

Copyright in Universities: An Exploratory Study from Vietnam

Le Minh Nguyen* Nguyen Chi Dung Le Van Long
Nam Can Tho University, Can Tho, Vietnam

Person responsible for the article: Le Minh Nguyen, Email: leminhcantho@gmail.com

The research is financed by Nam Can Tho University. No 168, Nguyen Van Cu Ext Street, An Binh Ward, Ninh Kieu District, Can Tho City, Vietnam

Abstract

International law and the laws of most nations today acknowledge and safeguard the intellectual property rights of both organizations and individuals. This recognition serves to stimulate innovative and creative endeavors, facilitate the dissemination of scientific, technological, cultural, and artistic advancements, foster economic and societal development, and enhance the overall quality of life. Intellectual property assumes a critical role as a driving force behind innovation and creativity, fostering the growth of a nation's intellectual assets in terms of both quantity and value. This, in turn, contributes to bolstering creative capabilities and fostering a healthy competitive environment. Nevertheless, intellectual property rights violations are not uncommon, particularly in the context of higher education institutions in Vietnam. In this article, the authors employ qualitative research methods, following the "three-step test" outlined in the Berne Convention of 1971 for the protection of literary and artistic works, in conjunction with the stipulations of Vietnamese Intellectual Property Law. The results of this examination aid in the identification and location of infringements on the author's rights, such as inappropriate citation and plagiarism within university settings. Subsequently, the authors propose various solutions, which include legal adjustments, strategies for managing intellectual property, the establishment of cross-sectoral and inter-university networks, and the regulation of the responsibilities of scientific councils. These measures are intended to mitigate instances of intellectual property rights violations within Vietnamese universities in the present day.

Keywords: Copyright, three-step test, intellectual property rights, infringement, universities...

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1. Introduction

Since Vietnam switched to a market economy, the author's rights were also recognized in Decree No. 142 / HDBT dated November 14, 1986. However, the law on author's rights at this time was only rudimentary, the regulations on author's rights as well as the mechanism for protecting author's rights were very limited. However, the consistent policy of the Vietnamese State is to encourage innovation and creativity in literature, art, and science. In the development and international integration process, the law on author's rights has changed significantly, especially the relations on author's rights.

Currently, the law on author's rights in Vietnam is basically in line with international standards, creating conditions for integration, but in reality, the results of the process of protection and enforcement of the law on author's rights are not as expected. Acts of infringement of author's rights and related rights still occur in many fields, from publishing, press, radio, television, theater, music, cinema, works... To recognize the contributions of organizations and individuals in research and creative activities, the law recognizes and grants rights to the subjects for the products created. Author's rights are one of the powers recognized and protected by law for authors and owners of these rights. However, the author's rights are also rights that are easily infringed in life, especially in the university environment, with many forms and degrees of infringement. The law stipulates that acts of infringement of the author's rights can be handled administratively, civilly, or criminally. In recent years, universities in Vietnam have also issued regulations to guide and disseminate authors' rights, and issue decisions to handle acts of infringement of authors' rights by the law on intellectual property. However, the issue of infringing author's rights through acts of copying works not by regulations, unreasonable citation, and plagiarism still occurs in universities.

With the "three-step test" according to the Berne Convention in 1971, Vietnamese universities will be able to identify acts of infringement of the author's rights that the subjects who infringe may be students, lecturers, staff, or managers. Acts that are considered implicit, customary, permissible, or subjective may change when approaching this article.

2. Research context

Many teachers and students in Vietnam lack writing skills, and many doctoral dissertations have been found to contain plagiarism after they are published. Master's and undergraduate students consider copying materials for studying as permissible behavior and openly use others' writings as their own. The problem becomes more

serious when plagiarism occurs openly, especially in the university environment where new knowledge is created.

Vietnam joined the Berne Convention in 1971, and the country's legislation has been changed to align with the Convention. However, it seems that enforcing sanctions according to Vietnamese laws has not been effective in regulating infringement behaviors. It is time for Vietnamese universities to realize the need for effective mechanisms to prevent and address copyright infringement.

