

# Terms of Copyright Protection and Inappropriate Rules in the Law on Intellectual Property for Current Folklore Works in Vietnam

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## ABSTRACT

This article contains the results of an analysis of the existing laws of Vietnam, as well as the relevant international agreements to which Vietnam is a party. Specific provisions for the protection of literary and artistic works in general and folklore works in particular are defined. The paper substantiates the idea that in order to protect copyright, the works of the folklore genre must comply with the conditions relating to all literary and artistic works. In addition, the article contains a description of the features of folklore works, causing additional requirements for copyright protection. Art and literary works will be protected in Vietnam when: this is the result of the author's creative intellectual work; The work must have the original character of the work, which cannot be reproduced in any form; The work must be created in the form of a specific text or object; Works do not contain content against the state or distort the national history. Folklore is also a literary and artistic work, so for protection in Vietnam, it must also comply with the conditions as a work in general. However, folklore works have their own characteristics, therefore the following specific rules are required: works, of course, will be protected without guarantee of originality; Automatic secured work without dependency must be presented in a fixed format. In the article, the author studied and analyzed the content of legal provisions relating to the copyright to folklore works in intellectual property law, as well as the study of objective and subjective factors leading to some provisions of the copyright law for popular works with unclear content or between legal provisions that still contain controversial content, some important materials related to the protection of copyright on folklore works were not clear or defined. There is still a contradiction between the legal rules determining who owns the copyright, or, if the copyright holder is defined for folklore works, there is a serious shortage. Legal provisions are contradictory, because when using popular works, if a user fulfills his legal obligations in accordance with the provisions of this law, he must pay royalties, but if the user actually represents his legal obligations in accordance with another law, he does not need to pay royalties, but you only need to determine the source of the work. Provisions on the protection of the rights of copyright holders have not been clearly defined, important issues ensuring the protection of folklore are not clearly defined in the copyright law. The law on copyright does not establish the rights and obligations of those who own folklore works, does not regulate the legal relationship between the derived author and the original author of folklore works.

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

## 1. INTRODUCTION

Folklore works always reflect the traditional culture of the region or country where they were created. This is a common feature that unites the folklore of the whole

world, and each country has its own rules for the protection of this type of art [1-4]. Vietnamese folklore also reflects the traditional culture of the people that has

existed for a long time, the soul of the Vietnamese, their spiritual values live in it. Folklore is the great creative potential of the country and its people, so it must be carefully guarded. However, not all folklore works are fully protected. Vietnam is actively involved in the global economy, is a party to multilateral and bilateral treaties in the field of art, so many national works in general and folklore works in particular have a fairly large number of interspersed foreign cultures [5].

The copyright protection of folklore works is of great importance. In this work the author presents: firstly, the conditions for the protection of copyright on all works in general; and secondly, the conditions for the protection of copyright to folklore works in particular in Vietnam at present [6-8]. This is the current legal provisions of the Vietnamese law comply with international treaties and agreements to which Vietnam has acceded. They also comply with international legal practices in this area. The purpose of the work is to provide legal grounds for authors, owners of copyright on folklore works; as well as for those interested in this area; to protect, protect and develop the material and spiritual values of folklore works. The legal provisions of Viet Nam's intellectual property law in general, and on copyright to folklore works in particular, initially created the legal framework for agencies, organizations and individuals to fulfill the rights and obligations associated with copyright to folklore works. At the same time, normative legal documents in this area also gradually comply with international copyright law, so that Vietnam gradually accedes to international conventions and treaties [9, 10]. However, in the implementation of intellectual property legislation in some acts there are some provisions that do not correspond to reality in practice. This causes government agencies and legal entities to face many difficulties in implementing or not knowing how to do this because of the reasons: the same content, but the provisions contradict each other or are unclear, or the object to which these applications are applied, etc.

In this paper, the author focuses on analyzing provisions that do not correspond to the copyright on folklore works in the Law "On Intellectual Property". The content of the work consists in pointing out contradictions in the provisions on copyright on folklore works; copyright provisions that do not guarantee consistency, concreteness and clarity in order to protect copyright and related rights. This work will serve as a basis for making changes and additions to the Law on Intellectual Property in the future.

