

The Formation and Development Process of Vietnam Law on Copyrights for Musical Works

Abstract

The paper reviews and evaluates the process of formation and development of Vietnamese law on copyright for musical works based on the experience of international treaties and the laws of other countries in the region and worldwide. From there, several appropriate legal policy recommendations were developed to improve Vietnamese copyright law for musical works. Recommendations include: (i) Have a planning strategy and long-term plan for building and perfecting Vietnamese law on copyright for musical works; (ii) it is necessary to expand the scope for many organizations and centers with legal functions such as bar associations, bar associations, and other legal service organizations to carry out copyright protection for musical works; (iii) it is necessary to disseminate and deploy working methods, contact competent agencies and organizations when musicians discover that their musical works are being infringed, and to inform businesses and individuals working in the field of art in particular and in the community in general about the importance of ensuring copyright for musical works; (iv) Flexibly combine copyright protection with other forms of online protection.

KEYWORDS: copyright; musical works; copyright protection

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1 | Overview of copyright for musical works in Vietnam

Countries that follow the Anglo-American system of recognising and protecting intellectual property rights focus on the rights of the author, as opposed to the concept of the creator as the owner of the intellectual product. Countries following the continental European system, such as France and Germany, use the term author's right to refer to the rights to the work. The author directly creates the music.^[1] The continental European copyright law system places the creator of musical works at the center of the protection system and focuses on protecting the moral rights of the creator of the work.^[2] However, no matter what legal system they are influenced by, countries worldwide agree to grant exclusive rights to those who directly create musical works, including moral and ethical rights. Property rights. The author of a musical work owns the results of his or her creative labor and has the exclusive right to publish or let others publish the musical work. Copying and disseminating the content of a musical work without the author's consent is an infringement of copyright.

Musical works are one of the objects of protection of the Berne Convention. Article 2 of the Berne Convention stipulates: "Literary and artistic works include [...] musical pieces with or without lyrics, [...]".^[3] The World Intellectual Property Organization WIPO has defined "musical work" as follows: "Any work that consists of sounds or contains only musical characters even if it does not include lyrics or any other. Any action intended to be sung, spoken, or performed with music is considered a musical work". A musical work has been described as „a sound composition created abstractly so that it can be performed through sound even without words."

The author of a musical work is the person who directly creates all or part of the musical work, expressed in the form of notes in music or

¹ Tran Thi Thanh Trang, "The difference between the Civil law and Common law legal systems and the appearance of these two legal families in ASEAN" Electronic Information Portal of the General Department of Civil Judgment Enforcement – Ministry of Justice, 2023. https://thads.moj.gov.vn/noidung/tintuc/lists/nghiencuutraodoi/view_detail.aspx?itemid=1072. [accessed: 6.8.2024].

² Pham Nhat Thang, "Concept and characteristics of copyright", 2023. <https://everest.org.vn/khai-niem-dac-diem-cua-quyen-tac-gia/>. [accessed: 6.8.2024].

³ Clause 1, Article 2 of the Berne Convention for the Protection of Literary and Artistic Works.

other musical characters with or without lyrics, regardless of the performance. To perform or not to perform.^[4] People who suggest ideas, support work, contribute ideas, or provide materials for others to create a musical work are not recognized as authors of the musical work. The composed musical work must be the creative result of the author who created that musical work. According to Vietnamese Law Copyright^[5] includes personal and property rights. Moral rights protect the creative integrity and reputation of the creator as expressed through the work.^[6] Property rights protect the author's economic interests and allow the author to profit by directly or indirectly exploiting the work.

2 | They are establishing copyrights for musical works and exclusive rights for those who directly create musical works

2.1. Establishing copyright for musical works

Vietnamese law stipulates that protected musical works must be original, not copied or imitated by others. This does not mean that the idea of the work must be new but that the author himself must create the form of expression of the idea.^[7] The author's intellectual labor must create that work. Originality does not mean the absence of inheritance.^[8] The form of expressing the author's creativity in a musical work is the arrangement of lyrics in a lyrical, musical work, the structure of a musical work,

⁴ Point d, Clause 1, Article 6 of Decree 17/2023/ND-CP of the Government guiding the Intellectual Property Law on copyright and related rights.