3. Methods

The article studies the regulations on the author's rights and the mechanism of protection of the author's rights. Applying the "three-step test" according to the Berne Convention in 1971 to the legal context of author's rights in Vietnam, concretizing in universities. From there, analyze, evaluate, and detect acts of infringement of author's rights, propose solutions to aim at the goal of perfecting the legal regulations on intellectual property in general and author's rights in particular, contributing to perfecting national law and opening up policies for universities on the mechanism of protection of author's rights, detection and handling of acts of violation of author's rights, while building a strategy of management and use of assets that are author's rights arising in universities. The research is a reliable source of information for stakeholders in the field of intellectual property in general and author's rights in particular in the field of education.

The article uses the jurisprudence research method, a method used to analyze the implications of the concepts of copyright, the nature, and the basis of the emergence of copyright according to Vietnamese law. The principle of "intellectual property" is applied to research methods. If we consider copyright as a form of property, universities will have specific mechanisms in place to protect intellectual property rights, prevent infringement, and address any violations of the rights of authors. The qualitative research method aims to compare and evaluate the shortcomings of legal documents. In addition, the article also uses the method of legal writing analysis, logical method, information, and data are systematized, analyzed, synthesized, evaluated, and commented on correctly to serve as a basis for solutions.

4. The theoretical basis of copyright and the infringement of copyright

4.1 Some general issues on copyright: Copyright is acknowledged in the 1971 Berne Convention, where it encompasses both moral rights and economic rights. Moral rights involve an author's self-recognition and the authority to object to any alterations, mutilations, or changes made to their work or any actions that could damage the author's honor and reputation (Institute, 1971). From the provisions and spirit of the Berne Convention, it can be understood that moral rights include: The right to be recognized and respected and the right to control the work. Right to be recognized and respected, the Berne Convention contributes to creating a legal environment to recognize and respect the creative efforts of the author. This helps the author feel appreciated for their contribution to culture and art. The right to control the work, by protecting the economic rights of the author, the Berne Convention helps the author control how their work is used and distributed. This can create a sense of security and freedom for the author in deciding how their work is presented and used.

Economic rights include basic rights such as the right to reproduction, the author has the right to control the copying of their work. This includes the right to make copies of the work by any means, including printing, electronic copying, or any other form of copying. The right of distribution, The author has the right to control the distribution of copies of their work to the public through sale, rental, or any other means of distribution. The right of presentation, The author has the right to control the presentation of their work to the public, including live performance, projection, or presentation through media. The right of performance, The author has the right to control the performance of their work to the public, including live performance or through media, such as television broadcasting, radio broadcasting, and online media. The right of translation, The author has the right to control the translation of their work into other languages. These economic rights allow the author to control how their work is used and distributed. The Berne Convention promotes the protection of these rights and ensures that the author benefits economically from their creative efforts, The principles and provisions in this Convention also positively affect the moral rights of the author by ensuring respect and protection for creative works.

Vietnamese law stipulates that copyright is the right of organizations and individuals to the works that they create or own (Quốc hội Việt Nam, Luật Sở hữu trí tuệ 2005, sửa đổi, bổ sung, 2009, 2019, 2022). From the implication of the definition, it can be understood that organizations or individuals can be the owners of copyright or the authors of a work. Regarding the basis for the emergence of rights, copyright arises from the moment the work is created and expressed in a certain form, regardless of content, quality, form, means, or language, whether published or not published, whether registered or not registered.

Regarding the basis for the emergence of rights, the law stipulates that ownership rights arise from the moment the work is created and expressed in a certain material form, regardless of content, quality, form, means, language, whether published or not published, whether registered or not registered (Quốc hội Việt Nam, Luật Sở

hữu trí tuệ 2005, sửa đổi, bổ sung, 2009, 2019, 2022). Sharing the same view, an author argues that copyright automatically arises from the moment the work is created in a certain form (True Tamplin, 2023). In addition, the concept of a higher education institution according to Clause 2 Article 4 of the amended Law on Higher Education in 2018 is understood as a higher education institution that trains and researches in many fields, organized according to regulations. It can be seen that universities play a pivotal role in the innovation system of countries, through missions such as providing human resources, promoting scientific and technological progress, transferring knowledge, and new technologies, and providing entrepreneurial and innovative skills. In the process of performing their functions, universities constantly research and create new knowledge, the new knowledge created can be of the organization (university) or individuals (staff, lecturers, students). In general, the products created in universities can be divided into two groups: One is the group of products created from the tasks assigned by the school or funded by the state budget for scientific research, school, central units, departments, and faculties under the school. Two is the group of products created by the efforts and thinking of individual staff, lecturers, or students. Thus, depending on the way and origin of creating products, according to the law's provisions, the work's author and owner will be determined as well as the benefits derived from that creative thinking.

