of other works of art; Analysis of basic characteristics in the process of protecting intellectual property rights for folklore works, the role of intellectual property rights in folklore works in Vietnam. From the research and analysis process, the author pointed out: The nature of folklore works is collective creation on the traditional foundation of a group or individual to reflect the aspirations of the community, expressed commensurate with their social and cultural characteristics, standards and values are handed down by simulation or otherwise; Folk cultural works born on the basis of economy are agriculture dependent on nature, so it is closely linked to people's daily activities, it reflects the life and feelings of farmers expressed by activities with many forms of expression, therefore folklore works have four characteristics expressed through word of mouth, Characteristics combining many models, collective characteristics, features of many different versions; Intellectual property rights to folklore works are the right of the community (village), individuals (artisans, collectors, researchers) for property is an intellectual product, including copyright, i.e. the right of the community to create folklore works and copyright-related rights/community rights to create folklore works; Protection of intellectual property rights for folklore works is to ensure the prevention and protection of copyright infringement; copy distorts the original work; mining without permission; use without recording the source; incorrect quotes where folklore is born. Effectively prevent illegal profits from copyright infringement, prevent abuse of heterogeneity of folklore works to distort national identity, violate national interests, lose national self-esteem, cause political instability, falsify policies and the laws of the State.

Keywords: *copyright protection, inappropriate rules, intellectual property, culture, folklore works*

1. INTRODUCTION

Due to development needs, Vietnam has continuously cooperated with regional countries as well as countries in the world in many fields of economy and culture [1-4]. Facing the trend of international integration, cross-cultural interference is inevitable, therefore, the identity of Vietnamese culture may disappear, by the assimilation of other cultures [5-8]. Because of economic development priority, therefore, the areas of social life have not been strictly managed, thus leaving unfortunate consequences, good customs, good tradition of Vietnamese people, the love between people and people, a healthy and honest lifestyle in every Vietnamese person gradually disappears, instead is a pragmatic lifestyle, people without emotions appear more and more popular [9]. This without timely solution the result is immeasurable, because Vietnamese culture and identity have been refined, and preserved for

thousands of years will be forgotten and lost by Vietnamese people in the future. Therefore, to preserve the traditional culture of the Vietnamese nation every citizen must see the role of traditional culture and feel proud to be Vietnamese, so people must understand how traditional culture is formed, what types of art are shown? That's why the author chose the article topic: Folk cultural works and characteristics of intellectual property rights for folklore works in Vietnam, this article is the purpose of the author to help readers better understand Vietnamese folklore and Vietnamese [10-12].

1.1. Concept of folklore works and intellectual property rights to folklore works, protection of the law on intellectual property rights to folklore works

1.1.1. Concept of folk literature works

The nature of folklore works is the material and spiritual values of people created in their lives, Folk works have many genres such as folk tales, folk songs, blowing instruments (bamboo flute, flute ...), dance, drama, ritual, painting works, traditional costumes, traditional musical instruments (one-string, gong, drum ...) and architectural forms. Folklore works are collective creativity of people in society, it reflects the cultural and spiritual life of the community and peoples of the world, folk literature works with a sense of awareness, aesthetic art, and education. therefore, it needs every individual in the community to embrace and protect.

1.1.2 Folklore works have four basic characteristics

Although First: Folk culture has been handed down from generation to generation through word of mouth (storytelling).

Second: Folk culture is a mixture of different art forms that exist in the memories of folk writers; exist in writing; exist through acting.

Third: Folklore works are the creation of the people, but not everyone is the author.

The fourth group: Folklore works are composed by many people and it is rarely fixed in a text, so when it is transmitted to different areas, it will be changed.

The difference between folklore and other literary works is expressed in:

The folk work is based on the wet rice agricultural economy, so much depends on the natural ecological environment, the author is a farmer living in the commune, hamlet (the administrative unit of Vietnamese people).

Folklore works reflect the production and living activities of farmers. For example, to lull babies, people create lullabies and it will be sung when lulling the baby to sleep.

