

2011-2012 IP Survey Report

**Field Survey on  
Intellectual Property Issues  
in the Process of  
ICH Information Building and Sharing**

**International Information and Networking Centre for  
Intangible Cultural Heritage in the Asia-Pacific Region  
under the auspices of UNESCO**

In collaboration with the Center for Research and Promotion of Cultural Heritage, Vietnam

---

## *Preface*

---

ICHCAP, a UNESCO Category 2 Centre, has carried out activities for safeguarding intangible cultural heritage (ICH) in the Asia-Pacific region with a centralised function in ICH information and networking. In this role, the Centre has worked towards protecting intellectual property rights related to ICH information. The Centre held expert meetings on ICH safeguarding and intellectual property rights in 2009 and 2010, and in 2011, the Centre proposed a project for protecting ICH intellectual property (IP) rights in the process of ICH information building and sharing.

In 2011 and 2012, as part of the new project, field surveys were conducted with the cooperation of ICH information-related institutes in the Asia-Pacific region to examine IP issues that could arise in the process of ICH information building and sharing. The survey was conducted in eleven countries—Cook Islands, Fiji, India, Kazakhstan, Korea, Kyrgyzstan, Mongolia, Pakistan, Philippines, Sri Lanka, and Viet Nam. The purpose of the surveys was to highlight the IP-related problems that ICH-related organisations may encounter while conducting ICH information-related activities, such as identification, documentation, digitisation, etc., and promoting the groundwork for a guide to protect IP-related aspects of ICH in the process of information building and sharing.

For the field surveys, a questionnaire developed by ICHCAP was provided to key organisations, and surveys were carried out by each organisation according to the questionnaire. A research team based in each organisation lead the surveys. Upon completing the surveys, the organisations involved compiled a report. ICHCAP collected the submitted reports and is now making them available in this publication, *Field Survey on IP Issues in the Process of ICH Information Building and Sharing*.

The survey reports from each country are being provided as a resource to exchange experiences related to the IP aspects of ICH information. Also, it is expected that publishing reports can foster an environment to understand and resolve problems related to IP aspects of ICH information in the Asia-Pacific region.





# *Contents*

---

## IP Issues in the Process of ICH Information Building and Sharing

Preface	001
Vietnam Survey Report	
I .Background	006
II.IP Issues in Information Building & Sharing	014
III. Conclusion	025
Summary	028
List of co-researchers	040

---

Annex 1   Questionnaire	045
Annex 2   Regulations	065
Annex 3   Main Tasks of LACO & COV	071

---



# ***IP Survey Report***

---

# I . Background

---

In Viet Nam, ICH safeguarding activities started much later than those related to tangible cultural heritage. During a long period, we did not have legal framework for safeguarding intangible cultural heritage. However, after having access to several UNESCO recommendations and the 2003 Convention, Viet Nam's ICH awareness process and safeguarding activities have quickly developed and brought about many of positive outcomes. This resulted from a re-thinking that began in 1996. The strategy has changed public awareness and practical work in various aspects of life, including culture. Being active in learning about and inheriting the broad knowledge and experiences in ICH safeguarding, Viet Nam has been developing its safeguarding activities. A legal framework for safeguarding intangible cultural heritage has developed gradually and has been integrated to the common viewpoints of humanity. Our law on cultural heritage, which had been passed on in 2001 and valid since January 2002, has recently been revised and amended to be in line with real-world applications and the 2003 UNESCO Convention. Viet Nam ratified the 2003 Convention in September 2005.

During the past ten years, Viet Nam has moved forward quickly and made remarkable progress in the field of safeguarding intangible cultural heritage. However, there has not yet been a separate protection policy for intellectual property issues related to ICH information. Below is some basic information on concerned organisations.

## **1. ICH Safeguarding State Bodies, Organisations, and Communities**

### **Regarding IP in the Process of ICH Information Building and Sharing**

#### **A. Viet Nam Institute of Culture and Arts Studies**

The Viet Nam Institute of Culture and Arts Studies (VICAS) was established on 1 April 1971. Its original name was the Institute of Arts, and then it was changed to the Viet Nam Institute of Culture and Arts in 1988, the Research Institute of Culture and Arts in 1996, the Institute of Culture and Information



in 2003, and finally the name it bears today. Along with the name changes, its organisational structure has also changed accordingly. Since its establishment, VICAS has been 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.

In 1997, the Ministry of Culture, Sports and Tourism assigned VICAS to be a member of the Management Board of the National Target Program on Culture to manage collecting and safeguarding the intangible cultural heritage of Vietnamese ethnic groups. Besides being an advisory body for the Ministry of Culture, Sports and Tourism, VICAS also implements a range of projects for collecting, preserving, and promoting intangible cultural heritage in Viet Nam.

With the government's funding through the National Target Program in Culture, VICAS, over the past five years, has conducted 458 collection and research projects, revitalised 38 traditional festivals of ethnic minorities, and trained 350 local officials.

VICAS studies culture and arts to provide consultancy on cultural policies to the Ministry. Since 1996, VICAS has already implemented or has provided guidance to others to implement 705 projects and activities for ICH surveys, studies, collections, documentations, and inventories.

Normal processes of a project begin with a survey at a field site. Ensuing activities involve preparing a survey report; building a collection and documentation plan; working with local authorities and related communities on the work plan; preparing a synopsis decided by culture owners; recording, photographing, and shooting onsite; editing; e-coding and archiving in the database at VICAS. Outcomes of each project or activity are included in audio-recordings, video DVDs, photographs, and reports.

However, while carrying out ICH projects in the past, the issue of IP rights had not been acknowledged or mentioned, and there were no policies or regulations on paying fees to culture bearers for their practice/presentation or to interviewees for the information and data they provided. In 2000, based on the requirements in practice, VICAS proposed a regulation that allowed allocating a small part of a project budget to nominal sums for presentations or the involvement of culture bearers and local communities. The financial branch accepted this policy, and it has been applied since then. However, the IP aspect of ensuring benefits for culture bearers and related communities has not yet been dealt with in terms of projects or activities related to ICH safeguarding.

VICAS has successfully prepared various dossiers - namely, "The Cultural Space of Gong in the Central Highlands", "Quan Họ Bắc Ninh Folk Song",

“Giống Festival at Phù Đổng and Sóc Temples” and “The Worship of Hùng Kings in Phú Thọ” - to submit to UNESCO for inscription on the ICH Lists.

VICAS is now developing and running an ICH database bank that connects to other fifteen satellite databases in different localities. To exploit and promote its huge, invaluable ICH information data, VICAS has also emphasised popularising the values of intangible cultural heritage through mass media, including Hanoi Television with a programme on culture space (*Không gian văn hoá*); Viet Nam Television, with a programme on conserving for future generations (*Gìn giữ cho muôn đời sau*). To date, it has published many ICH books and hundreds of VCDs and DVDs on intangible cultural heritage to serve reading requirements of provincial libraries, Hanoi National University of Education, University of Social Sciences and Humanity, and individuals.

## **B. Vietnamese Institute for Musicology**

The Vietnamese Institute for Musicology (VIM), formerly the Musicology Division of the Culture and Arts Bureau, was established in 1950. Undergoing many changes in organisational structure and belonging to many different organisations, it was officially separated and became an independent institute in 1976.

Since 1976, the VIM has developed in terms of domains of activities and in number of personnel, from twenty staff members in 1976 to nearly a hundred today, working in six different professional divisions: 1) Collection and Research, 2) Scientific Information, 3) Technology, 4) Showroom of Vietnamese Traditional Musical Instruments, 5) Documents and Publication, and 6) Administration Bureau.

The VIM is mainly responsible for collecting, preserving, researching, and disseminating Vietnamese traditional music domestically and internationally. Playing a central role in collecting traditional music sources from fifty-four ethnic groups throughout the country, the VIM has conducted many field trips to collect folk music in various villages throughout Viet Nam. For over the past 50 years, the Institute has built a huge archive 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. These valuable materials are now well preserved, thanks to modern and advanced technology facilities equipped at the VIM.

Three times annually, the Institute publishes a 150-page bulletin in Vietnamese and English to provide the public with scientific research findings

on music activities implemented by the institute's staff and other scholars and researchers.

