

## *Summary*

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## **I. Background**

Until its accession to UNESCO network on intangible cultural heritage (ICH), the State of Viet Nam didn't entertain safeguarding activities in relation to ICH. Notable developments in the field happened with the promulgation in 2001 of the national law on cultural heritage, and in September 2005 with the ratification of UNESCO 2003 Convention for the safeguarding of ICH.

### **1. Survey Institutional Background**

A strong legal foundation for the safeguarding of the nation cultural heritage has been built in Viet Nam for the past years. The institutional background of ICHCAP IP Field Survey is made up of several institutes in Viet Nam:

- Viet Nam Institute of Culture and Arts Studies (VICAS)
- Vietnamese Institute for Musicology (VIM)
- Copyright Office of Viet Nam (COV)
- Viet Reproduction Rights Organization (VIETRRO)
- VietPictures Media Company

### **2. ICH Information Building and Sharing**

#### **1) Viet Nam Institute of Culture and Arts Studies (VICAS)**

Established in 1950, VICAS has been since its establishment a leading national institute for science research and post-graduate training on culture, arts and information in Viet Nam's culture, sports and tourism sector. The Institute is assigned as advisory body on culture, and also management of the collection and safeguarding of the intangible cultural heritage of ethnic groups in Viet Nam. Also, VICAS implements itself a range of projects of collection, preservation and promotion of intangible cultural heritage of ethnic peoples in Viet Nam.

VICAS has been invested by the Government in ICH safeguarding activities through the National Target Program in Culture. During the past five years, the Institute had conducted several activities:

- 458 collections and research projects
- Revitalization of 38 traditional festivals of ethnic minorities
- Training of 350 of local officials

- Guidance on implementation of 705 ICH survey, study, collection, documentation, and inventory projects.

The Institute acknowledges several information building and sharing activities in ICH field.

- Development of an ICH data-base bank, which connects to other 15 satellite databases in different localities.
- Media promotion of Viet Nam ICH values:  
Hanoi Television: program of culture space (Không gian văn hoá)  
Vietnam Television: program of conservation for future generations (Gìn giữ cho muôn đời sau)
- Publication of many ICH books and hundreds of VCDs and DVDs on ICH for academic training:  
Hanoi National University of Education  
University of Social Sciences and Humanity (Hanoi National University)

In parallel, the Institute has successfully prepared various dossiers, namely: “The Cultural Space of Gong in the Central Highlands”, “Quan Ho Bac Ninh folk Song”, “Giong Festival at Phu Dong and Soc Temples” and “The Worship of Hùng Kings in Phú Thọ” to submit to UNESCO for its inscription on the Lists of the Intangible Cultural Heritage of Humanity by UNESCO.

A project in the institute follows several normal processes:

- Survey at field site
- Preparation of survey report
- Building of collection and documentation plan
- Preparation of synopsis by culture owners
- Recording, photographing and shooting on site
- Editing
- Audio-recordings, video DVDs, photographs and reports

The IP aspect ensuring benefits of culture bearers and related communities is not yet dealt with in any cases, projects or activities of safeguarding intangible cultural heritage.

Until 2000, based on the requirements in practice, the Institute proposed a regulation of allocating a small part of project budget to pay some little fees for the presentations or involvements of culture bearers and local communities.

## **2) Vietnamese Institute for Musicology (VIM)**

The specialized body focusing on traditional music heritage of Vietnam, VIM was established in 1950. The Institute is under the authority of the Ministry of Culture, Sports and Tourism, and focuses mainly on collection, preservation, research and dissemination of Vietnamese traditional music within the nation and to the world.

VIM has six different professional Divisions:

- Collection and Research
- Scientific Information
- Technology
- Showroom of Vietnamese Traditional Musical Instruments
- Documents and Publication
- Administration Bureau.

VIM plays a central role in collecting traditional music source of 54 ethnic groups throughout the country. In this sense, the Institute has conducted a big number of fieldtrips for folk music collection in various villages from the northern mountain to northern delta, central coastal and from the Central Highlands to the east and west of the Mekong delta.

