**COPYRIGHT OF** **FOREIGN MUSIC SONGS WITH VIETNAMESE LYRICS**

Performing a song, a musical work is no longer limited to adaptation of audiences’ recreational needs; it is, however, compulsory for ensuring copyright of such song. Artists using foreign songs to rewrite Vietnamese lyrics and perform them is not a new issue, however, some individuals, singers have involved in scandals and run a risk to be sued or ordered to make a payment and the foreign music songs with Vietnamese lyrics performed by them are revoked by a requirement from the person owning the copyright of those songs. The use of foreign melody songs with Vietnamese lyrics without permission is a violation of copyright regulations, so what is the foreign music work songs with Vietnamese lyrics in accordance with the Law?

1. **Protecting process of the foreign music songs with Vietnamese lyrics**

The foreign music songs are “Vietnamized” by translating from foreign language to the Vietnamese or rewriting a new Vietnamese lyric on basis of the foreign music. These works will be protected as derivative works. Accordingly, Article 4.8 of Law on Intellectual Property 2005 amended 2019 (“**Law on Intellectual Property 2019**”) stipulates: *“Derivative* work *is a work translated from one language to another language, a work adapted, arranged, transformed, compiled, annotated, selected*”. Thus, it can be understood that a derivative work must (i) be created from an existing work, (ii) make a creator’s personal mark, (iii) be partly or fully differ from expression of original work. Also, the foreign music songs with Vietnamese lyrics usually express the above-mentioned factors, and when people approach these works, they feel reminded to the original work.

The derivative work is one of subjects protected the copyright; however, Law on Intellectual Property only protects this secondary object under a level of protection which is more limited than an original musical work. Like the original work, the copyright of the derivative work is also automatically established, arises upon creating the work, and be protected by law without registration. On the other hand, the derivative work is only protected if it does not damage the copyright of the work used to create the derivative work. Thus, the derivative works creation must gain the author’s consent, the copyright owner and if not, this will be considered a violation of the copyright, it means that, when a foreign song is adapted to the Vietnamese lyrics, the subject rewriting the lyrics must gain the author’s consent of that original song.

The regulation of the copyright in Law on Intellectual Property are all codified from regulations of Berne Convention for the Protection of Literary and Artistic Works (1886) in which Vietnam is a party of. Accordingly, Article 2.3 of Berne Convention: “*All translated, adapted, arranged music works and other arrangements from* *a literary and artistic work are protected as the original works without causing damage to the copyright of the original work*”.

In addition, through reference of countries’ law around the world, there are also similar regulations as follows:

* Article 13 of Copyright Law of China stipulates: “*Copyright of works created by adapting, translating, annotating, and arranging existing works is enjoyed by those who made the adaptation, translation, annotation, or arrangement, but the copyrights of the original work must not be violated when exercising this copyright*.”
* Articles L.112-3 of Intellectual Property Code of France (Consolidated version March 3, 2012) stipulates: “*Authors of translations, adaptations, transformations or arrangements of intellectual works enjoy protection instituted by this regulation without effect of the author’s rights of the original work. This is also applied for the authors of anthology or anthology collections of works or different data, such as the databases, by choice or materials arrangement, constituting intellectual creations[[1]](#footnote-1)*.”

It can be seen that the regulations of the above countries do not have specific definition of the derivative work, and only list kinds of the works belonging to the derivative work and how to create those works such as annotation, translation, arrangement, adaptation, etc. However, there are still some countries do not follow the listing but define the derivative works by definition, for example, according to Copyright Law of the United States*: “A “derivative work” is a work based on one or more existing works, such as a translation, music arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be summed up , transformed, or adapted. A work consisting of editorial revisions, annotations, details, or other modifications which, in general, represent an original work obtaining the copyright, is a “****derivative work****””.*

Thus, although there is a difference in the use or non-use of the term “derivative work” among the countries, but it does not make the difference to conditions of the copyright protection of the derivative works - “**without causing damage to the copyright of the original existing work**”. Therefore, the foreign music songs with Vietnamese lyrics are only protected by the copyright when there is no copyright violation of the existing foreign music works.

1. **Right of derivative work creation**

So, how do the foreign music songs with Vietnamese lyrics avoid causing damage of the copyright of the works used to create the derivative work?

The right to create derivative work belongs to its owner’s property right. According to Article 20.1 [a] of Law on Intellectual Property, the author or the copyright owner of the original song can exclusively perform or allow other people to perform the right of creating the derivative works and performing the works in public. Thus, except for cases of non-commercial purpose, such as Braille work transfer or transferring to other languages for the blind, when arbitrarily creating the derivative works and performing these derivative works without permission from the original work’s copyright owner is a violation of the intellectual property right under Article 28.7 Intellectual Property Law. In addition, when exploiting and using the right to create the derivative work, an organization, individual must pay royalties, remuneration, and other material interests to the copyright owner. Arbitrarily creating the foreign music songs with Vietnamese lyrics without the owner’s consent and payment of the above-mentioned remuneration and material benefits to the owner, indirectly deprives the owner’s right to dispose of his or her original work and causes damage to the property rights of the owner’s original work because this act deprives the remuneration which must be paid the owner.

Many people just randomly choose a foreign song with catchy, impressive tune and arbitrarily rewrite the Vietnamese lyrics, then freely perform these songs, post them on social media, and obviously make a profit from them. When these songs are created and performed, in usual, they are only introduced as "Foreign music songs with Vietnamese lyrics" with the lyrics writing author's name, or even only the Vietnamese lyrics rewriting author's name. Almost the original work’s owner lives in the foreign countries, so they obviously do not know about existence of the works being rewritten from their works. Furthermore, Article 50 of Intellectual Property Law stipulating application components for registration of the derivative works copyright protection are also not in compulsory to be attached with approval from the original work’s author and only limits requirement to file “*name of* *the author, the work used to create the derivative work*”. Because of this manner, it is witnessed a widespread of Chinese songs with Vietnamese lyrics, Japanese songs with Vietnamese lyrics in music market in Viet Nam. Only when the copyright owner started to require the necessary protecting approaches, the derivative works’ owner has frantically tried to find solutions. The copyright owners of these foreign music works can sue or request for payment, or removal and a compensation for the violation of their rights.

Thus, to be in accordance with the legal regulations of the copyright of the foreign songs with Vietnamese lyrics, the individuals before rewriting the Vietnamese lyrics or performing this derivative work, must require the permission from the copyright owner of the original work.

1. [↑](#footnote-ref-1)