



Laws on Copyright Protection for Cinematographic Works in Cyberspace: A Qualitative Study from Vietnam

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ABSTRACT

In recent years, along with the development of social networks, many challenges have arisen in protecting copyright for digital works, especially cinematic works. Accordingly, in Vietnam there have been many cases of copyright infringement but not absolutely protected. For example: cinematic works are shared on internet platforms without the consent of the producer, audiences through livestreams have shown the works on social platforms or the audience reviews the details of the works, which causes the sales of the above works to decrease... Although the Government of Vietnam has issued many mechanisms to protect cinematographic works in the context of digital technology development. However, implementation still faces many difficulties. Through qualitative research, the article will clarify issues related to copyright protection measures for cinematographic works through administrative and civil measures in Vietnam. Beside that, the authors will provide recommendations and solutions to improve the copyright protection mechanism for cinematic works in cyberspace in Vietnam in the current context.

INTRODUCTION

In the current context of industry 4.0, social networks are growing strongly and have great spread. Accordingly, in Vietnam, the film industry faces an opportunity to promote growth, striving to reach about 150 million USD (Vietnamese films reach about 50 million USD) in 2020 and aiming to reach 250 million USD in 2030 (Vietnamese films reach about 125 million USD), (Prime Minister, Decision No. 1755/QĐ-TTg of the Prime Minister dated June 8, 2016 on the Strategy for developing Vietnam's cultural industries to 2020, vision to 2030). In order to achieve the goal of developing the film industry in the cultural development strategy and the development of digital media, on June 15, 2022, at the 3rd Session, in Vietnam, the 15th National Assembly passed the Cinema Law 2022, This is a solid legal basis to build and develop the film industry in a direction that both meets the public's cultural enjoyment needs and ensures economic development goals.

In Vietnam, the release and dissemination of short films on cyber platforms gradually became more popular after the impact of the Covid 19 pandemic when the Government had policies to limit large gatherings of people. In 2020, cinema complexes suffered heavy losses, revenue decreased to less than 1,660 billion VND, only more than 1/3

of revenue compared to 2019 (Ngo Lan Huong, 2021). As a consequence, the majority of audiences switched from going to theaters directly to enjoying works on online movie viewing platforms. This shift in demand creates many opportunities for film production units. These units have optimized profits by reducing costs for multiplex systems and expanding the scope of the audience as a motivational factor for the new mode of operation.

Besides the advantages, changing the method of reaching audiences to online channels causes film producers to face new challenges; including the issue of copyright protection for cinematic works in cyberspace. Reality shows that many audiences choose to access cinematic works through copyright-free online movie sites instead of choosing official channels. In addition, there exist many accounts that review the details of the works, with content that is misleading compared to the original content, which causes the audience to misunderstand the content of the works. In Vietnam, the current situation of cinematographic works being easily copied and recorded without the permission of the author or owner of the work is becoming increasingly popular, the number of unauthorized users may increase to 15.5 million people in 2022, expected to potentially lose \$348 million, account for 18% of all legal cinematographic works.

Although, the State of Vietnam has issued many different laws and documents to regulate this issue such as: Penal Code 2015, amending and supplement 2017, the Intellectual Property Law 2005, amending and supplement 2022, Cinema Law 2022, Decree 131/2013/ND-CP regulates handling of administrative violations of copyright and related rights; Decree 17/2023/ND-CP detailing a number of articles and measures to enforce intellectual property law on copyright and related rights, Joint Circular No. 14/2016/TTLT-BTTTT-BKHCN instructions, procedures for However, according to the announcement of the Ministry of Culture, Sports and Tourism of Vietnam, the level of penalties for copyright infringement on cinematographic works in Vietnam currently accounts for less than 5% of the level of penalties for violations of copyright and related rights for more than 10 years of implementing Decree 131/2013/ND-CP (Nguyen Thi Ngoc Kieu, 2021). From the above issue, it shows that Vietnam needs to have more deterrent policies to protect copyright. Therefore, authoring works in cyberspace is urgent in the current period.