Besides its role as an advisory body for the Ministry of Culture, Sports and Tourism, the Institute has successfully prepared various dossiers namely “Nha Nhac - Royal Court Music of the Nguyen Dynasty”, “Ca trù Singing”, “Xoan singing in Phú Thọ” and “The art of Đờn ca tài tử music and song in southern Viet Nam” to submit to UNESCO for its inscription on the Lists of the Intangible Cultural Heritage of Humanity by UNESCO.

VIM is equipped with a huge ICH inventory. Several information building and sharing activities related to ICH have been implemented in this context:

- Archival storage of audio and visual recordings of more than 18,000 folk songs, and 9,000 pieces of folk music with participation of over 2,000 folk artists.
- Collection of ICH material from newspapers, monographs, ancient books about traditional folk music.
- Publication of three issues of a 150-page Bulletin in Vietnamese and English to provide the public with scientific research findings on music activities implemented by the Institute’s staffs and other scholars and researchers.

- Preservation of audio visual recordings songs using advanced IT facilities equipped at the institute.
- Dissemination of folk and traditional music in social life.
- Internet sharing of Vietnamese traditional music culture at <http://www.vnmusicology-inst.vnn.vn>
  - Upload to the Internet the institute activities, collection and research achievements and technical products about Vietnamese traditional music of the institute.
  - Internet training on Vietnamese music
  - Fast and easily access to Vietnamese traditional music
  - Internet search tool for information about aspects related to folk music and traditional performing arts.
- Computer-based databank on traditional music, performing arts and some other ICH domains.
  - Data-base bank access for sounds listening, images looking, and information reading using user-friendly software.
- Production of technological products in form of CDs, VCDs.
- Videos featuring programs of folk and traditional music of all ethnic groups, providing opportunities to understand better music of the multi-ethnic minorities of Vietnam.
- Technological Database Bank on folk music and traditional performing arts of Vietnam.

The Institute also implements itself a range of projects of collection, preservation and promotion of intangible cultural heritage of ethnic peoples in Viet Nam.

### **3) Copyright Office of Viet Nam (COV)**

Literary and Art Copyright Office founded on 27 February 1987

The Copyright office of Viet Nam is the State management agency with a nationwide competence in term of copyrights and other related rights. Its function is to assist the Ministry of Culture and Information to perform the State management over copyright.

Tasks are:

- Drafting legal documents on copyright protection.
- Issuance and withdraw of copyright certificate, the licenses on professional activities and services of copyright.

- Instruction of culture and information services about performances needed over copyright management at all levels.
- Organization and conduction of cooperation with other countries and international organizations in term of copyright, etc.
- Organization of more than 40 seminars, meetings, workshops, including several international meetings organized by WIPO, UNESCO and other international NGOs.
- Issuance of copyright certificates to authors and owners of over 15,000 works.

#### **4) Viet Reproduction Rights Organization (VIETRRO)**

VIETRRO is an independent non-profit socio-professional organization, established on 22 March, 2010.

VIETRRO is authorized by individuals and institutions in collective management of reproduction rights toward copyrighted works in the forms of texts and digitization.

VIETRRO main focus is the collective management of reproduction right to copyrighted works in Viet Nam. To this effect, it is involved with:

- Traditional measures (photocopy and similar reproduction).
- Digitization of the works.
- Useful tool for right holders, consumers.
- Contributes to the establishment of appropriate legal frameworks for the protection and use of their works and to the economy and society as a whole.
- Provides consumers with necessary services to easily and legally access required copyrighted works.
- Stimulate creativity and usage of copyrighted works, disseminating their cultural, scientific and artistic values to the public and exploiting their economic benefits.

#### **5) VietPictures Media Company**

Viet Nam Media Company was founded in 2009; it cooperates with the Viet Nam Television (VTV) and other renowned television companies.