The VIM has actively and increasingly been developing dissemination of folk and traditional music in the social life. A series of CDs, VCDs, and videos featuring programmes of folk and traditional music of all ethnic groups have been released, providing music lovers opportunities to better understand the music of the ethnic minorities of Viet Nam.

In 2002, with a tendency of expanding and connecting with globalising information, the VIM opened a website (<http://www.vnmusicology-inst.vnn.vn>) to bring itself and Vietnamese traditional music culture to its international friends. The Institute has uploaded a huge data of its activities, collections, and research achievements as well as technical products about Vietnamese traditional music and information of other domestic music activities. Through internet, the Institute has partly met the needs of the global community who are interested in studying Vietnamese music.

Early in 2004, based on its own archives, the VIM officially set up a database bank on folk music and traditional performing arts of Viet Nam on an advanced and synchronous technology system that facilitates fast and easy access to information, including audio, images, and text, for those who are interested in Vietnamese music and performing arts. This is the first database bank system on traditional music and arts in Viet Nam. At present, VIM is continuing to enrich and perfect its database bank system. In the near future, the Institute will set up a high-speed transmission link so that information and data on Vietnamese traditional music from the database bank system can be largely diffused and easily accessible to on the internet.

In addition to domestic activities, international cooperation activities of the Institute have also taken place to carry out research on traditional music with foreign partners by collaborating with and assisting many international researchers, participating in international workshops on music, and bringing Vietnamese folk arts groups to other countries to perform. The VIM is eager to cooperate with international researchers and scholars in the region and from all over the world to implement researches and projects on traditional and folk music.

Besides the role as an advisory body for the Ministry of Culture, Sports and Tourism, VIM also implements a range of projects to collect, preserve, and promote the intangible cultural heritage of ethnic groups in Viet Nam.

It has successfully prepared various dossiers—namely “Nha Nhac, Royal Court Music of the Nguyen Dynasty”, “Ca tru Singing”, “Xoan Singing in Phú

Thơ”, and “The art of Đờn ca tài tử music and song in southern Viet Nam” to submit to UNESCO for its inscription on the ICH Lists.

### **C. Copyright Office of Viet Nam**

The Literary and Art Copyright Office (LACO), of which, the forerunner was the Copyright Protecting Firm, founded on 27 February 1987, was the state management agency with a nationwide competence in term of copyrights and other related rights. Its function was to assist the Ministry of Culture and Information (now the Ministry of Culture, Sports and Tourism) with managing copyrights. Its tasks were to draft legal documents on copyright protection; issue and withdraw copyright certificates, the licenses on professional activities and services of copyright; provide instruction on the services of culture and information to perform the state management over copyright at all levels; and organise and conduct copyright activities in cooperation with other countries and international organisations.

Since its inception, LACO has organised more than forty seminars, meetings, and workshops, including several international meetings with WIPO, UNESCO, and other international NGOs. The organisation has also received and issued copyright certificates to authors and owners of over 15,000 works.

### **D. Viet Reproduction Rights Organisation (VIETRRO)**

VIETRRO is an independent socio-professional organisation, established on 22 March 2010 by the Ministry of Home Affairs. It operates as an autonomous, non-profit organisation working on budgets and it is responsible for legislation. The organisation is authorised by individuals and institutions to collect and reproduce copyrighted works in the forms of texts and digitization. Its purpose is to stimulate creativity and the usage of copyrighted works by disseminating their cultural, scientific, and artistic values to the public and exploiting their economic benefits. It provides consumers with necessary services to easily and legally access copyrighted works. Through collective management of reproduction of copyrighted works, VIETRRO works as a useful tool for rights holders and consumers, and the organisation contributes to establishing appropriate legal frameworks.

### **E. VietPictures Media Company**

Being a young institution (officially founded in 2009), the company is composed of very young staff members (aging from 25 to 35) and is led by a

young director, who was born in 1979. At present, the company has many important contracts with Viet Nam Television (VTV) and other renowned television companies. It has also collaborated with several Korean film production troupes.

Paying due attention to living heritage, the company's objectives and functions are

- to produce documentary films on cultural heritage, especially films on intangible cultural heritage;
- to produce films on other economic, social and cultural aspects related to cultural heritage;
- to build a library of images; and
- to archive a database and do business on related aspects of film production.

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

Viet Nam has had a legal system dealing with intellectual property, including the Law on Intellectual Property. However, IP issues related to ICH aspects are still limited. Article 8 of the Law on Intellectual Property of 2009 states the following:

### **A. The State's Intellectual Property Policies**

- 1) To recognise and protect intellectual property rights of organisations and individuals on the basis of harmonising benefits of intellectual property rights holders and public interests; not to protect intellectual property objects that are contrary to social ethics and public order and prejudicial to defence and security.
- 2) To encourage and promote the creation and use of intellectual assets to contribute to socio-economic development and improvement of the people's material and spiritual life.
- 3) To provide financial support for the receipt and exploitation of assigned intellectual property rights in public interests; to encourage organisations and individuals at home or abroad to provide financial aid for creative activities and the protection of intellectual property rights.
- 4) To prioritise investment in training and retraining the contingent of cadres, civil servants, public employees, and other relevant subjects engaged in the protection of intellectual property rights and the

research into and application of sciences and technologies to the protection of intellectual property rights.

- 5) To mobilise social resources for investment in raising the capacity of the system to protect intellectual property rights, thereby meeting the requirements of socio-economic development and international economic integration.

## **B. Types of works eligible for copyright protection (Article 14)**

- 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 labour without copying others' works.
- 5) The government shall guide in detail the types of works specified in Clause 1 of this Article.

### **3. Methodology of Building the IP Report**

- 1) Using the ICHCAP questionnaire as the basis of further developing questions to collect as much relevant information and data as possible;
- 2) Holding discussions with the selected interviewees to understand their requirements and demands as well as the problems that occurred while implementing the project;
- 3) Focusing on the main objectives of the project: intellectual properties in the process of ICH information building and sharing;
- 4) Preparing of each group's report on the results of interviewing different types of subjects
- 5) Holding discussions building a final report following the prescribed format

## II.IP Issues in Information Building & Sharing

---

Below are several case-studies concerning IP issues.

### **Case Study 1.**

#### **Collecting and Safeguarding ICH Items of Phuoc Tich Village, Phong Dien District, Thua Thien Hue Province.**

Implementation year: 2009

Duty department: Section of Cultural Policy and Development, VICAS

Head of project: Dr Luong Hong Quang, Deputy Director of VICAS

Investor: MOCST

In the Phong Dien district of Thua Thien Hue Province, about 42km away from the centre of Hue City is Phuoc Tich, a 500-year-old village surrounded on three sides by the O Lau River. In this village, there are priceless tangible and intangible cultural heritage items, which are filled with unique cultural characteristics and identity of Hue and the mid-region of Viet Nam.

In recent years, Thua Thien Hue decided to change Hue into the Festival City of Viet Nam, and this plan was approved by the government. Thus, a need arose to exploit the potential cultural heritage resources of the province, including Phuoc Tich, as a tourist point connected to the complex relics of Hue as well as the festival.

Being very rich in both tangible and intangible cultural heritage, Phuoc Tich attracted the attention of many scholars and researchers. In the past, there were a number of surveys and studies on the ancient architecture and traditional craftsmanship of Phuoc Tich. The results provided a historical overview of the village as well as the status of its cultural heritage. These studies also proposed some initial ideas about the need of safeguarding the cultural space of this traditional village.

However, the recent development of Hue as a festival city has raised questions of how to balance the safeguarding and exploitation of cultural heritage values of Phuoc Tich to serve tourism and bring benefits to its community, in the new



context of rapid urbanisation and modernisation. This projects aims at initially applying new concepts of connecting cultural heritage with tourist development and involving communities in safeguarding their cultural heritage.

Procedures of project:

- Meeting with local authorities and villagers and discussing project ideas and gaining their agreement
- Studying related document resources
- Conducing fieldwork and interviews for data collection and information needs
- Analysing collected data and preparing reports
- Recording and publishing DVDs on ICH data and related items
- Photographing ICH activities
- Issuing a report with an overall assessment on the status and values of cultural heritage of Phuoc Tich, its ICH items that can be potentially preserved while attracting and serving tourist development and festivals as well as proposed solutions on priorities for investment and collaboration policy between state bodies and the community.