⁵ Articles 19 and 20 of the Intellectual Property Law passed by the Vietnamese National Assembly in 2005, amended and supplemented in 2009, 2019, and 2022.

⁶ Ho Chi Minh City Department of Science and Technology (2020), "Copyright and related rights. https://dost.hochiminhcity.gov.vn/documents/484/Quyen_tac_gia_va_quyen_lien_quan.pdf. [accessed: 6.8.2024].

⁷ Nguyen Thu Nga, "How to register a copyright for musical works" *Justice Magazine*, (2020). <https://congly.vn/lam-the-nao-de-dang-ky-Quyen-tac-gia-do-i-voi-tac-pham-am-nhac-136087.html>. [accessed: 6.8.2024].

⁸ Tran Van Nam, Copyright law and enforcement in Vietnam. Hanoi: Justice Publishing House, 2014.

and the musical notes in a non-verbal work.^[9] The arrangement and structure of the lyrics or the notes of the music convey the idea of the work. Copyright in musical works is protected regardless of the content or artistic value of the musical work. Copyright in musical works is automatically protected. The results of creative activities of musical works that are original and expressed in a particular material form will be protected by Vietnamese law, and the procedure for registering copyright in musical works is not a mandatory requirement.

2.2. Exclusive rights are reserved for those who directly create musical works

Vietnamese law uses the term “author’s right” without using the term “copyright,” like in the UK and US. Copyright is the right of organizations and individuals to works they create or own.^[10] Copyright includes:

- (i) Moral rights: Moral rights belong to the author and cannot be transferred, except in the case of moral rights attached to property (the right to publish a work), which can be transferred to another subject. Moral rights not attached to property include Naming the work, Putting the actual name or pseudonym on the work, having the real name or pseudonym mentioned when the work is published or used, Protect the integrity of the work by not allowing others to edit, mutilate or distort the work in any form.^[11] These moral rights are attached to the author, affecting the author’s reputation and honor.
- (ii) Property rights: Property rights in musical works include the right to make derivative works, the right to perform the work in public, the right to copy the work, the right to distribute and import originals or copies of works, the right to communicate works to the public by wire, wireless, electronic information networks or any

⁹ Tran Thi Thuy Duong, *International law and experiences of some countries on copyright protection of musical works*. Master’s thesis in Jurisprudence, Faculty of Law, Hanoi National University, 2016.

¹⁰ Clause 2, Article 4 of the Intellectual Property Law passed by the Vietnamese National Assembly in 2005, amended and supplemented in 2009, 2019, and 2022.

¹¹ Article 19 of the Intellectual Property Law passed by the Vietnamese National Assembly in 2005, amended and supplemented in 2009, 2019, and 2022.

other technical means; the right to receive royalties, remunerations and other material benefits (such as the right to receive awards for works). Property rights allow musical works to be exploited and used in many aspects, provide a source of income for the owner, are a driving force for creative activities, and contribute to promoting Economic and social development.

3 | History of the development of Vietnamese law on copyright for musical works

Before 1946, Vietnam had yet to identify the role of copyright in musical works as one of the critical factors in building a market economy. In the first constitution in 1946, the State of Vietnam recognized the fundamental rights of citizens related to copyright, expressing progressive and humane ideas about humanity. Citizens' right to freedom of speech and publication is the State's commitment to protecting the rights of intellectuals and Respecting private property rights. That legislative ideology has continued to be expressed in the 1959, 1980, and 1992 Constitutions and the 2013 Constitution currently in effect. In 1986, with Decree No. 142/HDBT dated 14 November 1986, for the first time in Vietnam, a separate document on copyright was issued with some primary and initial regulations on copyright with the help of VAB (formerly Soviet copyright protection company).