Institute related activities are:

- Production of documentary films on cultural heritage, especially films on intangible cultural heritage.

- Films production on other economic, social and cultural aspects related to cultural heritage.
- Building of images library.
- Database archive and film production related businesses.

### **3. Legal Framework on IP Protection Concerning ICH in Viet Nam**

Viet Nam has already had a legal system dealing with intellectual property, including the Law on Intellectual Property. However, the IP protection related to ICH respects in this system are still limited.

#### **Copyright Protection**

Article 14 of the Vietnamese copyright law enunciates several types of works eligible for copyright protection:

- 1) Literary, artistic and scientific works eligible for copyright protection include:
  - a) Literary and scientific works, textbooks, teaching courses and other works expressed in written languages or other characters;
  - b) Lectures, addresses and other sermons;
  - c) Press works;
  - d) Musical works;
  - e) Dramatic works;
  - f) Cinematographic works and works created by a process analogous to cinematography (below collectively referred to as cinematographic works);
  - g) Plastic-art works and works of applied art;
  - h) Photographic works;
  - i) Architectural works;
  - j) Sketches, plans, maps and drawings related to topography, architecture or scientific works;
  - k) Folklore and folk art works of folk culture;
- 2) Computer programs and data compilations.
- 3) Derivative works shall be protected under clause 1 of this Article only if it is not prejudicial to the copyright to works used to create these derivative works.
- 4) Protected works defined in clauses 1 and 2 of this Article must be created personally by authors through their intellectual labor without copying others' works.

- 5) The Government shall guide in detail the types of works specified in Clause 1 of this article."

## **II. IP Issues in ICH Information Building and Sharing**

Viet Nam country report provides 5(five) case-studies concerning IP rights issues arising in the course of institutes activities’.

### **Case study 1**

#### **Collecting and Safeguarding ICH items of Phuoc Tich village, Phong Dien district, Thua Thien Hue province.**

Locality: Phuoc Tich, a 500 - year old village in the area of Phong Dien district, Thua Thien Hue province of Viet Nam.

Thua Thien Hue province had desired to change Hue into a festival city of Viet Nam and this was approved by the government. The requirement of exploitation arose concerning the potential of cultural heritage resources of the province, including Phuoc Tich village, a tourist point connected to the complex relics of Hue ancient citadel, and Hue festival.

Hue as a festival city raised a question of how to balance the safeguarding and exploitation of cultural heritage values of Phuoc Tich village to serve tourism and bring benefits to its community, in the new context of fast urbanization and modernization. This projects aims at applying new concepts of connecting cultural heritage with tourist development and involving communities in safeguarding their cultural heritage.

A report with an overall assessment on the status and values of cultural heritage of Phuoc Tich village, its potential ICH items that can preserve while attaching and serving tourist development and Hue festival, proposed solutions on priorities for investments and policy of collaboration among State bodies and community.

Outcome: There was a very small rate in the total project budget to pay fees for the presentation and information provided by culture owners and villagers. There was no budget for their IP rights.

### **Case study 2**

#### **Comprehensive survey on ICH in Yen Hung district, Quang Ninh province**

Yen Hung district is located in the Quang Ninh province of the State of Viet Nam. The mentioned district is very rich in tangible and intangible cultural



heritage with around 230 historical-culture relics, traditional festivals, craftsmanship and local knowledge.

In 2009, the Bureau of Culture and Information of Yen Hung district and the Department of Culture, Sports and Tourism of Quang Ninh province have decided a study on preservation of certain typical ICH items. The task of management and preservation of cultural heritage was therefore considered. The aim was to implement a comprehensive survey and inventorying ICH items in all the communes of Yen Hung district to raise awareness of the public, give an over view on the status cultural heritage and propose solutions for the safeguarding of valuable ICH items of the district.

A report was made with an overall assessment on the status and values of cultural heritage of Yen Hung district, and proposals for policies on the preservation and promotion of cultural heritage of the district.