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**

Implementation year: 2009

Duty department: Section of Cultural Policy and Development, VICAS

Head of project: Dr Luong Hong Quang, Deputy Director of VICAS

Investor: MOCST

Yen Hung District, located on the south-east sea side of Quang Ninh Province (around 140 km north-east of Hanoi), plays an important role in the province's socio-economic activities and trade exchange. Having a long history of development, Yen Hung is very rich in tangible and intangible cultural heritage with around 230 historical-culture relics, traditional festivals, craftsmanship, and local knowledge.

Rapid urbanisation and globalisation created favourable conditions for the district's development in all respects, but these factors also negatively influenced the practices and existence of cultural heritage.

Until 2009, the Bureau of Culture and Information of Yen Hung district and the Department of Culture, Sports and Tourism of Quang Ninh province focused only on studying and preserving certain ICH items, not surveying or inventorying all ICH items of the whole district to understand the status and outline a comprehensive safeguarding strategy. In the orientation to develop Yen Hung, local authorities considered the task of managing and preserving cultural heritage as one of the most important aspects of the development plan.

Within the context of that background, this project was approved, aiming at implementing a comprehensive survey and inventorying ICH items in all the communities of Yen Hung to raise public awareness, give an overview on the status of cultural heritage, and propose solutions for safeguarding valuable ICH items of the district.

Procedures of project:

- Meeting with local authorities and discussing the project plan and gaining their agreement
- Studying related document resources
- Conducting fieldwork and interviews to collect data and information for every community on the following domains: traditional festivals, performances, craftsmanship, folk games, cuisine preparation, local knowledge, traditional medicine, and ritual practices and customs
- Analysing collected data and preparing reports

Outcomes/Effects:

- Recording and publishing DVDs on ICH data and related items
- Photographing ICH activities
- Producing a list of traditional festivals and a list of artisans and folk artists
- Issuing a report with an overall assessment on the status and values of cultural heritage of Yen Hung and proposals for policies on the preserving and promoting the cultural heritage of the district.

This project is among the very few where the results have been sent back to the communities for their review and recommendations. However, IP rights have not yet been mentioned, and only a very small amount of the total budget has been allocated to culture owners and villagers for the information and presentation they provided.

VICAS obtains ICH-related data or archives through fieldwork and documentation activities.

Source of data:

- Collecting, recording, and shooting on fieldwork site in Yen Hung district by researcher teams from VICAS.

Name of data:

- Traditional festivals
- Performing arts
- Traditional handicrafts
- Ritual practices
- Folk games
- Local knowledge

Type of data:

- Text of reports
- Papers
- Photographs
- Recordings (DAT)
- Videos (Betacam, DVCam, etc.)

Collected data are edited. After that, they are e-coding and classified by domain, and then stored, preserved, and exploited in the centre's heritage-related database bank, VICAS (Trung tâm dữ liệu di sản văn hóa, Viện Văn hóa Nghệ thuật). Some data are also accessible to the public by request.

According to the personal experiences of Dr Luong Hong Quang, Deputy Director of VICAS:

- It is very difficult to identify ICH ownership.
- There need to be legal frameworks regulating when, how, and how much to pay culture bearers, owners, and related communities for their performances or contributions.

### **Case Study 3.**

#### **Revitalizing Folk Songs in Dong Anh Commune, Dong Son District, Thanh Hoa Province**

Implementation year: 2001 to 2002

Duty department: Research team of VIM

Head of project: Dr. Le Van Toan (now Director of VIM)

Investor: MOCST

Đông Anh Commune in the Đông Sơn District of Thanh Hoa Province is famous for its Nghè Sâm festival and the folk songs attached to it. In 2001, the VIM's research team conducted a survey on traditional music in this commune and discovered that in the past, villagers here had practiced over twelve types of folk songs, including Trò Múa Đèn (Lamp dance), Trò Tô Vĩ (a story about Tô Vĩ, an ancient Chinese hero becoming a goat breeder), Trò Tiên Cuội (an old dance accompanied with folk songs about Cuội, a man who dreamed of getting married to a fairy from heaven), Trò Trống Mỗ (a story about a drummer and a herald), Trò Vân Vương (Queen Vân), Trò Xuân Phả (a performance of five dances accompanied with folksongs about five foreign delegations coming to congratulate the triumph against the aggressors of the Great Viet), and Trò Thiếp (a theatrical form of the Len dong ritual practice). The difference between the folk songs in Đông Anh Commune and other regions is that the Đông Anh folk songs are always accompanied by dances. Therefore, transmitting these folk songs is not easy and some have already been lost, and others are at risk of disappearing.

Based on the investigation results, the VIM decided to send proposals to MOCST to approve and support efforts to revitalise several Đông Anh folk songs as a pilot project for local authorities and communities. One priority item was Trò Thiếp, which was last performed in 1944 at the Nghè Sâm festival and had not been practiced in over sixty years because it was considered to be backward at that time. In 2002, when the revitalisation project for Đông Anh folk songs started, there remained only three people, all over the age of eighty, who joined in the last Nghè Sâm festival and still remembered the lyrics and the dance techniques to transmit to younger generations. After ten years of training, Trò Thiếp was finally revitalised and practiced until now. Trò Trống Mỗ was the second item that has been revitalised through this project.

Many researchers and scholars considered Trò Thiếp and Trò Trống Mỗ to be very early forms of Vietnamese theatre.

Procedures of project:

*The stage for preparation*

- Meeting with local authorities and elderly villagers and discussing project ideas and gaining their agreement
- Studying related document resources

*The stage for collecting and creating information*

- Conducting fieldwork and interviews with elderly villagers to collect data and information related to the items
- Analysing the collected data to provide to the community
- Assisting communities in revitalising their performances

*The stage for processing and producing information*

- Preparing final reports
- Archiving and storing outcomes in the institute's library

*Outcomes/Effects*

- Developing audio and video recordings and DVDs on Trò thiếp and Trò Trống Mõ
- Photographing the performances
- Producing project reports on the community-based revitalisation of Trò thiếp and Trò Trống Mõ in Đông Anh, Đông Sơn in Thanh Hoa

In all phases of the project, IP rights were not mentioned. There was no budget for IP rights, but the involved culture bearers and people from the local community were paid for their presentation and information.

The VIM prepared consent forms to access and use the ICH materials and cession of rights to request culture bearers of Trò Thiếp and Trò Trống Mõ in Đông Anh for their agreement.

There were no objections by bearers, practitioners, or community to use or disseminate information.

Normally, there was no prior informed consent to reproduce, use, and display ICH materials. And, there were very few cases of culture bearers requesting the secondary productions of their ICH elements. The VIM provided them free of charge. Requests by outsiders are accepted with a written confirmation of purpose.

**Case Study 4.**  
**ICH Digitisation Project** (database/archive building)

Implementation year: 2010 to 2013

Duty department: Section of Documentation and Library, VIM

Investor: MOCST (through the national target program)

The VIM obtains ICH-related data or archives through fieldwork and documentation.

Source of data:

- Collecting, recording, and shooting on fieldwork sites in Đông Sơn district by VIM researcher teams

Name of data:

- Audio recordings: folk songs (lullabys, love songs, and working songs for the water and land), ritual songs, traditional music (Ca tru, Xam, Xoan, Hue Singing, and others)
- Video recording (CD, VCD, DVD): of above mentioned categories
- Traditional theatres: Tuong, Cheo, Cai luong, and Hue theatre
- Traditional dances: Royal dance, ritual dance, and folk dances
- Puppets: water puppets, stick puppets, hand-controlled puppets, and string puppets
- Artists' profiles
- Other data

Type of data:

- Text of reports
- Papers
- Photographs
- Recordings (DAT)
- videos (CD, VDC, Betacam, DVCam, etc.)