PRACTICAL APPLICATION OF THE LAW ON COPYRIGHT PROTECTION FOR CINEMATIC WORKS IN CYBERSPACE

Regarding the handling of copyright violations of cinematographic works by civil measures

Civil remedies are applied to handle acts of infringement at the request of the owner of copyright or related rights or of the organization or individual that suffers damage caused by the act of infringement, even if the act that has been or is being handled by administrative or criminal measures. Article 198 of the Intellectual Property Law 2022 allows rights holders to apply civil measures to protect intellectual property, including cinematographic works. However, some measures are not effective and are still difficult to apply, specifically as follows:

Firstly, the law allows authors to protect their cinematic works by using technological solutions. However, the implementation of this regulation still has many problems, leading to ineffective self-protection of intellectual property. Specifically, Clause 1, Article 198 of the Intellectual Property Law 2022 stipulates that "Right holders apply technological measures to protect rights, provide rights management information or apply other technological measures to prevent acts of infringe intellectual property rights." Accordingly, preventing copyright infringement of cinematographic works is a priority. However, in practice applying this regulation still has some difficulties:

To start with, the author of a cinematographic work must choose to apply technical measures to protect his or her intellectual property; While the applied technological measures may be governed by many different legal documents such as the Law on Information Technology, the

Law on Cyber Security, the Law on Electronic Transactions and related supporting legal documents.

In addition, technological measures to protect copyright of cinematographic works require a high level of technology and are difficult to apply commonly. Currently, technical measures are necessary to manage copyright infringement of cinematic works in cyberspace. Some technology measures announced include: Illegal Content Obstructing Program (ICOP), Digital Rights Management (DRM - Digital Rights Management) Technology, Digital Watermarking, Block chain...⁴ However, these measures require high costs and require scientific and technological expertise, making them difficult to apply widely. Meanwhile, the author's application of technological measures through representative entities or state management agencies has not been specifically regulated. Accordingly, Article 198 of the Intellectual Property Law and Article 61 of Decree 17/2023/ND-CP only mention the case where the author has the right to apply technological measures themselves without mentioning the competent receiving agency. require the application of technological measures and the representative mechanism of socio-professional organizations applying technological measures to protect rights. Therefore, applying technological measures to track and manage copyright for cinematic works in cyberspace remains difficulties.

Secondly, the right to request an end to copyright infringement of the author's cinematographic works has not been effective. The Intellectual Property Law 2022 adds the right to remove and delete infringing content on the network environment. Specifically, Clause 2, Article 198 of the Intellectual Property Law 2022 stipulates: "*Right holders have the right to request organizations and individuals that violate intellectual property rights to stop the infringement and remove remove and delete infringing content on the telecommunications network and Internet environment, apologize, make public corrections, and compensate for damages.*" Thereby, it shows that the regulations has been issued, however the enforcement of these self-protection rights in case of copyright infringement of cinematographic works in cyberspace is still limited. For example:

To begin with, the law stipulates that the subject has the right to request the subject infringing the copyright of a cinematographic work to stop illegal acts and remedy the consequences, but there is a lack of mechanism to identify the subject committing the infringing act. In fact, identifying subjects committing acts of copyright infringement on cinematic works in cyberspace still faces many difficulties. According to the Identity Law 2023, the issue of electronic identification for agencies, organizations and individuals is raised to replace traditional citizen identification that is not yet associated with digital account identification. Beside that, Article 26 of the Law on Cyber Security 2018 stipulates that domestic and foreign enterprises providing services on telecommunications networks and the Internet are

responsible for authenticating user information when registering digital accounts. There are no regulations on measures to monitor this activity. On the other hand, to make a request to remove infringing content, it is necessary to identify the violator. Thereby, identifying information about subjects infringing copyright on cinematic works in cyberspace is difficult for both authors and management agencies.