Outcome: This project is among very few ones that the outcomes have been sent back to the communities for their review and recommendation. But, IP rights have not been mentioned yet, except a very small rate of the total project budget to locate for the cost of presentation and information provided by culture owners and villagers.

IP Issues: VICAS obtains ICH-related data or archives by field work and documentation. Source of data: collecting, taking, recording and shooting on fieldwork site in Yen Hung district by researchers' teams from VICAS. Collected data are edited, after that they are e-coding and classified according to the domains, then stored, preserved and exploited in the Center of Cultural Heritage related Database Bank, VICAS (Trung tâm dữ liệu di sản văn hóa, Viện Văn hóa Nghệ thuật). A part of these data are also accessible to the public in request.

IP Outcome: It is very difficult to identify ICH ownership. There is a need for some legal frameworks regulating when, how and how much to pay culture bearers', owners' related community's performances or contributions.

### **Case study 3**

#### **Revitalizing folk songs in Dong Anh commune, Dong Son district, Thanh Hoa province**

VIM's researcher team conducted a survey on traditional music in this commune and discovered that in the past, villagers here had practiced over 12 items of folk songs.

The difference between the folk songs in Đông Anh commune and other regions lies in that folk songs in Đông Anh always accompanied in harmony

with dances. The transmission of these folk songs is therefore not easy. Some of the items were already lost and some were at risk of disappearing.

Based on the investigation results, VIM decided to send proposals to Ministry of Culture, Sports, and Tourism (MOCST) for its approval and supports to revitalize several items of Đông Anh folk songs as a pilot project for local authorities and communities.

The project of revitalizing Đông Anh folk songs started with the remained only three old people at ages of over 80, who joined the last Nghè Sâm festival and still remembered lyrics and techniques of dancing to transmit to younger generations.

Outcomes: In all phases of the project, no IP right was mentioned. There was no budget for IP rights. But, the involving culture bearers and people from the local community were paid fees for their presentation and information.

VIM had prepared consent forms to access and use ICH materials and cession of rights to request culture bearers of Trò Thiếp and Trò Trống Mõ in Dong Anh commune for their agreement. There were no objections to utilizing and disseminating information by bearers, practitioners, or community. Normally, there was no prior informed consent to the reproduction, use, and display of ICH materials. And, there were very few cases that culture bearers came to request for the secondary productions of their ICH elements. VIM provided them free of charge. Requests by outsiders are acceptable with written confirmation of utilization purpose.

#### **Case Study 4** **ICH digitisation project (database/archive building)**

VIM obtains ICH-related data or archives by field work and documentation.

Source of data: Collecting, taking, recording and shooting on fieldwork sites in Dong Son district by researcher teams from VIM.

Name of data: Audio recordings, video recordings, traditional theaters, traditional dances, puppets, artists' profiles, etc. Collected data are edited, after that they are e-coding and classified according to the domains, then stored, preserved and exploited in the Center of Cultural Heritage related Database Bank, VIM (Trung tâm dữ liệu di sản văn hóa, Viện Âm nhạc). A part of this database is also accessible to the public upon request. VIM respects the right of culture bearers in determining ICH accessibility, reproduction and issues of secrecy, sacredness, or confidentiality under customary laws and practices of ICH material collected.

Outcome: The institute has several times dealt with IP issues, including organization of conference on IP in music in December 2007 (in collaboration with Norway); Training workshop on ICH documentation (in collaboration with Sweden) and payment of fees for the performances or contributions of culture bearers/owners. Name of project: Conference on IP in music (2007); Objective of project: Raise awareness and knowledge of IP rights. The report mentions some IP issues which have arisen:

- It is very difficult to identify ICH ownership.
- There need to be some certain legal frameworks regulating when, how and how much to pay culture bearers', owners' related community's performances or contributions.
- It has become more difficult for recognized artists to provide information and data.