## **2. TERMS OF COPYRIGHT PROTECTION OF WORKS**

The solution to the problem of copyright protection of folklore works is of great importance, therefore in this work it is necessary to study its main aspects: firstly, the conditions for the protection of copyright in works of art in general, and secondly, the current conditions for the protection of copyright in Vietnamese folklore works. Viet

Nam has legal provisions in compliance with international treaties and agreements to which the state has acceded. One of the objectives of this work is the study of legal grounds that may be useful for authors of folklore works, as well as for those who are interested in the field of art in general. Knowledge of the legal framework related to the protection of copyright in works of art is necessary in order to preserve, protect and develop the material and spiritual values of folklore works.

The main conditions for the protection of copyright in works of art are usually attributed to the following. First, the work must be the result of a creative work process. At the same time, the subject of creative activity becomes an author through the process of intellectual work, gaining experience and other factors accompanying the creative process. Due to the uniqueness of the talents and independence of each author of the work, they are created rich and diverse, contain deep spiritual and material values. Getting acquainted with the well-developed results of creative work, people get new thoughts and emotions.

Secondly, the work protected from the point of view of authorship must be original, that is, it must be created directly by the author and be an intellectual work that does not allow copying of any other work. In the legal field of each individual country, the interpretations of the categories "originality" and "copyright" are different. The concept of "originality" of work in any field of science, literature and art is based on the creative activity of the author, created by him and on anything else not similar "substance".

In practice, cases of copying occur quite often, however, often not immersed in the field of art a person is not able to distinguish the original work from its reproduction. As an example, many domestic and foreign musical plays, which, according to experts, are stolen, can serve, this statement is also true for famous paintings, for example, P. Picasso, who have always been subject to fraud. "Fake" works of art cannot be protected, because they do not meet the criteria of originality and independence in the works of the author.

There are generally accepted criteria for the originality of work, according to which the author, in the event of a dispute, must prove that the work was created by him independently or by using any other work (in this case, you must indicate the part used to determine the originality of the results of his own work and guarantee retaining the rights of another author).

Thirdly, only the text and / or materials of the work are protected, but not the content of the idea. Forms of writing work are quite different and vary depending on the type of work, so for literature such forms are poetry, novels, short stories, for fine arts - paintings, photographs, calligraphy, and so on. The work can be expressed objectively, that is, in the form of a certain form - a book, canvas, electronic medium. Clause 1 of Article 379 of the Civil Code (2005) and Article 6 of the Law "On Intellectual Property" (2005) state: "Copyright begins from the moment of creation and expression of work in a certain material form, regardless of the content, quality, form, carrier, language, publication and registration.

However, in order to ensure legal security, political stability and the common good of citizens, the state does not contribute to the protection of works with semantic content related to anti-state sentiments, undermining national unity; propaganda of violence, war, invasion, reactionary cultural ideas; destruction of lifestyle, criminal acts, social evil, destructive customs; disclosure of state, military secrets, private life of citizens or other secrets provided by law; distortion of history, denial of revolutionary achievements, insult of great people and national heroes, slander, damage to the prestige, honor and dignity of citizens. Works that contain a meaning that is contrary to the law do not have state protection and cannot be published in any form .

The conditions for the protection of a work as a work to be fixed in a certain form are enshrined in the agreements of the Berne Convention for the Protection of Literary and Artistic Works. Article 3 of the Convention states that the norms of the domestic law of a State Party “should also be considered as a condition of protection in accordance with the Convention, subject to such procedures as filing, registration and notification, which are a condition for the protection of the work”.

Subject to all necessary working conditions, they can be protected regardless of whether they have passed the publication procedure and whether the country where the work was created is a party to the Convention. If the author is a citizen of the state party to the Bern Convention or the work was published in one of the state parties, then it is automatically protected by copyright .

However, it should be noted that the protection of copyright has a territorial feature. In other words, the work is subject to copyright protection if it complies with the legal regulations of the country where it is planned to be protected. Thus, each country has a separate copyright protection system, based on one or more regulations.

Speaking about the conditions of protection of copyright on folklore works, it is necessary to note the following most important aspects. Folklore works have their own characteristics, among which the most important from the point of view of copyright are represented by optionality, stony, syncretism and collectivity. In connection with these features, the conditions for the protection of copyright in folklore works are different from those of other designed objects of copyright protection.