Furthermore, handling requests to stop infringing acts, remove and delete infringing content on the network environment is difficult to implement. According to Clause 3, Article 58 of Decree 17/2023/ND-CP detailing a number of articles and Measures to enforce intellectual property laws on copyright and related rights stipulate: *“requesting termination of infringement of copyright, related rights under Point b Clause 1 Article 198 of the Law on Intellectual Property shall be sent to organizations, individuals committing the infringement by authors, copyright holders, performers, related right holders, or authorized organizations, individuals.”*. Accordingly, the subject receiving the request termination of copyright infringement is the infringing subject. In the scope of copyright protection for cinematic works in cyberspace, the above regulations do not have much meaning in resolving disputes. One is that the act of copying and distributing is carried out in cyberspace, through anonymous accounts, so it is difficult to determine the information of the violator. On the other hand, the correct way of managing citizens through digital technology is in the process of taking a long time to complete. The reason comes from the audience's weak level of information technology, the tendency to prefer to carry out procedures and transactions using traditional and manual methods is also the reason that makes the digital process more difficult. The Government's fields of government and human resources qualified in science and technology in state management are limited (Phan Hai Ho, 2022, p.85) Since then, rights holders have difficulty sending documents requesting violators to stop their actions. copyright infringement of cinematographic works. Furthermore, copyright infringement of cinematic works in cyberspace is mainly an act of profiteering from the intellectual property of the work owner. Moreover, sending a request to stop the violation to the violator is only a formality and difficult to achieve the desired effect.

Thirdly, there are still problems in managing domain names that violate intellectual property laws. Most copyright infringements of cinematic works in cyberspace take place on websites. Strict management of domain name granting and management activities of websites is important to promote copyright protection of cinematographic works. According to Article 7 and Article 10 of Joint Circular No. 14/2016/TTLT-BTTTT-BKHCN guiding the order and procedures for changing and revoking domain names that violate the law on intellectual property, allowing the revocation of domain names that are handling administrative violations for

intellectual property rights infringement. However, reporting and revoking domain names that violate intellectual property laws according to current Vietnamese law is relatively slow because of requirements for domain names that violate copyright and measures to revoke domain names. expressed in the decision to sanction administrative violations. On the other hand, violators who avoid domain name revocation by simultaneously creating many similar domain names. Domain names are reserved and used when domain names for posting products violate intellectual property rights (including copyright rights for cinematographic works). Thus, revoking infringing domain names has not resolved the situation of popularizing and posting illegal cinematographic works.

Decree No. 17/2023/ND-CP has recognized that the responsibility to remove or prevent access to digital information content that infringes copyright has been placed on intermediary service providers (Intermediary). Service Provider - ISP) in Vietnam. It can be seen that ISPs currently act as agencies to enforce intellectual property rights in the digital environment. Instead of carrying out legal procedures at the competent authority such as suing in court or requesting the competent authority to sanction administrative violations, the rights holder can send a notice and request the ISP to comply. immediately take emergency measures including removing or preventing access to digital information content alleged to infringe copyright (Nguyen Ngoc Duy Uyen, 2023, p.12)

According to Article 114 of Decree No. 17/2023/ND-CP allows ISPs to remove or prevent access to digital information content that infringes copyright on cinematographic works in the digital environment upon receiving a request. of the copyright holder. However, Decree 17/2023/ND-CP does not mention the support mechanism for completing procedures in case the request is invalid. In addition, the monitoring mechanism for handling violations of copyright and related rights in the digital environment has not yet been established. Granting obligations to an entity without establishing a specific monitoring mechanism can lead to many negatives in the law enforcement process. On the other hand, there are intermediary organizations such as Vietnam Internet Center (VNNIC); Vietnam Music Copyright Protection Center (VCPMC); The Vietnam Association for the Protection of Cinema and Television Works... has functions and tasks related to copyright and related rights but has not yet stipulated responsibilities for coordination with ISP.

From the above analysis, it can be seen that the request to stop copyright infringement of cinematic works on cyberspace in Vietnam is still limited. The right to self-protection is difficult to implement when the mechanism for the participation of intermediary organizations with functions and tasks related to the process of posting products resulting

from intellectual property rights violations is not yet complete.