Collected data are edited. After that, they are e-coding and classified by domain, and then stored, preserved, and exploited in the centre's heritage-related database bank, VIM (Trung tâm dữ liệu di sản văn hóa, Viện Âm nhạc). Some data are also accessible to the public by request. The VIM respects the rights of culture bearers in determining ICH accessibility, reproduction, and issues of secrecy, sacredness, or confidentiality under customary laws and practices of ICH material collected.

The VIM has several times dealt with IP issues, including organising a conference on IP for music in December 2007 (in collaboration with Norway); a training workshop on ICH documentation (in collaboration with Sweden); and payment fees for the performances or contributions of culture bearers/owners.

Name of project: Conference on IP for music (2007)

Objective of project: to raise awareness and knowledge of IP rights.

Issues that have arisen:

- Problems regarding compliance with a country's laws and regulations or customs concerning ICH information building and sharing activities
- Problems regarding identifying the nature of rights existing on ICH that will be used in information building and sharing activities
- Problems regarding identifying the nature of rights existing in ICH problems regarding ownership of ICH
- Problems regarding prior informed consent or approval
- Problems regarding secret, sacred, or confidential ICH
- Problems regarding sharing of benefits
- Problems regarding unfair use or misuse of ICH material
- Problems regarding portraits, filming, and reproduction

According to the personal experiences of Mr. Tran Hai Dang, Researcher of the VIM:

- It is very difficult to identify ICH ownership.
- There need be legal frameworks regulating when, how, and how much to pay culture bearers, owners, and related communities for their performances or contributions.
- Recognised artists become more difficult to provide information and data.

### **Case Study 5.**

#### **Hanoi Artisans in 2010**

Implementation year: 2010

Duty department: VietPictures Media Company

Head of project: Mr Trương Công Tú – Director of the Company

Investor: Viet Nam Television Agency

Background of project:

On occasion of celebrating the 1000 year of Thang Long-Ha Noi, VietPictures Media Company carried out a project on listing and investigating ICH items to produce a film on artisans who are living and holding various ICH items in Ha Noi. The company considered this subject crucial and paid due attention to it.

Context of project:

Based on the knowledge inherited from the previous projects and through consultancy with renowned experts, the company interviewed and shot film about the Hanoinian artisans of various ICH items in different domains, including craftsmanship, performing arts, rituals and festive events, oral expressions, and local knowledge. Another famous program of the company is S-Vietnam, which is shown daily on VTV1 from 18h45 to 19h00. The objective of the program is to disseminate understanding of intangible cultural heritage through direct communication with culture bearers and communities.

Procedures of project:

VietPictures Media Company has often had long-term plans and dispatched young researchers and reporters to perform fieldwork in areas rich with intangible cultural heritage. They discovered and identified ICH items through the perspective of the video producers and collected information and data for video production. Their technical methodology is professional, and their approach is new and engaging communities and is therefore aligned with the principles and purpose of the 2003 UNESCO Convention.

Outcomes/Effects:

VietPictures Media Company's projects are practical and suitable to the requirements and inquiries of real life. The long-term objective of each project can be seen in the way the producers document and develop their products.

Name of data: VietPictures Media Company

Type of data: text, photographs, recordings, videos, etc.

- The company possesses both types of data that can be seen on:  
<http://vietpictures.net/vi/>

Source of data: communities

Person/Organisation who has rights on the data:

Mr Trương Công Tú, Director of VietPictures Media Company

- Cell phone: 0983.865.696 Email: tutc@viet-pictures.com;



- Fax: +844 3514.5343
- Address: 14/34 Hoang Cau Street, Dong Da District, Ha Noi, Viet Nam

VietPictures Media Company experienced issues related to IP sporadically and self-consciously. At present, there are no guidelines on this aspect. Below are some of the company's policies:

- Paying fees to the ICH owners, based on mutual agreement
- Respecting ICH 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 ICH in particular, the company has been aware of the needs and the meaning of implementing IP. The company, therefore, wishes to raise a fund for IP aspects related to ICH and grant these funds to the communities

VietPicture Media Company's products are protected by copyright law and other related legal instruments of Viet Nam.

VietPictures Media Company identified the culture -owning communities through local authorities, and approached the communities to plan investigations and documentation. The company has also consulted the 2003 UNESCO Convention to identify and work with communities.

The company is operating in conformity with concerned national and international legal documents, including the Law on Cultural Heritage and Ordinance on Rituals and Religions.

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 has paid due attention to, for instance:

- Cultural heritage owners do not have physical benefits regarding IP rights when their heritage items are used and recreated
- Cultural heritage owners do not have physical benefit regarding IP rights when programs on their heritage items are broadcasted, uploaded on internet, or published
- After conducting interviews or playing roles in a film production, in most cases, cultural heritage owners were did not consulted or informed of when the company produced its recreated works

- Until now, the company “has not been denied by cultural heritage owners, bearers, or communities toward using and disseminating ICH information”. However, these issues may arise in the future
- The company has not received any regulations related to approval and delivery of usage rights with prior informed consent

VietPictures Media Company is building a database and classifying data following the objectives and requirements of the company’s tasks and keeping the data in its original form. There is no security system for the data to date.

VietPictures Media Company is aware of the need of a fund for sharing benefits to the cultural bearers, including economic rights, rights to translation, and reproduction and communication to the public

The company is conforming to concerned national and international legal documents, including the Law on Cultural Heritage and Ordinance on Rituals and Religions.

VietPictures Media Company includes IP issues in its vision. It considers people the core factor and respects the voice of communities. It never restores ICH elements if there is not enough understanding or trustfully scientific and material evidence. However, information on ICH elements introduced by the company is still limited, depending on the purpose of the television or short film productions, and information includes several aspects of intangible cultural heritage.

### III. Conclusion

---

The Survey Team started the IP project in December 2011 and completed the final report in September 2012. The challenges that the team faced include:

- Through interviewing over ten institutions and twenty individual legal experts, no cases could provide a clear concept or provide concrete information on implementing IP rights protection concerning ICH data. We, therefore, realised that IP rights protection concerning ICH data 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 did not have many opportunities to work on this issue, but they all recommended pursuing the matter as a useful task and that it is necessary to learn from the experience of other countries.
- The survey team was very committed in carrying out interviews and collecting data, but their knowledge and experience in this field were still limited.

The findings of the research work showed that IP rights protection related to ICH data is very important to Viet Nam, based on the following:

- To ensure profits of ICH bearing communities, groups and individuals
- To ensure that ICH be duly protected and promoted in conformity to the 2003 UNESCO Convention, avoiding divergence of ICH elements or commercialisation in ICH concerning activities resulting from inappropriate and unsustainable development
- To ensure ICH recreation of the concerned communities
- To ensure respect, harmony, and information and shared benefits among communities who have similar ICH elements, especially among communities of ICH elements existing transnationally.

Our recommendations are:

- Every country should include IP protection issues in their national action plan, conduct research, and establish policies for IP rights protection
- ICHCAP should continue studying this subject, evaluate step by step, and draw on experience to publish and disseminate information to Member States in the region.
- The more experienced countries are invited to support the less experienced countries in implementing pilot projects and building policies to protect IP rights related to ICH

On this occasion, we would like to express our sincere thanks to ICHCAP for their grants and in supporting us in implementing this IP project, through which, we have learnt much about IP rights protection in the process of ICH information building and sharing to apply in Viet Nam in the near future.

Le Thi Minh Ly, *Ph.D.*

Director of the Center for Research and Promotion of Cultural Heritage

## *Summary*

---

## **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.



## *List of co-researchers*

---

- **Dr. Le Thi Minh Ly**  
Director of the Center for Research and Promotion of Cultural Heritage  
Specialist in ICH policies
- **Prof. Dr. Nguyen Van Huy**  
Deputy Director of the Center for Research and Promotion of Cultural Heritage  
Specialist in anthropological research and ICH
- **Ms. Nguyen Kim Dung**  
Department of National Cultural Heritage, Chief of Section  
Ministry of Culture, Sports and Tourism of Viet Nam  
Specialist in ICH policies
- **MA. Pham Kim Ngan**  
Chief of Section  
The Center for Research and Promotion of Cultural Heritage  
Specialist in cultural heritage and museum education
- **MA. Nguyen Duc Tang**  
UNESCO Hà Nội Office, Cultural Officer  
Specialist in ICH and museum
- **Dr. Nguyen Thi Thu Van**  
Lecturer of law  
The University for Social and Humanity Sciences  
Specialist in law



## Annex 1 | *Questionnaire*



## 1. Introduction

Intangible cultural heritage (ICH), which is the source of human creativity and cultural diversity, has been diminishing since the onset of globalisation and urbanisation. In this regard, international society, working in tandem with UNESCO, has garnered public attention on ICH safeguarding, and the Convention for the Safeguarding of the Intangible Cultural Heritage was adopted in 2003.