4.2 Identifying some common behaviors that infringe on copyright in universities in Vietnam:

Infringement of copyright is the act of usurping, copying, impersonating the author, publishing, distributing the work, modifying, cutting, or distorting the work in any form that harms the honor and reputation of the author without the consent of the author or owner. The law stipulates that acts of infringement of copyright include: Infringement of personal rights such as the right to name the work; use the real name or pen name of the work; be mentioned by real name or pen name when the work is published, used; publish the work or allow others to publish the work; protect the integrity of the work from being distorted by others, prevent others from modifying, cutting the work in any form that harms the honor and reputation of the author; property rights such as making derivative works; directly or indirectly copying all or part of the work (Quốc hội Việt Nam, Luật Sở hữu trí tuệ 2005, sửa đổi, bổ sung, 2009, 2019, 2022). It can be seen that the acts of infringement of copyright are very diverse, but in universities in Vietnam, to identify which acts infringe on the author's rights, conduct the "three-step test" according to the Berne Convention in 1971. Based on Article 9 of the Berne Convention, the authors of literary and artistic works protected by the Convention shall have the exclusive right to authorize the reproduction of their works in any form or manner. The laws of the member countries of the union may allow the reproduction of such works in certain special cases, provided that such reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author. Any sound or visual recording shall be considered a copy of the Convention (Scholl, n.d.). Interpreting according to an understanding from the implication of Article 9 of the Berne Convention, the reproduction of works protected by copyright will not be considered as an act of infringement of the exclusive right to reproduce of the author of the act simultaneously satisfies the following 3 steps (three-step test): Step 1, such reproduction is only permitted in exceptional cases as provided by national law. Step 2, such reproduction does not interfere with the normal exploitation of the work. Step 3, such reproduction does not unreasonably prejudice the author's legitimate interests. In a study and experiment of the "three-step test", Christophe Geiger gave the view that the three-step test is nothing new. However, there may be some urgency for "rethinking" this legal tool and its role in copyright law and litigation in the future (Geiger & Sweet & Maxwell and its Contributors, 2007). The "three-step test" implementation has been experimented with in some countries, but the experiment in the university environment in Vietnam is extremely meaningful.

Similar to the Berne Convention, the Trips Agreement of 1994 also stipulates a similar "three-step test". Accordingly, limitations and exceptions, member countries must limit the limitations and exceptions to the exclusive rights in certain special cases, not conflicting with the normal exploitation of work and not unreasonably prejudicing the legitimate interests of the right holder (Organization, 1994).

When conducting a comparison of the "three-step test" according to the Berne Convention and the Vietnamese law on intellectual property, it is noted that the Vietnamese law has specified the exceptions to the right to reproduce works, that is, the cases of reproducing published works without permission, without paying royalties. Specifically:

Firstly, self-copying a copy for scientific research, personal study, and not for commercial purposes, this provision does not apply in the case of copying by copying devices:

Copying is the act of copying exactly like the original (Hoàng Phê, 2019, p. 1073). The Vietnamese Law on Intellectual Property stipulates that copying is the act of creating a copy of the whole or a part of a work or a recording, video recording by any means or form (Quốc hội Việt Nam, Luật Sở hữu trí tuệ 2005, sửa đổi, bổ sung, 2009, 2019, 2022). The act of copying works by means such as photocopying machines, scanners, and cameras is quite common in the university environment in Vietnam. The Vietnamese Law on Intellectual Property allows individuals to perform the act of copying works with a maximum number of one copy for

scientific research, personal study, and not for commercial purposes, however, the person performing this act is not allowed to use copying devices (such as scanners, photocopying machines, cameras...). For example, students in the learning process can copy a poem from a textbook into their notebooks without being considered an act of infringing the author's rights. The regulation that does not allow copying by copying devices is consistent with the "three-step test" according to the Berne Convention, because, if individuals are allowed to copy by copying devices and copy in large quantities, students will choose to copy instead of having to buy the original work because copying is much cheaper, this will affect the rights and legitimate interests of the author. In addition, Clause 2 of Article 25 of the Vietnamese Law on Intellectual Property stipulates that copying does not apply to architectural works, artistic works, or computer programs. This is understood as the act of copying an architectural work, an artistic work, or a computer program without the permission of the owner will be considered as an act of violating the law even without using copying devices. Vietnamese law is considered to be consistent with the mechanism of protecting architectural works, artistic works, or computer programs. In an article, author Jane C. Ginsburg also agreed and argued that protection is necessary to create works that promote the progress of knowledge and that there should be a patent protection mechanism for computer programs or works created by specialized machines (Link, 2018).