National development: on 2 December 1994, the Standing Committee of the 9th National Assembly passed the Ordinance on Copyright. At the eighth session of Session IX, October 28, 1995, the National Assembly of the Socialist Republic of Vietnam passed the Civil Code, including copyright regulations. With 36 separate provisions on copyright in Chapter I, Part 6, the 1995 Civil Code regulates civil relations regarding copyright in the context of the country's transformation of its management mechanism from centralized subsidy to market mechanism with State management. The birth of the Civil Code, with regulations on copyright, is a significant step forward in legislative activities in Vietnam in this field, with the help of the World Intellectual Property Organization (WIPO). Overall, the basic principles and regulations on copyright in the 1995 Civil Code have established or served as a basis for establishing a system by international

standards and practices based on the convention. Berne Convention for the Protection of Literary and Artistic Works, Rome Convention for the Protection of Performers, Sound Recorders and Broadcasters.

However, it is also important to realize that many problems and shortcomings have been revealed in implementing the provisions of the Civil Code on copyright. On the one hand, it is inconsistent with current international standards; on the other hand, it still needs to update essential steps in copyright for musical works. Therefore, before 2005 in Vietnam, no specialized law on copyright for musical works was mainly governed by the 1995 Civil Code and sub-law documents such as Decree 76/CP dated 29 December. In November 1996, the government implemented several copyright regulations in the Civil Code. Decree 76/CP was born and only mentioned copyright rights at a civil level. Five years later (2001), other issues related to state management rights, such as the handling of organizations and individuals who commit acts of copyright infringement, were mentioned by Decree 31/CP of the Government. The government, dated 26 June 2001, sanctioned administrative violations of culture and information. To overcome and strictly handle copyright infringement, and at the same time to introduce registration procedures and copyright registration fees to ensure the rights of organizations and individuals when disputes arise. Circular 166/1998/TT-BTC dated 19 December 1998, of the Ministry of Finance guiding the collection of copyright registration fees.

In the last years of the twentieth century, the development of the world economy followed new trends, along with the strong development of the scientific and technological revolution, which brought people forward by leaps and bounds. In the face of international solid integration trends, the objective impacts of the World economy and the urgent requirements of the country's socio-economic development. Therefore, in that situation, the Communist Party of Vietnam and the State of Vietnam have determined the importance of intellectual property as a driving force in promoting the country's economic development. On 14 June 2005, the Civil Code was approved by the 11th National Assembly at its seventh session. In which intellectual property rights and technology transfer are regulated in the sixth part with three chapters, from Article 736 to Article 757. Then, on November 19, 2005, at the eighth session, the 11th National Assembly passed the Intellectual Property Law with six parts, 18 chapters, and 222 articles.

The 2005 was the year that marked outstanding achievements in the process of innovating Vietnam's legal system; at the same time, the 2005 Intellectual Property Law and the 2005 Civil Code codified regulations on

copyright. Authorization for musical works in socio-economic development strategies, science and technology, and intellectual products. The fields of literature and art ensure freedom and democracy for all creative activities, create conditions to promote the effectiveness of artistic labor, and increase ideological, historical, or other cultural and scientific values. In addition, since the 2005 Intellectual Property Law was introduced, Vietnam has also issued Decree No. 100/2006/ND-CP dated 21 September 2006, detailing and guiding the implementation of several articles of the Law on Intellectual Property. Civil code, intellectual property law on copyright. After that, the promulgation of Decree 85/2011/ND-CP dated 21 September 2011, amending and supplementing Decree 100/2006/ND-CP is considered a new step in the promulgation of normative documents. Laws of the Vietnamese legislative branch.

