

## Copyright issues in digital libraries

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### ABSTRACT

The research starts with an introduction of some legal documents on copyright in library operations in general and digital libraries in particular then goes into the details of enforcement copyright in digital libraries in Vietnam. Lastly, on the basis of the findings, the author proposes some suggestions for effective enforcement of copyright in Vietnam's digital libraries.

**Keywords:** copyright, digital libraries, Vietnam.

### GENERAL ISSUES OF COPYRIGHT

#### Intellectual Property Rights and Copyright

Intellectual Property Rights are construed as the ownership of individual's creative results on the basis of law, in which the right of the creator to be granted a monopoly right in a certain period of time when he / she possesses, uses, disposes of intellectual products made by him/herself. Objects are protected by the State with intellectual property rights include:

(1) Copyright (literary and artistic works and scientific works, objects related to copyright such as performances, phonograms, video recordings, programs broadcasting satellite signals carrying encoded programs);

(2) Industrial property rights (inventions, industrial designs, trademarks, geographical indications, business secrets, trade names, layout designs of semiconductor integrated circuits);

(3) Rights to plant varieties (plant varieties and propagating materials).

In Vietnam, these objects are managed by different agencies: Object (1) is managed by the Copyright Office of Vietnam - the Ministry of Culture, Sports and Tourism; Object (2) is managed by National Office of Intellectual Property of Vietnam - Ministry of Science and Technology; Object (3) is managed by the Department of Crop Production - Ministry of Agriculture and Rural Development.

Copyright is one of the three objects of Intellectual Property Rights. Copyright is the rights of organizations and individuals to works created or possessed by them, to protect their personal interests and economic interests in relation to their works, to prevent copying behavior, impersonation, dissemination or illegal transfer of works. Copyright includes 2 rights: Personal rights and Property rights (referred to Article 18, Article 19, Article 20 of the Intellectual Property Law of Vietnam)[13]:

1. Personal Rights: Name the work; Show real name or pen name on the work; To be named or pseudonym when the work is published or used; Publish the work or allow others to publish the work; To protect the integrity of the work, to prevent others from repairing, mutilating or distorting the work in any form that is detrimental to the author's honor or reputation.
2. Property rights: Making derivative work; Performing work before the public; Copy work; Distributing or importing the original or copy of work; Communications to the public by



wire, wireless, electronic information network or any other technical means; Leasing of original or copy cinematographic works or computer programs.

### **Some legal documents on copyright**

In the world, copyright issues are mentioned in the 18th century with the introduction of copyright laws such as the "Statute of Anne" Law of the United Kingdom, which took effect in October 1710. This is the first copyright law in the world, giving two basic rights: The author has exclusive rights to his works and that monopoly is protected for a certain period of time. The following copyright laws were the Danish copyright laws (1741), France (1791), USA (1795), Germany (1845) ...

In Vietnam, starting with the 1980 Constitution, copyright is recognized as one of the basic rights of citizens. In 1986, Decree No. 142 / HDBT, issued on 14 November 1986 by the Council of Ministers, regulates 8 articles related to the protection of copyright, such as the provisions on the author, on the types of protected works, the spiritual and material interests of the author, the term of protection of copyright ... To the 1992 Constitution, the 1995 Civil Code, the issue of copyright protection was officially recognized. Copyright is gradually improved with more and more specific content in legal documents such as Intellectual Property Law, Decrees, Circulars,... issued by the competent authorities of Vietnam. From 1997 onwards, Vietnam has signed several international treaties related to copyright. These international treaties have created a solid and safe legal framework in the field of copyright protection in Vietnam in accordance with international standards and practices.

According to statistics, the Copyright Office of Vietnam has presided over and coordinated with other organizations and agencies to study, formulate and submit to competent authorities for promulgation over 30 types of legal documents, with a total of over 620 laws, of which 226 are currently in effect throughout the country. These laws have been recognized in legal documents of the Constitution, the Civil Code, the Administrative Law, the Penal Code, the Intellectual Property Law, the law of the press, cinematography, heritage, advertising, customs and other directives, decrees and circulars such as:

The Intellectual Property Law of Vietnam was passed by the National Assembly of Vietnam on 29 November 2005, effective from 1 July 2006 and amended in 2009, consisting of 6 parts, 18 chapters and 222 articles. In particular, the second part: copyright and related rights mentioned provisions on protection conditions; content, limitation of rights, term of protection, owner, transfer; registration certificate; representatives, consultants and services on copyright and related rights [13].