Secondly, copying a reasonable part of the work by copying devices for scientific research, personal learning, and not for commercial purposes:

According to Article 25, the Law on Intellectual Property of Vietnam stipulates the exceptions, not infringing the author's rights, then the act of copying by copying devices must meet the following conditions: The purpose of copying is for scientific research, personal learning and not for commercial purposes; not allowed to copy the entire work but only allowed to copy a reasonable part of the work; the copying must not be contrary to the normal exploitation of the work and must not cause unlawful damage to the legitimate interests of the author, owner of the author's rights; copying by copying devices does not apply to architectural works, works of art and computer programs. In a study by author Lisa Di Valentino, the Western University of Canada also pointed out that, users of copyrighted materials also have rights under copyright law, whereby they are allowed to copy, communicate, perform, integrate, or process the work without permission or payment; these rights are also called exceptions to infringement (Valentino, 2015).

The regulations in Vietnamese and Canadian law are consistent with the "three-step test" according to the Berne Convention. However, Vietnamese law does not stipulate what is a reasonable quotation and what percentage of quotation is considered reasonable, while developed countries stipulate for example in France that the maximum is not more than 10% of the quoted work (CFC, n.d.).

Thirdly, the exceptions of the right to copy related to library archiving activities:

Copying for library archiving also has certain limitations, the work copied and stored in the library is considered an information resource and the widespread use of information resources can affect the rights and legitimate interests of organizations and individuals, then that resource will be restricted in use (Quốc hội Việt Nam, Luật Thư viện năm 2019, 2020). Copying can be done by university libraries in the traditional form (paper documents) or digital form (digitized documents), The purpose of this exception is to archive, and preserve the works in the library, prevent the risk of many works, copies of works being lost, missing or damaged irreparably, especially rare works, no longer circulating on the market. However, Vietnamese law does not stipulate the number of copies libraries can make. Refer to the regulations in the French Intellectual Property Law, Article L.122-5, which stipulates that when a work is published, the subject of the author's rights cannot prevent the copying of a work for archiving, preservation purposes for scientific research or personal learning in libraries, museums, and archival agencies on condition that it is not for commercial purposes (Légifrance, n.d.).

Compared with the "three-step test" according to the Berne Convention, the fact that the number of copies allowed to be stored in the library is not regulated leads to a situation where some Vietnamese university libraries store many copies of works to serve the needs of readers, which may affect the normal exploitation of the work, affecting the rights of the owners. In addition to the acts considered as exceptions, infringement of authors' rights in universities in Vietnam can be expressed through acts such as:

The act of copying works unreasonably: The act of copying works by means such as photocopying machines, scanners, and cameras is quite common in the university environment. Copying can be for learning, scientific research, library archiving... The amended Intellectual Property Law in 2022 stipulates that the act of copying for scientific research, and personal learning is not an exception that does not infringe the author's rights if the subject performs the act of copying by copying equipment or performs the act by copying equipment but does not meet the conditions as prescribed. This regulation is evaluated as suitable for the actual situation when photocopying books, and textbooks for learning is very common. Copying for teaching, and personal learning may conflict with the normal exploitation of the work, causing damage to the legitimate interests of the author, the owner of the author's rights. Copying for library archiving also has certain limitations, the work copied and stored in the library is considered an information resource and the widespread use of information resources can affect the rights and legitimate interests of organizations and individuals, then that resource will be restricted in

use (Quốc hội Việt Nam, Luật Thư viện năm 2019, 2020).