First, the variability characterizing the works of folklore does not guarantee the originality of the work, due to the fact that it is not possible to establish for certain who the first person who created the work of folklore was. Currently, many folklore literary works are similar in content, but have different details (for example, the place of the actions described in the work, the names of the characters, and so on). Through the use of various artistic details, different variants are created, each of which is automatically protected, which guarantees the originality of the work. Each version becomes a folklore-literary work of a certain people, regardless of where the original work was created, who its author was, and who the work was “modified”, therefore each version of the folklore work should be recognized and protected equally.

Secondly, the condition for the protection of copyright is the expression of the work in a certain form. There is a concept of copyright in the form of creativity. However, since the main form of the genre is “word of mouth”, for folklore works there is no definite form, and they are protected regardless of the method of formation. So, folklore works are not tied to a specific fixed form, they are automatically protected. This provision is enshrined in Clause 1 of Article 20 of Decree No. 100/2006 / ND-CP, which is based on a number of articles of the Civil Code and the Law "On Intellectual Property" and on copyright and related rights: "Folk literary and artistic works are protected regardless of the way of their formation" .

Thus, in this paper a detailed analysis of the legal basis for the protection of the folklore work in Vietnam is carried out. It should also be noted that on legal grounds set out above, the property and personal rights of the creator of a folklore work are amenable to protection. This allows the nation to join and produce mutual exchange with the global world cultural community, since literary works are considered one of the most effective tools of cultural, and at the same time - the economic integration of developing countries such as Vietnam.

### **3. THE CONTRADICTION BETWEEN REGULATIONS ON COPYRIGHT ON FOLKLORE WORKS**

The current Law on Intellectual Property has some conflicting points between articles (article 14, article 23 and article 41) when it comes to the protection of folklore works. Clause 1 of Article 14 prescribes folklore works as works protected by copyright. But this contradicts Article 23: “Folklore works are collective creations based on the tradition of the group,” and according to Art. 41: “The state is the owner for anonymous work. In the section on copyright and related rights, the Law “On Intellectual Property” does not provide for communities, artisans and / or collectors as the copyright holder. Although you can immediately understand the owner of the folklore and literary work can be as a community, and those who share the interests of copyright as an artisan and collector, but the Law "On Intellectual Property" mentions only copyright owners of related rights. The restriction of the Law “On Intellectual Property” mentioned above makes it very difficult to protect the copyright to folklore works in Vietnam at the present time.

#### ***3.1. The provisions of the intellectual property law don't ensure consistency***

This inconsistency is reflected in Part 2 of Article 23 and paragraph 27 of Article 27 on the protection of personal and property rights. Part 2 of Art. 23 of the Law "On Intellectual Property" stipulate that organizations and individuals, when using folklore works, must indicate the origin of such works and ensure the true value of folklore works.

Taking into account that in paragraph (a) of Article 27 a folklore work is subject to the complete protection of personal and property rights, this protection is for life. Thus, if you stop in paragraph 2 of Article 23 of the law, the use of folklore works without the need to give instructions about the origin, without distorting the value of the works. As applied in clause a, article 27, when using folklore works, the user of the work must pay the money. This is unreasonable in accordance with current intellectual property laws today.

### ***3.2 Many of the existing rules are not specific enough to protect the copyright of folklore works***

Although the Law "On Intellectual Property" provides for the protection of copyright on folklore works, but the legal norms enshrined in the law are not sufficient to protect this right in practice. A number of questions were not clearly defined: which institution is responsible for organizing the protection of folklore works? What aspects of folklore are protected? Protection is carried out in accordance with what mechanism? What types of folklore works will be protected? These are very important issues that affect the protection of copyright on folklore works.

The issue of collection and payment of royalties is not clearly defined:

Article 23 of the Law "On Intellectual Property" requires, when using folklore works, it must refer to the origin of this type of work and preserve the true value of the work. " It is understood that the Law only requires the fulfillment of a moral obligation for folklore works and does not require economic obligations, including the payment of royalties. Thus, many people believe that a fee for the copyright of a folklore work is not required. This lack of clarity made it difficult to collect and pay royalties.