Folklore works reflect the spiritual life of farmers, for example, the Spring Festival, where performances will be used to dance, sing or play flute with embroidered, colorful, contoured costumes, the purpose is to show on the minds and emotions of farmers.

Folklore works are preserved by human memory, not because they have no writing but because of its creation, diffusion and acceptance mechanisms, the mechanism of composition is improvisation, practice, dissemination and reception that usually take place at the same time and in place, the division between stages has no clear separation. Therefore folklore works are transmitted from generation to generation through word of mouth, it may be part of a

national cultural heritage or part of intangible cultural property of indigenous or local communities. Usually this invisible part is managed by a group of indigenous people and it is closely linked to the system of obligations and common rights of individuals and communities.

In Vietnam, the concept of folklore works for the first time is defined in intellectual property law. According to intellectual property law: "Folk culture acts as a collective creation on a traditional or group basis to reflect the community's aspirations, showing commensurate with their social and cultural characteristics, standards and values are circulated by simulation or otherwise "

1.1.3 The concept of intellectual property rights for folklore works

Formation: Copyright for folklore works is often established for the community of original folklore writers. This right allows the creative community to control the exploitation, copying, modification and publication of their works.

Subjects of copyright for folklore works include: Performing, recording, recording videos, broadcasts, satellite signals with encrypted programs

Folklore works include the following four basic groups:

Group one, it is expressed in language (voice): Jokes, fables, epics, myths, legends, anecdotes, poems, folk songs, proverbs, puzzles. "Literary and folk art works are language arts such as: Stories, jokes, fables, epics, myths, legends, anecdotes, poems, folk songs, proverbs, other similar expressions"

Group two, it is shown by music like: folk songs and melodies like Ca Tru, Quan Bac Ninh, Hue court music, ...

Group three, it is expressed by actions (in body language) such as Tuong, Cheo, Cai Luong, dance, drama, folk games, village festivals, folk ritual forms.

Group four, it is represented by visual art, can be felt by the senses because it is expressed in a certain form, such as graphics, painting, sculpture, musical instruments; architectural model (gong, merit, Dong Son bronze drum, Bat Trang ceramics, Dong Ho painting ...)

The first three groups are not necessarily expressed in a specific form, sayings do not necessarily need to be written down, music is not necessarily written in chord symbols, the dance is not necessarily in a specific model. But for the fourth group because it is a work of art, it must be represented by a tangible material.

Copyright owner of folk literature:

Folklore works are works created by generations of people and social communities, it lives with time and is circulated in people's lives. Therefore, generations of people and social communities are owners of folklore works and also the owner of copyright for folklore works. Therefore, in principle, the copyright owner under that law is the whole community. In particular, artisans and practitioners of folklore works are community members, with the ability to understand deeply and deeply about folklore works, they will represent the community to remember and spread

folklore works. The community will recognize their value because of the outstanding features of folklore works preserved by human memory. Folklore works, especially performing arts with operational mechanisms including: Creativity (often impromptu), practice, dissemination and reception often take place at the same time and in place, unclear assignment between stages, therefore the form of expression of folklore works exists under one model. Therefore, when practicing community members have the right to add their own initiatives, so folklore works are always formed from two parts: One is, core, frame (plot). If only the core, the frame did not become a work; Secondly, community members use this core, this frame follows their wishes through demonstration.

The place of creation, transmission, dissemination and reception of folklore are communities with the names of villages and squirrels (collectively referred to as villages). Therefore, it is possible to identify a village with ownership of their folklore works. If many villages have the same type of folklore, they will be recognized for each village's folklore, however, in fact, despite the same folklore work, each village has an expression that is not quite the same.

Through practical activities and based on the charter of the Vietnam Folk Art Association approved by the State, the following entities and individuals participate in the copyright of folklore works :

Commune community: The village is a social unit with ownership rights to the folklore of its village.

Folk artisans: People recognized by the community as leaders in holding and practicing, teaching folklore of the community.