### **Case Study 5**

#### **Hanoi Artisans in 2010 “Nghệ nhân Hà Nội năm 2010”.**

On occasion of the 1000 year celebration of Thang Long-Ha Noi, VietPictures Media Company carried out this project of ICH items listing/investigation to produce a film on the artisans, who are living and holding various ICH items in Ha Noi.

Context of project: Based on the knowledge inherited from the previous projects and through consultancy with renowned experts, the company had done, in turn, interviewing and shooting films about the Hanoinian artisans of various ICH items.

The objective of the program is to help understanding of the intangible cultural heritage through direct communication with culture bearers and communities.

Procedures of project: VietPictures Media Company often had a long-term plan and dispatched young researchers and reporters to go for field-works in all places where to locate intangible cultural heritage throughout the country. They discover, identify ICH items in the viewpoints of the video producers, and collect information and data for videos production.

VietPictures Media Company experienced issues related to IP spontaneously and self-consciously. At present, there is no guidance on this aspect. Bellows are some of the Company's policies:

- Paying fees to the ICH owners, basing on principle of mutual agreement;
- Respecting the intangible cultural heritage and being responsible to the ICH contents that have been introduced by the Company in the processes of producing films on cultural heritage in general, and on intangible cultural heritage in particular.

VietPicture Media Company has been aware of the needs and the meaning of the implementation of IP. The Company therefore wishes to raise a fund for IP aspects of ICH to apply toward the communities. VietPicture Media Company's products are protected by the copyright law and other related legal instruments of Viet Nam. VietPictures Media Company identified culture owning communities through local authorities; approach to the communities to plan investigations and documentation. VietPictures Media Company produces ICH films for television programs, but, there are many IP issues that the Company has not yet been aware of or paid due attention to, for instance:

- Cultural heritage owners did not have physical benefits regarding IP rights when their heritage items were used and recreated.
- Cultural heritage owners did not have physical benefit regarding IP rights when programs on their heritage items were broadcasted, uploaded on internet or published.
- After answering interviews or playing roles in a film production, most of the cases, cultural heritage owners were not consulted or informed when the Company produced his recreated works.
- Until now, the company has not been denied by cultural heritage owners, bearers or communities toward its utilization and dissemination of ICH information. However, these issues may arise in the future.
- The company has not gotten any regulations related to approval and delivery of utilization rights with prior informed consent.

VietPictures Media Company is building a database and classifying it following the objective and requirement of the company's tasks, while keeping the data in its original form. There is not yet security system for the data. VietPictures Media Company is aware of the need of a fund for sharing benefits to the cultural bearers, including economic rights, rights to translation, reproduction and communication to the public, etc.

### III. Conclusion

The survey team started the IP project since December 2011 and completed the final report in September 2012. The challenges faced by the team included:

- Through interviewing over 10 institutions and 20 individual legal experts; none of the cases could provide a clear concept or provide concrete information on the implementation of IP right protection concerning ICH data. We therefore realized that the protection of IP right concerning data in respect of ICH has not yet been strictly implemented in conformity with the intellectual property legal regulations of the State.
- The interviews with legal experts provided some information on IP and copyrights. These interviewed experts had not many opportunities of working on this issue. But they all recommended that this was a useful task, and it was necessary to learn experience from other countries in the region and on the world.
- The survey team was very committed in carrying out the job of interviewing and collecting data, but their knowledge as well as experiences in this field were still limited.

The findings of the research work showed that protection of IP rights concerning ICH data is very important to Viet Nam. Grounds of interests have been established as follows:

- To ensure profits of ICH bearing communities, groups and individuals.
- To ensure that ICH be duly protected and promoted in conformity with the 2003 UNESCO Convention, avoiding divergence of ICH elements or commercialization in ICH concerning activities resulting from inappropriate and less sustainable development.
- To ensure ICH recreation of the concerned communities.
- To ensure respect, harmony and information and benefits sharing among communities who own the same ICH elements, especially among communities of ICH elements existing in the crossing borders.