

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