In the university education environment, the act of copying works is very common from the undergraduate level to the master's level, there are cases of copying works up to 90%. For example, in 2017, Hanoi National University of Education issued Decision No. 2817, dated May 25, 2017, on not recognizing the master's thesis of Mr. Tran Van Hai due to a complaint about the act of copying works, and at the same time reviewing the responsibility and role of the instructor. At Article 40, Circular 15/2014/TT-BGDĐT, the Master's Degree Training Regulation stipulates the handling of violations, according to which civil servants, officials, and employees participating in management, teaching, guidance, evaluation of theses at training institutions if violating the regulation will be suspended from teaching, guiding theses, participating in the thesis evaluation council for a minimum period of one year, disciplined, administratively sanctioned or criminally prosecuted, compensated for damages according to the provisions of current law... cases like the above-hurt training activities, affecting personal and university reputation.

The act of unreasonable citation: Currently, at universities, the act of unreasonable citation is very common. Not only in Vietnamese universities, the act of unreasonable citation is common in universities around the world. Many students cheat, they take materials from websites, pay for assignments, and solutions, steal floppy disks, copy, transcribe passages from books in the library, essays on a commodity exchange, or simply work too closely with their friends. Putting the work of others into assignments without acknowledgment is almost not a new phenomenon, but in modern universities, it is extremely common (Hamilton Justin Zobel & Margaret, 2014). With the same view, author Florence Chizoba Emenalo argues that many university students copy a lot of research project reports from others and many postgraduate students cannot perform and report the necessary research work to graduate (Florence Chizoba Emenalo, 2016).

The Intellectual Property Law has provisions on citing works reasonably without distorting the author's intention to comment, introduce, or illustrate in one's work; to write articles, or use in periodicals, broadcast programs, and documentaries. So, if the author cites and distorts the author's intention, it is considered an unreasonable citation. The act of unreasonable citation in universities in Vietnam is understood as using paragraphs, information, data, and images from other people's works in one's work without indicating the origin of the cited work or having indicated the origin of the work but not complying with other regulations on citation, providing inaccurate information about the source of citation; not citing the source when changing words, moving words, sentences, paragraphs, ideas of other authors; attaching words, sentences, paragraphs from different sources and editing them in the article... Interpreting paragraphs, and content in other people's works with one's language without citing the origin of the work used; summarizing the content of other people's works but not citing the origin of the work used. In addition, the act of plagiarism is the use of information from other people's works without clearly citing the source or having unreasonable citation (citing against the author's intention) is considered plagiarism. The fact that students plagiarize in the university environment is a matter of concern, cheating through plagiarism is an issue of interest and worry in recent years (Steven J. Karau and Kipling D. Williams, 1991). Oxford University (UK), considers hiring or asking someone else to do research for oneself and also not acknowledging the help of others in the research process as plagiarism (Oxford University, n.d., p. 6). In addition, the University of Malaya approaches the concept of plagiarism from a broader perspective, which is an act of academic fraud arising from lying, insincerity, unreliability, dishonesty, and lack of respect for colleagues. Plagiarism occurs when taking someone else's ideas as one's own (Universiti Malaya, 2020). In Vietnam, Hoa Sen University defines plagiarism as "the use of words or ideas of others as if they were one's own in academic activities", which includes: explaining, presenting, copying, translating paragraphs or ideas of others without proper citation; using the whole or part of someone else's writing, including commercial articles sold on the market, on the internet; using artistic works, designs, charts, data of others without a clear source. (Đại học Hoa Sen, 2013).

In 2022, the public was stirred by the information that a work that won the Vietnam Writers Association award was suspected of plagiarism. Accordingly, the "*Phê bình phân tâm học - Phía của những âm ảnh nghệ thuật*" by Dr. Vu Thi.Tra (Institute of Literature) was accused of plagiarism. According to Dr. Do H.Ni (also at the Institute of Literature), she posted information on social media "accusing" Ms. Trang of taking an entire chapter from the scientific research project at the ministry level "*Tự truyện và tiểu thuyết Việt Nam sau 1986 nhìn từ phê bình phân tâm học*" belonging to the Institute of Social Sciences, which Dr. Vu Thi Trang was the project leader, working with 5 other people including Dr. Do H.Ni. After reviewing and working with the relevant parties, the Executive Board of the Vietnam Writers Association decided to temporarily withdraw the young author award in 2021 for the work "*Phê bình phân tâm học – Phía của những âm ảnh nghệ thuật*" by author Vu Thi.Tra.