Handling copyright violations of cinematographic works by administrative measures

Cyberspace is the main operating environment for copyright infringement. A report on popular online copyright infringement methods at the international conference on copyright enforcement in the digital environment organized by the Copyright Office shows that: Vietnam ranks third in the region in terms of copyright infringement rate. copyright infringement, with 15.5 million people regularly visiting websites with pirated content; In 2022, copyright infringement will cost Vietnam 350 million USD. According to statistics from the Center for Testing Radio, Television and Electronic Information - Department of Broadcasting and Electronic Information, in Vietnam there are about 200 pirated websites with about movies and other cultural products. about 120 million views per month (Nguyen Thi Ngoc Kieu, 2021, p.1781).

This behavior is regulated in Decree 131/2013/ND-CP dated October 16, 2013 stipulating penalties for administrative violations of copyright and related rights. The Decree is the main tool to ensure the enforcement of copyright laws for cinematographic works, contributing significantly to detecting and sanctioning acts of copyright infringement in general and copyright rights for cinematographic works in general, especially cinematographic works in particular. Copyright violations against cinematographic works have been initially handled with certain effectiveness. However, with the rapid development of digital technology, some regulations on penalties for copyright infringement of cinematographic products have revealed problems and inadequacies, for example:

Firstly, the fine for acts of infringing on the rights of owners of cinematographic works is not enough to deter and prevent violations. According to Clause 1, Article 15, Decree 131/2013/ND-CP stipulates: "Fine from 10,000,000 VND to 30,000,000 VND for distributing works without the permission of the copyright owner". Accordingly, subjects who distribute cinematographic works in cyberspace without the consent of the copyright owner of the cinematographic work are subject to a relatively modest fine. Meanwhile, the illegal distribution of cinematographic works leads to many consequences for copyright owners. Cinematic works are collective creations with high investment costs. The exploitation of cinematographic works is also unique because the entertainment value is expressed mostly in the first time the audience enjoys the work. Illegal distribution reveals the content of a cinematographic work, significantly reducing the commercial exploitation value of the work.

Thus, the fine for violating the right to distribute cinematographic works is relatively low, not commensurate with the level of damage caused to the copyright owner of the

work. Similar to acts of infringing on the right to distribute cinematographic works, penalties for acts of infringing on the integrity of the work, the right to publish, the right to rent the original or copies of the work are all at a maximum of 10,000,000 VND for individuals, 2 times more for organizations.

Secondly, the authority in administrative violations for acts of copyright infringement is still spread out and overlaps between subjects (Phuong, N. T., Khoe, T. T., & Van, T. T. T., 2024). The entities with authority to sanction acts of copyright infringement are currently recognized as Chairmen of People's Committees at all levels, Inspectorate, Police, Border Guard, Coast Guard, Customs and Market Management. This also shows the spread of subjects of administrative sanctions, easily leading to duplication of authority in the mechanism of applying administrative measures. At the same time, in the case of copyright infringement on the internet, there will be a lack of specialized agencies to issue more reasonable and effective penalties (Dieu Linh, 2023)

According to the announcement of the Ministry of Culture, Sports and Tourism on April 7, 2024 on the process of conducting inspections on compliance with legal regulations in the field of copyright and related rights, including the field of Cinematography shows administrative sanctions imposed on 447 organizations and 3 individuals. Accordingly, the total fine for administrative violations within the scope of Decree 131/2013/ND-CP is 12.8 billion VND (Mai Thi Thanh Nhung, 2022). In there, 99.5% of administrative sanctions cases related to copying computer software, 0.5% belong to the remaining fields. Thus, the copyright infringement for cinematographic works is currently less than 64,000,000 VND; while copyright infringement of pixel works in cyberspace is increasing. From there, it can be seen that the inspection and handling of copyright infringement is still not effective. Therefore, it is necessary to increase the fine level to improve the effectiveness of copyright protection for cinematographic works.