Protection of property rights of the copyright owner is not yet enshrined in the Law "On Intellectual Property":

Clause 1 of Article 23 of the Intellectual Property Law defines: "Folklore works and works of folk art are collective creations based on the traditions of a group or individuals to reflect community aspirations, social and cultural characteristics, standards and values, communicating through modeling or others" . Subsequently, paragraph 2 of Article 23 of the Intellectual Property Law states: "Organizations and individuals when using works of folklore and folk art should refer to the origin of such works and ensure the preservation of the true value of such works."

Thus, according to the provisions of paragraph 2 of Article 23, folklore works protected as works belonging to the public, as provided for in Article 43 of the Law "On Intellectual Property", means that the Law only protects

personal rights and does not protect the ownership rights to folklore works.

However, clauses 2 and 3, Article 20 of Decree 100/2006 / ND-CP of September 21, 2006, which sets out and guides in detail a number of articles of the Civil Code and the Law on Intellectual Property regarding copyright and related rights, enshrines that: "the use of folk-literary and folk-artistic works, provided for by paragraph 2 of Art. 23 of the Law "On Intellectual Property", is the study, collection and presentation of the true meaning of the work of folklore-literary and folklore-artistic works; and this study, collection, presentation will be protected by copyright".

Thus, in paragraph 2 of Article 20 of Decree 100/2006 / ND-CP, "use" is a study, collection, presentation of the true value of a folklore work. This is essentially a "non-commercial" act, if remuneration is paid to non-commercial behavior, this is contrary to the provisions of Article 25 of the Law "On Intellectual Property". Some documents relating to the copyright of folklore works have unclear rules, do not correspond to reality, make it difficult for subjects to exercise their rights, and even impossible to implement. For example, according to Decree 62 "on the examination and awarding of the title of artisan," in order to become a "folk artisan," the legacy practitioner must be given the title of "outstanding artisan". Decree 62 does not mention any "exceptions" for the title of "artisan", therefore the conditions for recognition of artisans actually "perplex" old artisans. Currently, many localities are very concerned because some of the provisions of Decree 62 "on the review and awarding of the title of craftsman" have not been clarified, the Circular governing the implementation of the Decree has not yet been adopted, and the deadline for implementing the Decree has already begun on August 25, 2014 of the year.

Not provided for issues related to the copyright of folklore works

In the regulations on copyright to folklore works there is no provision for clamps of folklore, the relationship between the original author and the derived author. The current regulations do not indicate who preserves folklore works; there is no regulation of the relationship between authors of derived works from original works and fixers of folklore works (if preserving folklore works is defined). The Intellectual Property Law of 2005 does not provide for a community, an artisan or a collector as a copyright holder, and considers only the owner of copyright and other related rights.

Thus, the legislation on copyright to folklore works in Vietnam still has many shortcomings, limitations, contradictions, not meeting the requirements in practice, not creating a favorable and healthy legal environment for the exercise of copyright to folklore works in order to protect and promote good values of folklore works.

#### 4. CONCLUSION

The article identifies and analyzes the necessary conditions for the protection of literary and artistic works in general and Vietnamese folklore works in particular. In accordance with the results of the analysis performed, the following conditions for the protection of copyright of literary and artistic works can be highlighted:

- Work is the result of the author's intellectual labor process;
- The work must be presented in a certain form;
- The work must be original - the original created directly by the author should not be reproduced in any other form; The work should not have a semantic content, falsifying the national history or damaging the state regime.
- Mandatory conditions for compliance with the copyright to folklore works are the following:
- Observance of copyright standards, characteristic of literature and art in general;
- Works are subject to protection outside the guarantee of exceptional originality in view of the variability of the works of the genre;
- Works are subject to protection regardless of the form of their expression.

In this article, the author analyzed and indicated unclear, important, but unspecified parts, unreasonable provisions of the law on copyright law and related rights to folk works.

There are still many contradictions between the provisions of the law on copyright to folklore works, which makes it difficult to protect copyrights to folklore works.

The provisions of the law on intellectual property do not guarantee consistency in the protection of moral rights and property rights of copyright holders.

Many regulations are not specific enough and clear, for example: the collection and payment of copyright issues are not clearly defined; Protecting the rights of copyright holders is also prescribed to be incompatible with reality, which impedes copyright protection.

The issues related to the copyright of folklore works were not prescribed: it is not clear who owns the folklore works; The legal relationship between the derived author and the original author is not mentioned in the law.

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