Starting from the summary of concurrent implementation to suit integration requirements, on 19 June 2009, the National Assembly passed the Law amending and supplementing several articles of the Intellectual Property Law. This Law takes effect from 1 January 2010. The amended contents include several rights of copyright, related rights, and rights to plant varieties by international conventions, Procedures for establishing Industrial Property rights, and several provisions related to intellectual property policies and enforcement. The amended and supplemented Law meets new practical requirements, is more consistent with international treaties, and ensures that the legal rights and interests of Vietnamese right holders are equal to other right holders of member countries of international treaties on intellectual property. In addition, legal documents with relevant provisions were also issued to create a solid legal corridor, such as the Penal Code (Article 170a) 2009; Customs Law 2005, Law on Handling of Administrative Violations 2012; Cinema Law 2006, Information Technology Law 2006; Technology Transfer Law 2006; Investment Law 2005. In 2013, the Copyright Department presided over the organization of drafting and completing the draft Decree “Regulations on sanctions for administrative violations of copyright and related rights” to replace Decree No. 47/2009/ND-CP^[12]. The government signed and promulgated the Decree (No. 131/2013/ND-CP dated 16 October 2013). The Decree includes four chapters and 43 articles amending and supplementing several violations, Adjusting acceptable levels, additional sanctions, and remedial

¹² Decree No. 131/2013/ND-CP of the Government stipulates penalties for administrative copyright and related rights violations.

measures to be consistent with practice and new regulations of the Law on Handling of Administrative Violations 2012. Acceptable levels, additional sanctions, and the remedial measures prescribed in the Decree are sufficient to educate and deter.

The next important thing is the implementation with a high sense of responsibility and strictness by competent agencies from the central to the local levels, by leading and coordinating with the relevant agencies to develop a Draft Decree “Regulations on royalties, royalty remunerations, remunerations for cinematographic works, fine arts, photography, theater and other types of works” (No. 21/2015/ND-CP dated 14 February 2015). This Decree, along with Decree No. 18/2014/ND-CP regulating royalties in journalism and publishing, completely replaces the previous Decree 61/2002/ND-CP on royalties. The Decree has amended and supplemented several principles for paying royalties and remunerations specified in Decree No. 61/2002/ND-CP to be consistent with the Intellectual Property Law and Practice: principles of Agreement between parties. Use the work with the author, copyright owner, between co-authors and co-owners; The principle of ensuring royalties for not only the author and copyright owner of derivative works but also the author and copyright owner of the original work when the derivative work is exploited and used. With amendments and supplements appropriate to the legal system and practical conditions, with greater feasibility, the Decree also aims to create public opinion more interested in general intellectual property issues. Copyright, in particular, is still new and very complicated in Vietnam. From there, creators can feel more secure in their creative activities, and users can feel secure in exploiting and using copyrights to obtain valuable products of ideology, literature, art, and science—public service. Directive No. 36/2008/CT-TTg dated 31 December 2008, of the Prime Minister on strengthening the management and enforcement of copyright and related rights protection after five years of implementation (2008-2014) also has achieved significant achievements. In the spirit of the Directive, the Copyright Office organized an online conference summarizing five years of implementation of Directive 36 in Hanoi, Da Nang, and Ho Chi Minh City on 22 May 2014. Complete the Summary Report, report to the Prime Minister, and send it to ministries, branches, and localities on 11 July 2014. Copyright protection activities have been deployed nationwide. Organizations and individuals gradually fulfill their legal obligations when exploiting and using copyrights.

Some localities have deployed it extensively to subjects with related rights and obligations, especially owners of production and service

establishments that use works, performances, audio recordings, and broadcasts. However, the implementation is not as “drastic” as the spirit of the Directive, so the results are not uniform among localities, ministries, and branches.^[13] Some ministries and branches still must resolutely direct their affiliated organizations to use copyright and related rights to fulfill their legal obligations. Many ministries, branches, and localities still need to make periodic reports on implementing the Prime Minister’s Directive. Thus, overall, intellectual property law, whether in the scope of national or international protection, must protect the interests of creators and owners of intellectual property assets and, at the same time, protect the interests of creators and owners of intellectual property assets to bring benefits to the community and society. Ensuring a balance of these interests is a cardinal rule and an “ideal goal” for any intellectual property policy system.^[14]