Article 131 of The Penal Code of Vietnam providing for the sanctioning of infringements of copyright [11];

Article 4, Article 5, Article 8, Article 23 of The Cultural Heritage Law of Vietnam No. 28 /2001/QH10 on Copyright and Related Rights [12];

Article 736, Article 743 of The Civil Code on Copyright and Related Rights [14];

Decree No. 100/2006 /ND-CP detailing and guiding the implementation of a number of articles of the Civil Code, the Law on Intellectual Property and the Copyright [5];

Decree No. 105/2006/ND-CP detailing and guiding the implementation of a number of articles of the Law on intellectual property on protection of intellectual property rights and state management of intellectual property [6];

Decree No. 47/2009/ND-CP stipulating the sanction of administrative violations in relation to the protection of intellectual property and related rights [7].

The above legal documents are promulgated by Vietnam and frequently modified in accordance with the actual situation in order to protect the creativity of the author's creative work.



In addition to legal normative documents, Vietnam has also signed eight bilateral and multilateral treaties on copyright and related rights, including:

- 05 international conventions and treaties, including the Berne Convention for the Protection of Literary and Artistic Works (2004), the Geneva Convention for the Protection of Producers of Phonograms (2005) and the Brussels Convention to the distribution of programmable satellite signals (2006), the Rome Convention for the Protection of Performers, Producers of Phonograms, Broadcasting Organizations (2007), TRIPS Agreement on Trade Aspects of Intellectual Property Rights (2007) has in turn taken effect in Vietnam.
- 03 bilateral treaties, including the Agreement on the Establishment of Copyright Relations, the US-Vietnam Bilateral Trade Agreement and the Agreement on the Protection of Intellectual Property Rights with the Swiss Confederation, have also entered into force in the contracting countries. In addition, bilateral and multilateral agreements on economic, trade, investment, services,... signed by Viet Nam, also have commitments on the protection of intellectual property rights, including copyright and related rights such as the Japan-Vietnam Economic Partnership Agreement or the Trans-Pacific Economic Partnership Agreement that Vietnam is negotiating with 8 other countries.

The above treaties, international treaties and agreements contain over 200 laws, which stipulate the rights and obligations of the parties. Citizens and legal entities of member countries must be fulfill their legal obligations when exploiting and using copyright and related rights of Vietnamese ones. In contrast, Vietnamese citizens and legal entities must do the same when they exploit and use copyright and related rights of the member countries's ones.

## **THE ENFORCEMENT OF COPYRIGHT IN VIETNAM'S DIGITAL LIBRARIES**

Digital technology has made an exhaustive and profound change of the social information base. Thanks to digital technology devices, information data is created quickly, easily, the storage is long, the using is widespread, convenient. Building digital libraries not only contributes to the preservation of cultural heritage, but also as a source of socio-economic development. Therefore, building and developing digital libraries is an issue that libraries in Vietnam are interested in. However, the issue of copyright in digital libraries is also a "headache" for not only authors, copyright holders, state management agencies but also libraries that wish to exploit, use the work to digitize legally.

Although the system of legal documents related to copyright has been issued quite detailed, fully and in accordance with the new situation, the actual rate of copyright infringement in Vietnam is still quite high. According to the year 2017 data of the Copyright Office of Vietnam, the rate of copyright infringement in Vietnam is very high (88%). In the field of information technology (IT), Vietnam's software piracy rate is 78% in 2015 according to BSA (Enterprise Software Alliance) and IDC (market research firm). So, in the context of international integration as well as today, libraries in Vietnam should have the responsibility to protect and enforce copyright when building digital libraries.

The major factor of building digital libraries is creating digital collections. Normally, they are created through 3 forms:

- Digitizing the source of paper documents in the library by scanning or using available digital sources.
- Purchasing or exchanging digital resources from publishers, digital document providers.
- Establishing links to digital resources available on the Internet, especially from agencies with the same subjects.

In particular, the self-digitation of paper document sources in the library for creating digital collections is very important and related to copyright issues. The digitation of paper



document itself is not an act of using copyright and related rights, but the purpose of the digitization may be related to the rights provided by the Intellectual Property Law. Therefore, to ensure that the process of building digital libraries is carried out legally, the identification of documents intended for creating digital collections are the copyright law's objects or not is very necessary.