Practitioner: As a performer, turning the values of folklore works into only human memory is "manifested in a specific form - expressed in a specific life", they are young people taught by artisans and can practice and express folklore works.

Research collector: Today there are collectors and researchers who share a certain degree of ownership in how to express folklore works. Somehow, they come to the community and are provided with folklore works by the community. These people are recognized as owners of the documents they collect.

From the above analysis, it is possible to include the concept of intellectual property rights in folklore works as follows: Intellectual property rights to folklore works are the rights of the community (village), individuals (artisans, collectors, researchers) are intellectual property owners including copyright, ie the right to create folklore works and other related rights, community rights to create folklore works.

1.1.4 Concept of protecting the law on intellectual property rights for folk literary works

Legal protection is the duty of all agencies, organizations, all Vietnamese citizens and foreign and citizen

organizations working and living in Vietnam. The State manages society according to the laws, rights and obligations of the State according to the provisions of the Constitution: "The state is organized and operates under the Constitution and laws and social management according to the Constitution and laws ..."

The law on intellectual property rights for folklore works is a general rule on the handling of intellectual property rights to folklore works promulgated or recognized by the State, expressing the will of the State, guaranteed by the coercion of the state and implemented through the rights and obligations of the stakeholders. Parties participate in legal relations of intellectual property rights to folklore works as authors, copyright owners, work users and state agencies and organizations. The above entities have clear rights and obligations. These rights and obligations are expressed by the specific acts of the parties due to the provisions of the law on intellectual property rights to folk works governed by the interests of the author, copyright owners, with the interests of the community and the interests of the State.

Protecting the law on intellectual property rights for folk literary works including acts (actions, non-actions) of individuals and organizations as prescribed by law. Legal science calls these acts according to the constitution and the law. Protection of the law on intellectual property rights for folklore works is a purposeful operation, making legal provisions on intellectual property rights to folklore works become a reality in life, creating a legal basis for the actual operation of law.

Through analysis, it is possible that the concept of legal protection of intellectual property rights for folklore works is as follows:

Protection of the law on intellectual property rights for folklore works is the act of copyright holders (commune communities, folk artisans, collectors, researchers of folklore works) of folklore users (individuals and organizations) of citizens and competent agencies and organizations according to the requirements of the law on intellectual property rights for folklore works, ensure the legal rights and interests of copyright owners, of the community and the state is carried out to protect and promote the spiritual and human values of folklore works.

1.2 Basic characteristics of intellectual property protection for folklore works

Copyright owners of folklore works are generations of people, social communities, folk artisans, practitioners to collectors, researchers ...Because of its social nature, it requires a higher legal consciousness of society than the protection of intellectual property rights for other literary works.

In the field of intellectual property rights for folklore works, Abuse can happen at any time and very difficult to detect due to the intangible nature of this special property. Especially, with the help of sophisticated and modern technology today Intellectual property rights to

folklore works are easily violated, therefore the effect of protecting intellectual property rights on folklore works depending on the propagation and dissemination of the law to the people to change the perception and consciousness of the object, thereby changing behavior and strictly implementing the provisions of law, at the same time, the protection of competent state agencies for folklore works must be carried out regularly and drastically, because when an object is in the process of exploiting and using folklore works, despite knowing the laws of their rights and obligations to the author of the work they are using, but for great economic benefits, they are ready, despite moral standards deliberately failing to fulfill his obligations, they become copyright thieves for folklore works.

Protecting intellectual property rights for folklore works, it has the coherent, collective, oral and heterogeneous principles of folklore works.

Four basic characteristics of folklore works: cohesion, heterogeneity, collective, word of mouth, an inseparable organic relationship. Therefore, when protecting intellectual property rights for folklore works, these four attributes must be respected. Therefore, when participating in the enforcement of the law on intellectual property rights for folklore works, subjects must respect the four basic characteristics of folklore works, therefore, entities can comply with, use and apply the law in accordance with the requirements of the law.