Handling copyright violations of cinematographic works by criminal measures

Individuals and commercial legal entities that commit acts of infringement of intellectual property rights that have all the elements constituting a crime will be prosecuted for criminal liability. Accordingly, Article 225 of the 2015 Penal Code is amended by Clause 52, Article 1 of the Law Amending the 2017 Penal Code, providing for the crime of Infringement of copyright and related rights, with a penalty of up to 1 billion VND or a fine. Up to 3 years in prison for individuals; Fines of up to 03 billion for legal entities, ban on doing business, ban on operating in certain fields or ban on raising capital for up to 03 years.

Thus, criminal law has a legal framework to prosecute criminals for copyright infringement of cinematic

works in cyberspace. However, the investigation and handling of this crime still has many limitations and has not caught up with the actual situation. In the basic criminal structure of the crime of infringement of copyright and related rights (Article 225), quantitative signs are stipulated such as illegal profits, value of infringing goods, and damage to the rights holder. So với quy định trước đây, lượng hóa những dấu hiệu định tính được xem là một điểm tiến bộ nhằm hướng tới sự thống nhất trong nhận thức và áp dụng. Compared to previous regulations, quantification of qualitative signs is considered a progressive point towards unity in perception and application (Le Xuan Loc, Tran Nhan Chinh, Tran Anh Duc, 2020, p.118). There are qualitative signs that, after being quantified, the determination is simple and relatively easy. However, the qualitative signs that have been quantified in regulations on intellectual property infringement crimes are not entirely the same.

Up to now, the investigation agency has only prosecuted 01 case in 2019 on the crime of infringing copyright and related rights against the website Phimmoi.net; This site has the act of showing pirated movies on a large scale, with nearly 75 million monthly visits from 11 million visitors (Nguyen Thi Huong, 2022, p.25). After more than 4 years of prosecution, the case has still not been tried. It can be seen that although criminal law has enough sanctions for serious copyright infringement, the prosecution and trial process still has many problems as follow:

Firstly, the scale of this website's illegal income has not been determined. Because the Phimmoi.net website does not charge users, the main source of money comes from advertising. Meanwhile, the brands are all of international origin and do not have commercial representatives in Vietnam. On the other hand, infringing websites often use international servers and domain names. Thus, almost all information necessary to carry out legal measures against criminals is located outside the national territory.

Secondly, the authorities have not yet determined the damage caused to the rights holders of the infringed cinematic works. The main reason comes from the lack of guiding legal documents related to network movies; While currently, watching movies online is increasingly popular and has become a movie watching trend for many people. To prove damage, it is necessary to clarify the following factors: Illegal conduct; There is actual damage; There is a cause and effect relationship between the illegal act and the actual damages. In this case, copyright infringement of cinematic works takes place in the digital environment, spreading quickly without any mechanism to prevent the spread of information. Due to the lack of a mechanism to calculate the damage caused, most damages are only estimated (Le Xuan Loc, Tran Nhan Chinh, Tran Anh Duc, 2020).

Material damage according to Article 204 of the Intellectual Property Law 2022 is determined through property losses, reduction in income, profits, loss of business

opportunities, reasonable costs to prevent and repair damage. Accordingly, the level of damage is determined on the basis of the damages suffered by the rights holder due to copyright infringement of the cinematographic work. Suppose in the case of a decline in income, in theory it is consistent with the logic of calculating based on the number of website visits corresponding to the number of people spending money to buy tickets at the theater. However, this decision may not be correct, because many people only watch movies online for free without spending money to go to the theater (Phuong, N. T., & Khoe, T. T. (2024). Therefore, it is necessary to research and propose solutions to determine damages in cases of copyright infringement in general and copyright for cinematographic works in the digital environment in particular.

Finally, the application of criminal law to handle copyright infringement of cinematographic works still has limitations, especially in the digital environment, making investigation and prosecution of criminals even more difficult. Therefore, researching and perfecting the law on the crime of copyright infringement and related rights is urgently required.