Simultaneously with the national legal system that has been shaped as above, the Bilateral Agreement on the Establishment of Copyright Relations, the Trade Agreement between Vietnam and the United States of America, the Agreement on the Protection of Copyright Intellectual property agreement between Vietnam and the Swiss Confederation are also in effect. Along with the above bilateral international treaties, Vietnam is a member of 5 multilateral international treaties, including the Berne Convention, protecting literary, artistic, and scientific works; The Rome Convention protects performers, producers of phonograms, and broadcasting organizations; The Brussels Convention protects satellite signals carrying encrypted satellite transmissions; The Geneva Convention protects producers of phonograms against illegal copying of their phonograms. TRIPS Agreement on commercial aspects of intellectual property rights. There are also bilateral and multilateral free trade agreements (FTAs) that include content on copyright and new generation-related rights, such as the ASEAN Free Trade Agreement (AFTA), the ASEAN Free Trade Agreement (AFTA), and the ASEAN Free Trade Agreement (AFTA). Trans-Pacific Partnership

¹³ Ministry of Culture, Sports and Tourism, “Summary of 5 years of implementation of Directive No. 36/2008/CT-TTG on strengthening the management and enforcement of copyright and related rights protection”, 2014. <https://caselaw.vn/van-ban-phap-luat/7635-bao-cai-so-158-bc-bvhttdl-ngay-11-07-2014-tong-ke-t-5-nam-thuc-hien-chi-thi-36-2008-ct-ttg-tang-cuong-quan-ly-and-thuc-thi-bao-ho-quyen-tac-gia-quyen-lien-quan-do-bo-van-hoa-the-sports-and-travel-ban-hanh-tinh-trang-hieu-luc-khong-ac-dinh>. [accessed: 6.8.2024].

¹⁴ Le Van Chat, Copyright protection for musical works – current situation and solutions (Can Tho University, 2014).

(CPTPP), a Free Trade Agreement between Vietnam and the Eurasian Economic Union (VCU); Vietnam Korea Free Trade Agreement (VKFTA); Free Trade and Agreement between Vietnam and the European Union (EVFTA); Regional et al. (RCEP). In order to join FTAs in 2023, Vietnam will make amendments to Intellectual property law along with the issuance of guiding documents such as Decree 17/2023/ND-CP, Decree 79/2023/ND-CP Circular 23/2023/TT – BKHCN, Circular August 2023/ TT – BTDDL.

Currently, the agency that establishes rights is the Copyright Office, which performs the role of state management of copyright and related rights. The Department has the authority to issue, re-issue, change, and invalidate copyright and related rights registration certificates specified in Clauses 1 and 2, Article 51 of the Intellectual Property Law. In addition, the Representative Office in Da Nang City (Central Region) and the Representative Office in Ho Chi Minh City (Southern Region) are two representative organizations of the Copyright Office in two regions of the country.

At the same time, the organisational system for collective management of copyright and related rights has been established, including the following organisations: Vietnam Music Copyright Protection Center (VCPMC)^[15] manages the rights of composers and compose lyrics; The Recording Industry Association of Vietnam (RIAV) manages the rights of producers of sound recordings. VCPMC is a non-profit organization, established under Decision No. 19/2002/QĐ-NS dated 19 April 2002, of the Vietnam Musicians Association. It is currently the only music copyright collective management organization in Vietnam. through licensing agreements signed with VCPMC, member authors can be assured that they can devote their time and enthusiasm to their creative work, as VCPMC will represent the authors who work with the copyrighted works, from negotiating and signing the licensing agreements to monitoring the implementation of the agreements, collecting the royalties and then distributing them to the members. Until now, VCPMC has been an official member of CISAC (International Alliance of Associations of Composers and Lyricists), including 239 Associations in 123 countries with over 4 million authors.^[16] In addition, there are enforcement agencies, according to Article 200 of the Intellectual Property Law,

¹⁵ See more about the Vietnam Music Copyright Protection Center VCPMC. <https://www.vcpmc.org/ve-vcpmc.html>.