According to Article 13, d.iii of the 2003 Convention, States Parties should establish documentation institutions for ICH and facilitate access to them to ensure the safeguarding, development, and promotion of ICH present in each State Party's territory. This is to say, the Convention encourages managing an institute related to information building and sharing—one that collects, produces, and disseminates ICH information.

The process of ICH information building and sharing could be the cornerstone to safeguarding ICH. However, as with most kinds of information activities in other fields, the process of ICH information building and sharing includes many intellectual property (IP) issues.

Many problems could arise while collecting and creating ICH information, while processing and producing ICH information, and while disseminating and utilising ICH information. Additional, diverse problems could also develop from the communities, institutes, or individuals involved in the process.

In particular, with the development of technology and the appearance of new media, ICH intellectual property issues can manifest themselves in many ways, and these problems have expanded into much more complicated arenas.

The International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO (ICHCAP) has been concerned with IP issues related to ICH information building and sharing. To cope with these concerns, ICHCAP has endeavoured to develop a guideline for protecting IP in the process of ICH information building and sharing.

ICHCAP has proposed a project for a field survey to examine IP issues, focusing on activities of ICH information-related institutes in the Asia-Pacific region and on cases about how to deal with problems that arise in the process of ICH information building and sharing.

The survey is expected to contribute by allowing an exchange of experiences and know-how in the Asia-Pacific region to foster an environment to understand and resolve problems related to IP aspects of ICH. Furthermore, the survey results could be the foundation for developing a guideline for protecting IP rights during ICH information building and sharing.

## 2. Glossary

For the current survey, the terms below will have the given meanings.

- 1) Bearer  
A member of a community who recognises, reproduces, transmits, transforms, creates, and forms a certain culture in and for a community. A bearer can, in addition, play one or more of the following roles: practitioner, creator, and custodian.<sup>1</sup>
- 2) Community  
People who share a self-ascribed sense of connectedness. This may be manifested, for example, in a feeling of identity or in common behaviour, as well as in activities and territories. Individuals can belong to more than one community.<sup>2</sup>
- 3) Custodian  
A practitioner who has been entrusted by the community with the responsibility of safeguarding their intangible cultural heritage.<sup>3</sup>
- 4) Documentation  
The recording of ICH in tangible forms.<sup>4</sup>
- 5) Identification  
Technical description of a specific element constitutive of the ICH, often done in the context of a systematic inventory.<sup>5</sup>
- 6) Information Building and Sharing  
A series of activities that build and utilise ICH information, such as identification, inventory making, documentation, and digitisation. The process of ICH information building and sharing consists of several stages: a stage for preparation, a stage for collecting and creating information, a stage for maintaining information, a stage for processing and producing information, and a stage for utilising and disseminating information.
- 7) Informants  
Local experts from whom information about particular cultural practices is obtained, in the context of cultural field research.<sup>6</sup>

---

<sup>1</sup> UNESCO Glossary Intangible Cultural Heritage. Prepared by International Meeting of Experts on Intangible Cultural Heritage. The Hague, August 2002, p.4

<sup>2</sup>*Ibid.*

<sup>3</sup>*Ibid.*

<sup>4</sup>*Ibid.* p.5

<sup>5</sup>*Ibid.* p.5

<sup>6</sup> Peter Seitel, *Proposed Terminology for Intangible Cultural Heritage: Towards Anthropological and Folkloristic Common Sense in a Global Era*. UNESCO International Round Table 'Intangible Cultural Heritage', 2001 p.9



- 8) Intangible Cultural Heritage (ICH)  
Practices, representations, expressions, knowledge, and skills—as well as the instruments, objects, artefacts, and cultural spaces associated therewith—that communities, groups, and in some cases, individuals recognise as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature, and their history, and it provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.<sup>7</sup>
- 9) Intellectual Property (IP)  
Legal rights that result from intellectual activity in the industrial, scientific, literary, or artistic fields.<sup>8</sup> Common types of intellectual property rights include copyrights, trademarks, patents, industrial design rights, and trade secrets.
- 10) Inventory Making  
Drawing up one or more inventories of the intangible cultural heritage present in territories to ensure identification with a view to safeguarding.<sup>9</sup>
- 11) Moral Rights  
Owner's right to claim authorship of the work and to object to any distortion, mutilation, or other modification or derogatory action in relation to the said work that would be prejudicial to the owner's honour or reputation.<sup>10</sup>
- 12) Practitioner  
A member of a community who actively reproduces, transmits, transforms, creates, and forms culture in and for the community by performing and otherwise maintaining social practices based on specialised knowledge and skills.<sup>11</sup>
- 13) Stakeholder  
Various levels of agency in ICH information building and sharing activities, including public and private institutions, and more specifically artists and creators of the cultural communities concerned.<sup>12</sup>
- 14) Subjects of ICH  
Bearers, practitioners, and communities.

---

<sup>7</sup> Art.2 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, 2003

<sup>8</sup> World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Law, Policy and Use*, WIPO Publication No. 489(E). p.3

<sup>9</sup> Art.12.1. UNESCO Convention for the Safeguarding. *opcit*

<sup>10</sup> Art.6Bis Berne Convention for the Protection of literary and Artistic Works, Paris Text 1971

<sup>11</sup> UNESCO Glossary Intangible Cultural Heritage. *opcit* p.5

<sup>12</sup> Noriko Aikawa, *State of Intangible Heritage Development in the Lead Up to the 2003 Convention*. UNESCO Shanghai meeting in the lead up to the adoption of ICH Convention. Training of the trainers. Asia and Pacific. Module 1. p.21

### 3. Specific Questionnaire

#### A. Institute Overview

- 1) Profile of the institute
  - a) What is the name of institute?
  - b) Where is the institute located? (City/Country)
  - c) Please introduce the history of institute.
  - d) What are objectives and functions of the institute?
  - e) In what country/region have your institute's activities been carried out?
  - f) What kind of ICH is your institute specialised in?  
Ex) performing arts, dance, music, rituals, ceremonies, etc.
  
- 2) Characteristics of the institute
  - a) Your institute can be classified as
    - Government department
    - Public institution
    - Public enterprise
    - Private enterprise
    - NGO
    - Other (Please explain the classification)
  - b) Is your institute affiliated with other organisations? If yes, please describe the parent or affiliated organisations—name, classification, objectives and functions, specialisation, etc. (over 200 words in English)
  - c) What are the institution's sources of budget?  
Ex) a national budget, fund-raising activities, etc.

#### B. Information Building and Sharing Activities of Institute

- 3) Information building and sharing activities of the institute
  - a) Please indicate the kinds of activities your institute has done or is doing.
    - Identification
    - Documentation
    - Inventory making
    - Database/Archive building
    - Publication and distribution
    - Utilising digital contents
    - Other (Please explain other activities your institute has done)

- b) Among your answers in [B-3-a], which activity does your institute mainly focus on? (multiple answers allowed)
- (1) Please explain the activity (over 250 words in English)
  - (2) If any, please also provide guidelines, internal regulations, or other principles regarding the activity.
- c) Regarding your answers in [B-3-b], please describe specific projects related to the activity by giving a set of answers below. If you have more than one project, please provide a set of answers for each one (One to three examples are recommended, but you can also give more than three examples)
- (1) Name of project
  - (2) Duty department
  - (3) Background of project (over 150 words in English)
  - (4) Context of project (over 250 words in English)
  - (5) Procedures of project
  - (6) Outcomes/Effects
- d) If you indicated in [B-3-a] that your institute did activities related to database/archive building, please provide an additional explanation about the activities.
- (1) How did/does your institute obtain ICH-related data or archives?
    - Field work and documentation
    - Purchase
    - Donation
    - Other (Please explain how your institute obtains(ed) ICH-related data or archives)

If you checked more than one answer, what is the primary way your institute obtains(ed) ICH-related data or archives? Please arrange your answer according to the order of priority.
  - (2) Please provide an index of data or archives of your institute by giving a set of answers below.
    - (a) Name of data
    - (b) Online/Offline data
    - (c) Type of data
      - Ex) text, photograph, recording, video, etc.
    - (d) Source of data
      - (Where did the data originate?)
    - (e) Context of data
    - (f) Person/Organisation who has rights on the data
    - (g) Principle/Guideline of data management, if any.