RECOMMENDATIONS TO COMPLETE THE LAW ON COPYRIGHT PROTECTION FOR CINEMATIC WORKS IN CYBERSPACE

In the context of the film industry being identified as one of the central goals of cultural and economic development, copyright protection for cinematic works in cyberspace is key. As a result, researching and perfecting the law on copyright protection for cinematic works in cyberspace is an urgent issue. From the above analysis, the author proposes some solutions to improve the law as follows:

Firstly, handling copyright violations of cinematographic works through civil measures requires creating favorable conditions for copyright holders of cinematographic works to take measures to protect their intellectual property themselves.

To begin with, we propose to allow authors of cinematographic works to request competent agencies and organizations to apply technological measures to prevent copyright infringement. Specifically, the author proposes to add Clause 1, Article 198 of the Intellectual Property Law 2022, which stipulates that "Right holders themselves apply or request competent agencies and organizations to apply technological measures to protect rights, bring rights management information or apply other technological measures to prevent intellectual property infringement." Accordingly, copyright holders of cinematographic works improve their ability to protect themselves with their intellectual property.

Also, increase the effectiveness of resolving disputes through civil means by mandatory identification of

digital accounts including social network users, website users and managers; Building a mechanism to manage and monitor the authentication of account registration information of intermediary organizations providing telecommunications and Internet services. In addition, the author believes that to exercise the right to request removal of content that violates copyright in cinematographic works, it is necessary to have the participation of agencies and organizations with relevant management functions and tasks. Therefore, we propose to amend and supplement Clause 2, Article 198 of the Intellectual Property Law 2022 as follows: "Owners have the right to request organizations and individuals that commit acts of infringing intellectual property rights to stop stop infringing acts, remove and delete infringing content on the telecommunications network and Internet environment, apologize, make public corrections, compensate for damages and have the right to request competent agencies and organizations to proceed. prevent and remove infringing content".

In addition, research and supplement a number of regulations on ISP obligations in the process of receiving and processing urgent requests from rights holders, including removing or preventing access to content. digital information is accused of copyright infringement. Specifically, the author proposes to add an additional obligation to support the completion of invalid documents due to the requester not clearly understanding the ISP's process; Along with that is the promulgation of a mechanism to monitor ISP operations such as quarterly or annual inspections and assigning competent units to perform supervision.

Secondly, handling copyright violations of cinematographic works by administrative measures needs to increase the level of fines enough to deter and prevent violations. While the value obtained from copyright infringement of cinematographic works in cyberspace is of great value, the current level of administrative sanctions is not enough to deter them. Therefore, we propose to increase by 2 times the fine for acts of copyright infringement in Decree 131/2013/ND-CP in the following articles: Article 10 on acts of infringement of the right to protect copyright. integrity of the work; Article 11 on acts of infringement of the right to publish works; Article 15 on acts of infringing on the right to distribute works; Article 17 on acts of infringement of the right to communicate works to the public; Article 18 on acts of infringing the right to copy works. In addition, it is necessary to soon have a mechanism to handle administrative violations of copyright and related rights infringement in a focal manner to reduce spread and duplication of authority, and improve accuracy in the board. Implement penalty decisions (Ngo Lan Huong, 2021).

Thirdly, handling copyright violations of cinematographic works by criminal means requires creating a mechanism to facilitate the investigation, prosecution and trial of cases. Specifically, the author proposes research to

develop a mechanism to determine illegal income obtained from copyright infringement. The author proposes to consider the value of illegal profits that are speculated to be all website revenue sources, and the website owner is obliged to provide evidence to prove that the income does not come from copyright infringement. In addition, it is necessary to research and determine the damage to rights holders, creating a legal corridor for independent organizations with sufficient expertise in the field of cinema to conduct damage assessment. From there, there is enough basis to handle crimes of copyright infringement of cinematic works in cyberspace./.

CONFLICT OF INTEREST

The author hereby declares that there is no conflict in the publication of the article

CONTRIBUTING AUTHOR

This article is written solely by the author, so this is the author's product based on personal research and synthesis of a number of previously published opinions.

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