Protecting intellectual property rights to folklore works other than other literary works in the subject of protection. Subjects entitled to protection of intellectual property rights to folklore works include: Group according to regional or regional usage habits; Group of literary and folklore theory; Art performance group; Art shaping group; Group with indigenous knowledge. Target groups are protected under the law on intellectual property rights for this folklore work very sensitive about politics, culture, social psychology, therefore, when participating in the law enforcement process, there must be a certain understanding of the types of folklore works, Folklore works it has a variety of genres. Therefore, legal entities will face many difficulties and mistakes in the process of law enforcement on intellectual property rights for folklore works. Especially state agencies, competent organizations and individuals need to have knowledge of different types of folklore works can organize for objects to implement the provisions of the law on intellectual property rights for folklore works make a decision to apply law to give rise to, prevent or change the legal relationship of intellectual property rights to certain folklore works. Vietnamese folklore works have the diversity and abundance of many groups these are the reasons that it is difficult for agencies, organizations and individuals to discover when copyright infringement occurs, while limiting the process of creating folklore works of the community. Therefore, state agencies, organizations and competent officials have not

made a timely decision to apply the ban, or terminate violations of law, request remedial action when violations occur.

1.3. The role of protection of intellectual property rights for folk literary and artistic works

Protection of intellectual property rights for folklore works is to make the provisions of intellectual property law guaranteed to be implemented in practice. Therefore, protection of intellectual property rights for folklore works has the following roles:

Protection of intellectual property rights for folklore works is a form of protection of intellectual property rights for folklore works, making the protection of intellectual property rights for folklore a reality, the protection of intellectual property rights for folklore works is to ensure the prevention and combat of copyright theft; copy distorts the original work; exploiting without permission; use does not record the origin; quotations are not exactly where folklore works were born; effectively prevent illegal profits from copyright infringement, prevent abuse of heterogeneity of folklore works to distort national identity, harm national interests, lose national self-esteem, destabilize society.

Protection of intellectual property rights for folklore works contributes to comprehensive development of these works, the exploitation and adjustment of works does not affect, harm the beauty, cultural identity that it carries, but does not inhibit the creativity of those who develop them.

Protection of intellectual property rights for folklore works also contributes to the development of Vietnamese culture in the modern trend, imbued with national identity and integration with the world but not dissolved.

Protection of intellectual property rights for folklore works also contributes to promoting patriotism and national unity tradition, the sense of self-reliance on national construction and protection is the high spiritual value of the Vietnamese people. These values have been preserved and promoted for generations, it has become a national cultural tradition, which is the basis for the cohesion of social classes, creating the immortality of the nation.

Protection of intellectual property rights for folklore works is to ensure international intellectual property treaties in general, including international treaties that directly relate to intellectual property rights in respect of folklore works that are respected and implemented in a full and serious manner. International treaties concerning this issue that Vietnam has participated in, signed and ratified are respected and become a reality. This is a very important issue to enhance Vietnam's position in the international arena and meet the increasing requirements in the context of international integration today.

2. CONCLUSION

In this article, the author gives an accurate and scientific concept of folklore works: Folklore is a collective creation on the traditional foundation of a group of individuals to reflect the community's aspirations, expressing their social and cultural characteristics.

The author has also pointed out the values of art, aesthetics, awareness and education of folklore works, at the same time, there are also four basic characteristics of folklore works: Verbal inheritance, accept multiple originals at once, collective and characteristics are different from the original.

The article specifically mentioned topics of intellectual property rights for folklore works including: Village community, personal (artisans, collectors, researchers).

Folklore works have their own characteristics compared to other works, should protect intellectual property rights for this type of work requires a separate way: Sociality must be more universal than protection of intellectual property rights over other works; Requires legal consciousness of the whole society, voluntarily perform obligations and promote social ethics of the entire people.

The article is a reference for those who study Vietnamese folklore, as well as the characteristics of intellectual property protection for folklore works in Vietnam.

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