### C. Intellectual Property Issues in Institute

- 4) Does your institute have experience with a project regarding IP aspects of ICH?

- Yes
- No

If yes, please describe the project by answering the questions below. If you have more than one project, please provide a set of answers for each one.

- a) Name of project
- b) Duty department
- c) Background of project (over 150 words in English)
- d) Context of project (over 250 words in English)
- e) Procedures of project
- f) Outcomes/Effects

- 5) Is there a department, a unit, or an individual undertaking tasks related to intellectual property?

- Yes
- No

If yes, please provide information below.

- a) Name of department (which covers the unit or the individual)
- b) Name of duty person (in the department, the unit)
- c) Tasks of department
  - (a) Main task  
(What is the main task of the department? [over 100 words in English])
  - (b) Tasks relating to intellectual property  
(Please describe the tasks that are related to intellectual property [over 100 words in English])
- d) Contact information
  - (a) Contact number and e-mail of department
  - (b) Contact number and e-mail of duty person

- 6) Does your institute have a principle for protecting IP aspects of ICH?

- Yes
- No

If yes,

- a) Please describe the principle (over 150 words in English)
- b) If any, please attach documents related to answers in [C-6-a].

## D. Intellectual Property Issues in the Process of Information Building and Sharing

ICH information building and sharing constitutes a series of activities that build and utilise ICH information, such as identification, inventory making, documentation, and digitisation. The process of ICH information building and sharing consists of several stages: a stage for preparation, a stage for collecting and creating information, a stage for maintaining information, a stage for processing and producing information, and a stage for utilising and disseminating information. Each stage is detailed below.

- The stage for preparation: conducting preliminary investigations, planning activities, selecting ICH objects to be investigated, undergoing prior consultation on an activity, etc.
- The stage for collecting and creating information: conducting field surveys (interviews, recording, filming, etc.), purchasing data, receiving donations, etc.
- The stage for maintaining information: building a database, keeping the data in its original form, classifying the data, constructing a security system for the data, etc.
- The stage for processing and producing information: editing, modifying, and upgrading information collected and maintained in the previous stages towards forms of documents, videos, web pages, etc.
- The stage for utilising and disseminating information: disclosing and disseminating information produced, distributing commercially, and utilising existing information for broadcasting, advertising, publicity, etc.

The management of ICH information raises equally different intellectual property issues from one category to another, be it in the phase of preparation, collection, production, or dissemination.

In **the stage for preparation**, intellectual property issues that could arise are below.

- Problems regarding identifying the nature of rights existing in ICH that will be targeted in information building and sharing activities
  - Identifying copyrighted works
  - Identifying unpublished or unknown authors' works
- Problems regarding compliance with a country's laws and regulations or customs concerning ICH information building and sharing activities

- Identifying a country's laws and regulations or customs that could affect information building and sharing activities
- Examining the range of protection under national statutes of IP rights of ICH practitioners and creators
- Others
  - Other intellectual property issues that could arise during the preparation stage

**In the stage for collecting and creating information, the stage for maintaining information, the stage for processing and producing information, and the stage for utilising and disseminating information,** intellectual property issues that could arise are below, grouped into categories of IP rights.

### **Ownership**

- Identification of the owner of the copyright and related rights in the recordings, films, or manuscripts embodying ICH
- Determination of ownership of both the database itself and its contents
- Issue of bearers' ownership rights in adaptations such as lawful inspiration or the borrowing of work based on one or several pre-existing ICH work(s)
- Custodians', owners', and/or managers' rights of ownership of secondary materials embodying ICH (secondary materials include items such as films, sound recordings, photographs, and written documents.)
- Bearers' ownership of ICH-derived materials that are legally owned by the creator of the document, recording, and/or database embodying ICH
- Issue of joint ownership in work involving ICH material

### **Prior Informed Consent or Approval**

- Issue of an approval or an agreement related to collecting ICH information
  - Identifying the authority who has been granted power to approve (permission or agreement from bearers, practitioners, communities, or other stakeholders)
  - Determining the terms and scope of the approval or agreement from bearers, practitioners, communities, or other stakeholders

- Prior informed consent to the reproduction, use, and display of ICH material
- Bearer's, practitioner's, or community's objections to utilising and disseminating information
- Determination of the format of agreements: consent forms to access and use ICH materials, licenses, undertakings, etc.

### **Maintenance of Collected Information**

- Determination of data classification in an area of protection under IP related law
- Determination of the database to be built according to its uniqueness in IP related law

### **Adaptations**

- The issue of unauthorised adaptations
- Issue of legal rights that could arise during secondary utilisation of information
  - Permission from stakeholders about secondary utilisation, such as broadcasting, advertising, publicity, etc.
  - Intellectual property of the secondarily used information

### **Secret, Sacred, or Confidential ICH**

- Issue of secrecy, sacredness, or confidentiality under customary laws and practices of ICH material collected
- Problems regarding disclosure of secret information

### **Access, Control, and Use**

#### ***Communities' Involvement***

- Determination of communities' participation in the recording, digitisation, and dissemination of ICH for safeguarding, promotional, and income-generating purposes
- Communities' involvement in the decision-making processes related to the management of ICH elements held by institutes
- Authority of ICH subjects and their capacity to manage information once produced
- Bearers' agreement on modification or transformation of ICH materials

- Determination of communities' legitimate rights holders
- Management of access and use of ICH information by communities
- General public's interests to benefit from and enjoy the information building and sharing activities of ICH

### ***Relationships***

- Issue of database users' interaction with bearers for use of ICH
- Issue of relationships between an institution that holds the material, and a bearer, be it the owner, custodian, or manager.

### ***Terms of Use of ICH Material***

- Code on management, access, and use of ICH information
- Compliance with restricted ICH use under customary laws and practices
- Establishment of IP-related protocols, policies, and practices

### **Infringement of Rights and Responsibilities**

- Infringement of intellectual property rights existing in the ICH information
  - Copyrights in literary, musical, and artistic expressions
  - Related rights (performers', phonograms', producers', and broadcasting organisations' rights) in performances, rituals, recordings, etc.
  - Trademark in cultural names, signs, indications, marks, symbols, etc.
  - Indigenous know-how and knowledge protected under trade secrets, patent law, etc.
  - Design rights in cultural textiles, poetry, etc.
- Legal responsibilities of institutes leading the activities
  - Vis-à-vis communities from which the ICH was collected
  - Vis-à-vis users to whom ICH is delivered
  - Vis-à-vis website viewers of digitised ICH collections

### **Licensing**

- Licensing by institutions of ICH material in a recording, database, or collection
- Terms of licensing
- Content of ICH material to be licensed
- Identification of the exact licensee and licensor



### **Bearer's Moral Rights**

- Disclosure of ICH ownership information on any related use
- Problems regarding the determination of the range of disclosure
- Case of derogatory work related to ICH
- Respect of bearers' right to integrity

### **Sharing of Benefits**

- Issue of respect of bearers' economic rights
  - Right to translation
  - Right to reproduction
  - Right to communication to the public
  - Others
- Problems regarding the distribution of profit that comes from utilising and disseminating information
  - Economic compensation for bearers, practitioners, or communities
  - Economic compensation for other affiliated organisations or individuals, such as collectors, researchers, agencies, or collective management organisations

### **Unfair Use or Misuse of ICH**

- Misappropriation of ICH material by an institute
- Misappropriation of ICH material by a third party

### **Portraits, Filming, or Reproduction of ICH Material**

- Right to use for commercial purposes
- Respect of motion pictures right in ICH digitisation
- Moral rights of bearers in portraits or films
- Respect of the sacredness, secret, or sanctity of portraits or films
- Right to reproduction in digitising a photograph
- Exception to copyright in cases of promotional or educational purposes

### **Use of ICH as Trademark, Geographical Indication, or Domain Name**

- Bearers' approval in using ICH material as logos or product identifiers
- Misuse of cultural words as trade name, domain name, or geographical indication

7) Have any of the above issues arisen in any of the stages at your institute?

