

II.IP Issues in Information Building & Sharing

Below are several case-studies concerning IP issues.

Case Study 1.

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

Implementation year: 2009

Duty department: Section of Cultural Policy and Development, VICAS

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

Investor: MOCST

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

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

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

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

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

Procedures of project:

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

There was a very small rate in the total project budget to pay fees for the presentation and information provided by culture owners and villagers. There was no budget for their IP rights.

Case Study 2.

Comprehensive Survey on ICH in Yen Hung District, Quang Ninh Province

Implementation year: 2009

Duty department: Section of Cultural Policy and Development, VICAS

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

Investor: MOCST

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

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

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

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

Procedures of project:

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

Outcomes/Effects:

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

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

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

Source of data:

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

Name of data:

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

Type of data:

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

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

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

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

Case Study 3.

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

Implementation year: 2001 to 2002

Duty department: Research team of VIM

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

Investor: MOCST

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

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

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

Procedures of project:

The stage for preparation

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

The stage for collecting and creating information

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

The stage for processing and producing information

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

Outcomes/Effects

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

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

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

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

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

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

Implementation year: 2010 to 2013

Duty department: Section of Documentation and Library, VIM

Investor: MOCST (through the national target program)

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

Source of data:

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

Name of data:

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

Type of data:

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

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

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

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

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

Issues that have arisen:

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

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

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

Case Study 5.

Hanoi Artisans in 2010

Implementation year: 2010

Duty department: VietPictures Media Company

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

Investor: Viet Nam Television Agency

Background of project:

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

Context of project:

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

Procedures of project:

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

Outcomes/Effects:

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

Name of data: VietPictures Media Company

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

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

Source of data: communities

Person/Organisation who has rights on the data:

Mr Trương Công Tú, Director of VietPictures Media Company

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

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

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

- Paying fees to the ICH owners, based on mutual agreement
- Respecting ICH and being responsible to the ICH contents that have been introduced by the company.
- In the processes of producing films on cultural heritage in general, and on ICH in particular, the company has been aware of the needs and the meaning of implementing IP. The company, therefore, wishes to raise a fund for IP aspects related to ICH and grant these funds to the communities

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

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

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

VietPictures Media Company produces ICH films for television programs, but there are many IP issues that the company has not yet been aware of or has paid due attention to, for instance:

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

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

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

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

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

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