¹⁶ Huyen Thuong, Tuan Anh, "A panorama of many bright spots of the Vietnam Center for Music Copyright Protection in 2023" *Arttimes*, 2023. <https://arttimes.vn/am-nhac/buc-tranh-toan-canh-nhieueu-diem-to-cua-central-tam-cover-return-to-qualification-am-nhac-viet-nam-nam-2023-c16a41167.html>. [accessed: 6.8.2024].

that stipulate their functions, tasks, and powers, such as the Courts, the Inspectorate, the Market Management, the Customs, the Police, and the People's Committees of each country. State agencies have the authority to resolve copyright infringements. Vietnamese law on copyright for musical works was born later than in other countries.

4 | Some recommendations to improve legal policies on copyright for musical works

Firstly, copyright for musical works is still very new in Vietnam, so it is essential to establish guidelines, policies and frameworks for its development. There is still no official document mentioning the planning strategy or long-term plan for building and perfecting the Vietnamese law on copyright for musical works. Therefore, the Vietnamese Law on copyright in musical works must complement the functions, tasks, powers and organisational apparatus of the Departments of Culture, Sports and Tourism, and the functions, tasks, powers and organisational apparatus of the People's Committees of the districts and communes in implementing the State's management of copyright in musical works. The relevant agencies shall closely coordinate with organisations representing collective copyrights in musical works to strengthen inspection, licensing, collection of royalties and remuneration in combination with other activities. Educate and persuade users to comply with the law.

Second, in addition to acting as an intermediary, the organisation that protects the rights of musicians must also be familiar with the provisions of the law, especially the law on the copyright of musical works, and provide legal services to promptly implement legal measures to protect the rights of musicians. At present, there are five collective management organisations for copyrights. Vietnam Music Copyright Protection Center VCPMC (management in the field of music), Vietnam Recording Industry Association RIAV (management of related rights of producers of sound and video recordings), Vietnam Literary Copyright Center VLCC (management of copyright in the field of literature), Vietnam Copy Rights Association VIETRRO (management in the field of copying), Association for the Protection of Artists' Rights Performance (APPA). Therefore, it is necessary to

expand the scope of many organisations and centres with legal functions, such as lawyers' associations, bar associations and other legal service organisations, to carry out copyright protection for musical works in order to avoid a monopoly situation leading to poor protection of musicians' rights.

Thirdly, the State of the Socialist Republic of Vietnam must disseminate and implement ways of working and contacting relevant agencies and organisations when musicians discover that musical works they have created are being infringed. Third, the State of the Republic of Vietnam must disseminate and establish ways of working and contacting relevant agencies and organisations when musicians discover their own musical works being infringed, and inform enterprises and individuals operating in the field of art and the community of the importance of ensuring copyright protection for musical works. Strengthen participation in international treaties and agreements on intellectual property protection with countries around the world. Among the treaties that Vietnam has signed are the two WIPO treaties on copyright and performances and sound recordings, including the "Copyright Treaty" (WCT) and the "Treaty on Performances and Phonograms" (WPPT). This is a prerequisite for Vietnam to learn from the experience of other countries in the area of copyright for musical works, and to ensure the rights of Vietnamese authors and copyright holders in intellectual property disputes involving foreign elements.

Fourth, in the era of technological explosion, border barriers are almost eliminated when musical works can be easily uploaded to online music platforms and social networks for the whole world to enjoy together; strengthening the combination between standard legal regulations and scientific and technological applications is extremely necessary to protect the rights of copyright owners of musical works. In addition to building a separate legal framework that is strong enough to protect the rights of copyright owners of musical works, it is necessary to combine it flexibly with other forms of online protection. We can mention the Illegal Content Obstruction Program (ICOP), which has the function of searching and checking certain points, systemised to automatically detect copied content on the Internet and interrupt the copying process.^[17] In addition, with the development of cloud computing technology, companies can save human resources and investment costs in using information technology to protect musical

¹⁷ Le Thi Nam Giang, "Copyright in the digital environment in Vietnam" Government Electronic Newspaper, (2014). <https://tphcm.chinphu.vn/quyen-tac-gia-trong-moi-truong-so-tai-viet-nam-1012964.html>. [accessed: 6.8.2024].

works on digital platforms, which is a prerequisite for establishing a strict and feasible legal framework in practice to protect the rights of copyright holders of musical works.

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