- Yes
- No

If yes, please describe the issue by answering the questions below. If you have more than one issue, please provide a set of answers for each one.

a) Please explain the activity your institute did.

(a) Name of project

(b) Sort of activity

(What kind of information building and sharing activities did your institute do in the project?)

Ex) identification, documentation, inventory making, database building, etc.

(c) Objective of project

b) What kinds of issues have arisen?

- Problems regarding compliance with a country's laws and regulations or customs concerning ICH information building and sharing activities
- Problems regarding identifying the nature of rights existing on ICH that will be used in information building and sharing activities
- Problems regarding identifying the nature of rights existing in ICH
- Problems regarding ownership of ICH
- Problems regarding prior informed consent or approval
- Problems regarding maintenance of collected information
- Problems regarding adaptations
- Problems regarding secret, sacred, or confidential ICH
- Problems regarding bearers' moral rights
- Problems regarding sharing of benefits
- Problems regarding unfair use or misuse of ICH material
- Problems regarding portraits, filming, and reproduction
- Problems regarding the use of ICH as a trademark, geographical indication, or domain
- Other (Please indicate the issue)

c) Please indicate all stages in which the issue has arisen.

- The stage for preparation
- The stage for collecting and creating information
- The stage for maintaining information
- The stage for processing and producing information
- The stage utilising and disseminating information

- d) What was the cause and content of the issue? (over 500 words in English)
  - e) Who were the stakeholders involved with the issue?
  - f) What did the institute do to resolve the issue? Please describe the process and the results of the resolution. (over 500 words in English)
  - g) What was the institute's principle in the process of dealing with the issue?
  - h) Does your institute have a guideline, policy, or protocol regarding legal issues that could arise during the stage?
    - Yes
    - No
 If yes, please attach the copy of the guidelines, policies, or protocols.
  - i) Please attach any other forms (ex. form of agreement) that were used during the stage.
- 8) Through your institute's experience, what kind of legal issues regarding IP aspects of ICH do you think could arise in each stage? (over 400 words in English)
- 9) In relation to [D-7] and [D-8], what kind of alternatives, guidelines, policies, or protocols do you think should be prepared? (over 400 words in English)

## **E. Institute's Activities**

Here are questions on issues that could arise in the entire process of the institute's activities.

- 10) What kind of relationship does your institute have with ICH subjects, such as informants, collectors, researchers?  
 Ex) one-way asymmetrical relationship, one-way symmetrical relationship, two-way asymmetrical relationship, two-way symmetrical relationship, owner vs. custodian, etc.
- 11) Does your institute include intellectual property issues in the institute's vision, purpose, function, polices, etc.? If yes, please indicate your institute's vision, purpose, function, polices, etc. that addresses intellectual property issues.
- 12) Does your institute have a representative legal dispute regarding the institute's information building and sharing activities?  
 Yes  
 No

If yes, please describe the case. If you have had more than one case, please provide a set of answers for each one.

- a) Name of project
- b) Sort of activity
- c) Purpose of project
- d) Procedures and context (over 200 words in English)
- e) Issue activated (over 200 words in English)
- f) Response to the issue

(Who or what department was in charge of the issue? How did the department cope with the issue? Were the principles or guidelines adjusted to the case? [over 300 words in English])

- 13) Does your institute have a case of guaranteeing the rights and the participation of ICH subjects (bearers, practitioners, or communities) in the institute's information building and sharing activities?

- Yes
- No

If yes, please describe the case below. If you have more than one case, please provide a set of answers for each one.

- a) Name of project
- b) Sort of activity
- c) Purpose of project
- d) Participation of subject in the procedure (over 300 words in English)
- e) Rights of subject guaranteed
- f) Please attach related documents.

- 14) Have policies or guidelines for protecting intellectual property rights of ICH in the process of information building and sharing been well organised in your institute?

- Yes
- No

If yes, please provide information on the policy or the guideline, including

- a) Context of the policy or the guideline
- b) Please attach related forms. (ex. form of agreement)

## **F. Related Legislation**

- 15) In your institute's country, is legislation or the legal system for the protection of cultural heritage organised?

- Yes
- No

If yes, please describe the legislation or the legal system below.

- a) Full title
- b) The relevant sections or paragraphs
- c) Date of coming into force
- d) Details of the office responsible for administering the laws
- e) Copies of laws and regulations
- f) What are issues or problems regarding IP aspects of ICH that cannot be covered by the legislation or the legal system described above?
- g) What kind of legal systems or devices need to be added for the protection of IP aspects of ICH?

If no, please provide additional information below.

- h) Legal systems or regulations expected to be issued
- i) Status of processing

## **G. Future Plans**

In case your institute has not been equipped with policies or guidelines for protecting intellectual property related aspects of ICH, please answer the following questions.

- 16) Does your institute have plans for organising guidelines or regulations for protecting ICH intellectual property related rights in the process of information building and sharing?
  - Yes
  - No
  - a) If yes, please describe your institute's future plans (manner and context) for organising guidelines or regulations. (over 250 words in English)
  - b) If a future plan is in the process of being organised, please provide additional information below.
    - (1) Guidelines or regulations expected to be organised
    - (2) Status of processing
- 17) Does your institute have plans for projects regarding the protection of intellectual property related rights in the process of information building and sharing?
  - Yes
  - NoIf yes, please describe the project below.
  - a) Purpose of project
  - b) Term and duration
  - c) Context
  - d) Anticipated procedures

## H. Other Opinions

18) Please provide any kind of information related to the purpose of this survey.

## 4. Contacts

Please provide contact information of the person who is in charge of this survey report.

Name	
Position	
Department	
Address	
E-mail	
Telephone	
Mobile	
Fax	

## 5. Reference materials

Please provide all attached materials with information below.

Distinction (relevant question)	
Form of material	
Name	
Source	
Context	

## 6. Results

Replies to this questionnaire should kindly be sent no later than the prearranged date to the following address.

**Ms Saymin Lee** (Information & Research Section)  
Intangible Cultural Heritage Centre for Asia and the Pacific (ICHCAP)  
National Research Institute of Cultural Heritage Bldg (4F)  
132 Munji-ro, Yuseong-gu, Deajeon 305-380  
Republic of Korea  
Tel. +82 42 820 3513 / Fax. +82 42 820 3500

The survey may also be e-mailed to the address below, but in addition to the e-mailed materials, please kindly send the requested references materials to the above address.

E-mail: [ichcap@gmail.com](mailto:ichcap@gmail.com)  
[smlee@ichcap.org](mailto:smlee@ichcap.org)

Reference materials can be submitted using Webhard.

Address: [www.webhard.net](http://www.webhard.net)  
Id: ICHCAP  
Password: ichcap

***Thank you for your valuable contribution to the survey.***





## Annex 2|*Regulations*



# Regulations of Vietnamese Legal Instrument on IPAspects of ICH

---

## **Law No. 36/2009/QH12 Amending and Supplementing a Number of Articles of the Law on Intellectual Property (Promulgated in 2009)**

### **4. To amend and supplement Article 8 as follows:**

**Article 8.** The State's intellectual property policies

1. To recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing benefits of intellectual property rights holders and public interests; not to protect intellectual property objects which are contrary to social ethics and public order and prejudicial to defense and security.
2. To encourage and promote the creation and utilization of intellectual assets in order to contribute to socio-economic development and improvement of the people's material and spiritual life.
3. To provide financial supports for the receipt and exploitation of assigned intellectual property rights in public interests; to encourage organizations and individuals at home or abroad to provide financial aid for creative activities and the protection of intellectual property rights.
4. To prioritize investment in training and retraining the contingent of cadres, civil servants, public employees and other relevant subjects engaged in the protection of intellectual property rights and the research into and application of sciences and technologies to the protection of intellectual property rights.
5. To mobilize social resources for investment in raising the capacity of the system to protect intellectual property rights, thereby meeting requirements of socio-economic development and international economic integration."