According to copyright regulations, documents are divided into two categories:

• ***Out-of-copyright***

- Documents are owned by the State such as legal documents, statistical datas, judicial documents. "Objects are not falling under the scope of copyright protection: 1. Pure current news. 2. Legal documents, administrative documents, other judicial documents and official translations of these documents. 3. Processes, systems, methods of operation, concepts, principles and datas" (Intellectual Property Law of Vietnam, Chapter I, Section 1, Article 15)[13].

- Public domain: The copyrighted documents have expired protected-term. Intellectual Property Law Vietnam specifies the protected-term for each object: the protected-term of publication and property rights in cinematographic and photographic works, fine arts, anonymous works is seventy five years after the work is first published. The protected-term of other types is the lifetime of the author and fifty years after the author died; In the case, work has co-authors, the term of protection shall terminate in the fiftieth year after the death of the last co-author. The protected-term of related rights is fifty years from the next year of fixed performances, published phonograms and video recordings or fixed if not yet published, performed broadcast programs [17].

- When the author does not strictly comply with the provisions of Copyright Law. For example, a work is under the copyrighted protection but the author agrees to transfer it to the public domain and allow people to use this work for any purpose unconditionally.

For out-of-copyright documents, libraries may digitize them anytime without asking permission of copyright or related rights. However, during the process of digitization, the author's personal rights to the work need to be respected. These rights are protected indefinitely and can not be transferred. So, on digitizing datas, libraries must ensure to perform the author's rights to their original work such as: to name the work, to be named on the work, to protect the integrity of the work...

• ***Protected by copyright***

Copyright law protected works are literary, artistic, scientific and derivative works of these ones without prejudice to the works's copyright used to make derivative works (Articles 14, (1), (2) of the Intellectual Property Law Vietnam [13]).

Accordingly, all syllabus, lectures, reference books, monographs, theses, dissertations, journal articles and other documents found in the library are protected by copyright law. The libraries are the owner of specific books stored in the library. Authors or authorized organizations and individuals are the copyright owners of those books. In principle, when digitizing them, libraries need to obtain permission and fulfill the obligation to pay royalties and remuneration to authors and copyright owners as agreed. Today, applying for permission to use copyright and related rights can be made simply and easily. Based on the copyright information available on works, libraries may contact directly to authors, copyright owners, or the management organizations authorized by the authors or copyright owners for permission (Article 56 of the Intellectual Property Law of Vietnam [13]). In Vietnam, there are four management organizations: Vietnam Center for Protection of Music Copyright (VCPMC), Vietnam Literary Copyright Center (VLCC), Recording Industry Association of Vietnam (RIAV), Vietnam Reproduction Rights Organisation (VIETRRO).



However, in fact, according to the limitations and exceptions of the copyright law, copyright protected works can be free to use without permission or paying royalties or remuneration in certain cases:

"a) Self-reproducing a copy for the purpose of an individual's scientific research or teaching;  
d) Reproducing works to store in library for research purposes;  
g) Recording of live performance for news reporting or teaching purposes;  
h) Taking photographs, telecasting graphic arts, architectures, photographs and fine arts exhibited at public places to introduce those images" (In Article 25, Article 33 of The Intellectual Property Law of Vietnam [13])

It should be noted that these exceptions apply only to published works. To unpublished works, we must comply with the "three-step test" rule (without prejudice to the normal exploitation of works, without prejudice to the legitimate interests of the authors or copyright owners).

If the work's copyright protected-term or authors or copyright owners are not clearly defined, libraries should consider the economic and legal risks that may arise when deciding on digitization. In addition, it is also possible to carry out digitization of documents, but fulfill some conditions required by the copyright owners.

### **SOME SUGGESTIONS FOR EFFECTIVE ENFORCEMENT OF COPYRIGHT IN VIETNAM'S DIGITAL LIBRARIES**

Vietnam needs to have a strong legal corridor to not only creates favorable conditions for organizations and individuals to retrieval, process, digitalize, package and transfer information but also actual protects the copyrights of their owned works.

It is necessary to raise the awareness of not only librarians but also users on copyright issues in library operations in general and building digital libraries in particular. Librarians and users need to understand clearly and do exactly what is being done/not being done in the process of gathering, creating and exploiting digital collections.

Digitalisation itself is not a copyright infringement but it depends on the purpose and scope of use. Therefore, libraries need to specify that the exploiting of digital libraries is only for the sole purpose of teaching, learning and scientific research. Absolutely not used for any commercial purpose that affects the economic interests of the copyright owners. Absolutely not be allowed to provide digital information products and services which are protected under copyright laws on the Internet without permission.