### **5. To amend and supplement Article 14 as follows:**

**Article 14.** 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;
  - l) Computer programs and data compilations.
2. 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.
  3. 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.
  4. The Government shall guide in detail the types of works specified in Clause 1 of this Article."

**Article 20.***Economic rights*

1. Economic rights [of authors] shall comprise the following rights:
  - a) To make derivative works;
  - b) To display their works to the public;
  - c) To reproduce their works;
  - d) To distribute or import the original or copies of their works;
  - e) To communicate their works to the public by wireless or landline means, electronic information networks or other technical means;
  - f) To lease the original or copies of cinematographic works and computer programs.
2. Authors or copyright holders shall exclusively exercise the rights stipulated in clause 1 of this article or may grant other persons the right to exercise such rights pursuant to the provisions of this Law.
3. When any organization or individual exercises one, several or all of the rights stipulated in clause 1 of this article and in article 19.3 of this Law, such organization or individual must ask for permission from the copyright holder and must pay royalties, remuneration or other material benefits to the copyright holder.

**Article 23.***Copyright in folklore and folk art works*

1. *Folklore and folk art work* means a collective creation based on the traditions of a community or individuals reflecting the ambitions of such

community and expressed in a form appropriate to the cultural and social characteristics, standards and values of such community which have been handed down by imitation or other modes. Folklore and folk art works shall comprise:

- a) Folk tales, lyrics and riddles;
  - b) Folk songs and melodies;
  - c) Folk dances, plays, rites and games;
  - d) Folk art products including graphics, paintings, sculpture, musical instruments, architectural models and other artistic expressions in any material form.
2. Organizations and individuals using folklore and folk art works must cite the origins of the folklore and folk art works, and must ensure that the authentic value of such folklore and folk art works is preserved.

**Article 28.** *Conduct constituting infringement of copyright*

1. Appropriating copyright in a literary, artistic or scientific work.
2. Impersonating an author.
3. Publishing or distributing a work without permission from the author.
4. Publishing or distributing a work of joint authors without permission from the co-authors.
5. Modifying, editing or distorting a work in any way which prejudices the honour and reputation of the author.
6. Copying a work without permission from the author or copyright holder, except in the cases stipulated in sub-clauses (a) and (dd) of article 25.1 of this Law.
7. Making a derivative work without permission from the author or copyright holder of the work used for making such derivative work, except in the case stipulated in sub-clause (i) of article 25.1 of this Law.
8. Using a work without permission from the copyright holder and without paying royalties, remuneration or other material benefits in accordance with law, except in the cases stipulated in article 25.1 of this Law.
9. Leasing out a work without paying royalties, remuneration or other material benefits to the author or copyright holder.
10. Duplicating, producing copies of, distributing, displaying or communicating a work to the public via a communications network or digital means without permission from the copyright holder.
11. Publishing a work without permission from the copyright holder.
12. Deliberately destroying or de-activating the technical solutions applied by the copyright holder to protect copyright in his or her work.
13. Deliberately deleting or modifying electronic information in a work regarding management of the rights to such work.
14. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing out equipment when knowing, or having

grounds to know, that such equipment may de-activate technical solutions applied by the copyright holder to protect copyright in his or her work.

15. Making and selling a work with a forged signature of the author of such work.
16. Importing, exporting or distributing copies of a work without permission from the copyright holder.

### **Decree No.85/2011/NĐ-CP**

Detailing and Guiding the Implementation of a Number articles of the Law on Intellectual Property and the Law Amending and Supplementing some Articles of the Decree No.100.2006/NĐ-CP on Detailed Regulation and Guidance to the Implementation of a Number of Provisions in the Civil Code and the Intellectual Property Law (effective from January 1st 2011).

Based on the Law No. 36/2009/QH12 Amending and Supplementing a Number of Articles of the Law on Intellectual Property, which was effective from 01/01/2011, the Government issued Decree No.85/2011/NĐ-CP amending and supplementing certain articles of the Decree No. 100/2006/ND-CP on detailed regulation and guidance to the implementation of a number of provisions in the Civil Code and the Intellectual Property Law on copy Rights and related rights. Decree No. 85 came into force since 10/11/2011 amended the provisions on the term of protection for posthumous works, photographic works, apply art works, the use of broadcasts, the right to reproduce the works, assignment for an anonymous work, the usage of the works, performance, sound recording, etc. The Decree also clarified some of the terms and supplemented 03 regulations on copyright for computer programs, literature, folk arts; principles and methods of payment of royalties, etc.

Ministry of Culture, Sports and Tourism, Ministry of Finance, Ministry of Information and Communication were commissioned by the Government to promulgate the tariff duties, payment of royalties, remuneration and material benefits as prescribed in clause 1 of 26 and 33 paragraphs 1 and 2 of the Intellectual Property Law were amended and supplemented.

**Annex 3|*Main Tasks of LACO & COV***





## Main Tasks of LACO and COV

---

### Literary and Art Copyright Office (LACO)

Literary and Art Copyright Office (LACO), of which, the forerunner was the Copyright Protecting Firm, founded on 27 February 1987, was the State management agency with a nation wide competence in term of copyrights and other related rights. Its function and tasks were:

- To be responsible to assist the Ministry of Culture and Information to perform the state management over copyright. The Office had the following functions and duties:
- To draft bills, laws, decrees and other legal documents on copyright protection; to issue and withdraw the Copyright Certificate, the licenses on professional activities and services of copyright;
- To instruct the Services of Culture and Information to perform the state management over copyright at all level;
- To organize and conduct the cooperation with other countries and international organizations in term of copyright;
- To propagate and popularize law on copyright and undertake information activities of copyright protection; to mature professional knowledge of copyright for relevant carders at central and local levels

Over the past years, LACO had organized over 40 seminars, meetings, workshops, including several international meetings organized by WIPO, UNESCO and other international NGOs. During over two decades (from 1986), LACO had received and issued Copyright Certificates to authors and owners of over 15,000 works.

### Copyright Office of Viet Nam (COV)

To admit the new requirements of present life and be in line with the changes in position and functions of the Ministry, the agency for intellectual properties was then entitled the Copyright Office of Viet Nam and given new function, tasks and powers as regulated in the Decision No.41/QĐ-BVHTTDL on May 15, 2008 as below:

Article 1. Position and Function: The Copyright Office of Viet Nam is an agency administered by the Ministry of Culture, Sports and Tourism, helping the Minister

in realizing the state management of copyright and related rights protection through out the country under the party's policies and the State laws.

The Copyright Office of Viet Nam shall have its own seal and an account at the State Bank.

Article 2. Tasks and powers:

- To submit to the Minister the strategies, laws, mechanisms and policies on copyright and related rights protection,
- To submit to the Minister for his decisions on provisions, cooperation, ordering and insurance of copyright to works and related rights to performances, programs, video programs and broadcasting programs and organize to implement them.
- To assist the Minister in collaboration with the Ministry of Science and Technology in drafting policies and legal documents on intellectual property, implementing joint-projects on intellectual properties and implementing other related activities.
- To take measures to protect legal rights of the State, organizations and individuals in the field of copyright and related rights.
- To provide instructions to local Department of Culture, Sports and Tourism and implementing the functions of state management on copyright and related rights.

Publisher

---

**International Information and Networking Centre for Intangible Cultural Heritage  
in the Asia-Pacific Region under the auspices of UNESCO**

**Director of the Publication**

Samuel Lee

**Editor-in-chief**

Seong-Yong Park

**Editorial Staff**

Weonmo Park

Saymin Lee

*Tel. +82-42-820-3513*

*Fax. +82-42-820-3500*

*Email. [ichcap@ichcap.org](mailto:ichcap@ichcap.org)*

*Add. 132 Munji-ro, Yuseong-gu, Daejeon 305-380*

*©2012 International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region*

*This publication is copyright. No part may be reproduced by any process without written permission.*

The contents herewith are entirely the product of the researchers and do not represent the views of ICHCAP.

---