When digitizing documents, libraries need to determine their copyright status and how they are used. Documents are donated by copyright owners, libraries may digitize them without asking permission. However, libraries should require the donor to give them the right to digitize documents (possibly with an assignment that states "*the right to use the work for any general purpose of the library, under any means*"). For other documents, libraries may use a "fair use" approach to provide users with a read-only digital copy on Intranet. Although the copyright law of Vietnam has not granted this privilege to libraries, this method of use will not lead to dispute copyright because this service only allows users to read copyrighted works on library workstations, not allow downloading and printing.

### **CONCLUSION**

Nowadays, along with the development of science and technology, digital libraries are growing strongly in Vietnam and on over the world. In the past decade, many digital libraries in Vietnam have been built, contribute to creating valuable information products, satisfying the demand of users. The appearance of digital libraries has changed fundamentally the mode of library operations from traditional to modern, made library operations more vivid and ef-



fective, changed society's perception to library work. Building digital library is an indispensable trend and a developmental target of libraries in Vietnam. However, to ensuring the legitimacy and the interests of authors when their works are used to digitize, libraries need to have a proper awareness of copyright issues, grasp firmly the contents of Intellectual Property Law of Vietnam in particular and the regulations related to copyright legislation in general and implement them well.

## REFERENCES

1. Besek, June M. (2003), *Copyright Issues Relevant to the Creation of a Digital Archive: A preliminary Assessment*, Council on Library and Information Resources and the Library of Congress.
2. Borgman, Christine L. (1999), "What are digital libraries? Competing visions", *Information Processing and Management*, (35), p. 227-243.
3. Bui, Loan Thuy, Bui, Thu Hang (2011), "Implementing intellectual property rights and copyright in library operations", *Journal of Vietnamese Library*, No 1 (27), p. 16-23.
4. Copyright Office (2010), Vietnamese and international legal regulations on copyright and related rights.
5. The Government of the Socialist Republic of Vietnam (2006), *Decree 100/2006/NĐ-CP issued on 21/9/2006 Detailing and guiding the implementation of a number of articles of the Civil Code, the Intellectual Property Law on copyright and related rights*, Hanoi.
6. The Government of the Socialist Republic of Vietnam (2006), *Decree 105/2006/NĐ-CP issued on 21/9/2006 Detailing and guiding the implementation of a number of articles of the Intellectual Property Law regarding the protection of intellectual property rights and the State management over intellectual property*, Hanoi.
7. The Government of the Socialist Republic of Vietnam (2006), *Decree No. 47/2009/NĐ-CP issued on 13/5/2009 Stipulating the sanction of administrative violations in relation to the protection of intellectual property and related rights*.
8. Hoang, Duc Lien (2010), *Solutions for digitizing documents and building digital libraries in university libraries*.
9. IFLA, *Copyright Issues for Libraries*, <https://www.ifla.org/copyright-issues-for-libraries>, 10/2/2018.
10. Jiang, Xiang Dong; translated by Viễn Phó (2006), "Analizing copyright issues in building real information sources of digital libraries", *Social Science Information* (No. 3). – p. 44–51.
11. National Assembly of the Socialist Republic of Vietnam (1999), *The Penal Code of Vietnam No 15/1999/QH10 issues on 21/12/1999*.

12. National Assembly of the Socialist Republic of Vietnam (2001), *The Cultural Heritage Law of Vietnam No. 28 /2001/QH10 issues on 29/6/2001*.
13. National Assembly of the Socialist Republic of Vietnam (2005), *The Intellectual Property Law No. 50/2005/QH11 issues on 14/6/2005*.
14. National Assembly of the Socialist Republic of Vietnam (2005), *The Civil Code No. 33/2005/QH11 issues on 29/11/2005*
15. Nguyen, Tien Duc (2005), "Establishing e-library and document digitization in Vietnam", *Information and Documentation Journal*, (2), p. 20-25.
16. Sullivan, Micalée, *The Digital Archive and Copyright Headaches*, <http://www.gradhacker.org/2011/06/01/the-digital-archive-and-copyright-headaches/>, 10/2/2018.
17. Wang, Wen-chun, Lai, Wen-chi, *A Study on the Application of Expert System for Digital Archivers related Copyright Problem Solving*, Info Share Tech Law Office, Taipei.(Chinese Version).
18. WIPO, *Berne Convention for the Protection of Literary and Artistic Works*, <http://www.wipo.int/treaties/en/ip/berne/>, 10/2/1018