It is recognized that acts of infringing the author's rights in the educational environment in general and universities in particular need to be handled to protect the legitimate rights and interests of the authors, and owners. The handling is really necessary for the context of our country's continuous reform of education, intellectual property law, and raising people's awareness of the spirit of "*respecting the law*".

5. Handling of copyright infringement

In recent years, in the context of globalization and international economic integration becoming an objective development trend of all countries, Vietnam's intellectual property system has taken strong steps towards integration with other countries and international organizations on intellectual property. The country's intellectual property laws have also been adjusted to be more integrated to protect and handle acts of intellectual property infringement. It is truly necessary to handle violations in the university education environment towards academic integrity in scientific research activities.

5.1 Applying the law to handle copyright infringement in Vietnam: Handling of copyright infringement: In the case of copyright infringement, three types of measures can be taken: civil, administrative, and criminal. For civil measures, when the court receives a request from the author or owner, it will proceed to resolve according to the litigation procedure. In cases where the infringement is determined through the collection, examination, and evaluation of evidence, the infringing party must be held responsible for ceasing the infringement; apologizing publicly; performing civil obligations; compensating for damages; destroying or distributing goods, raw materials, materials, and means used mainly to produce and trade infringing goods without affecting the ability to exploit the intellectual property rights of the intellectual property owner. Administrative measure Article 18 of Decree 131/2013/ND-CP (a phrase replaced by Clause 2 of Article 3 of Decree 28/2017/ND-CP) provides for the case of intentionally copying a work without the permission of the copyright owner, the violator will be administratively sanctioned as follows: A fine from 15,000,000 VND to 35,000,000 VND for copying a work without the permission of the copyright owner.

In addition, it is also necessary to apply remedial measures: Compulsory removal of infringing copies in electronic form, on the network and digital environment, or forced destruction of infringing objects, violating organizations will be fined double from 30,000,000 VND to 70,000,000 VND. Criminal measures, not only administrative penalties but also violators may be prosecuted for criminal responsibility for infringement of copyright and related rights as prescribed in Article 212 of the Intellectual Property Law 2005 amended and supplemented in 2009, 2019, and 2022. Accordingly, individuals and commercial legal entities that commit acts of intellectual property infringement with sufficient elements to constitute a crime shall be held criminally responsible. Article 225 of the Criminal Code 2015 was amended and supplemented in 2017, stipulating that anyone who intentionally commits an act of copying a copyrighted work that is protected in Vietnam with commercial scale or unfair profit from 50,000,000 VND to under 300,000,000 VND or causing damage to the copyright holder from 100,000,000 VND to under 500,000,000 VND or goods infringing the value from 100,000,000 VND to under 500,000,000 VND shall be fined from 50,000,000 VND to 300,000,000 VND or reformed without detention for up to 03 years. Depending on the nature and extent of the violation, the fine may be from 300,000,000 VND to 1,000,000,000 VND or imprisonment from 6 months to 3 years.

The laws on intellectual property have not clearly defined what is a reasonable quotation, but only mention specific cases in Decree 131/2013/ND-CP, dated October 16, 2013, on administrative penalties for copyright and related rights and Decree 28/2017/ND-CP, dated March 20, 2017, amending and supplementing some articles of Decree 131/2013/ND-CP, dated October 16, 2013, on administrative penalties for copyright and related rights and Decree 158/2013/ND-CP, dated November 12, 2013, of the Government on administrative penalties for violations in the fields of culture, sports, tourism and advertising.

According to the law, the act of infringing on the right to name, or title work is subject to a fine of 2,000,000 VND to 3,000,000 VND for using a work without stating the real name, pen name of the author, the title of the work, or stating incorrect real name or pen name of the author, the title of the work on a copy of the work, recording, video recording, broadcasting program. In addition, the subject who infringes must publicly correct false information on mass media; forced to correct the real name of the author, the title of the work on a copy of the work, recording, video recording, broadcasting program with incorrect information about the real name of the author or title of the work. The act of infringing on the integrity protection right of a work is subject to a fine from 3,000,000 VND to 5,000,000 VND for unauthorized repair or cutting of a work that harms the dignity and reputation of the author. A fine from 5,000,000 VND to 10,000,000 VND is imposed for distorting a work that harms the dignity and reputation of the author. In addition, the subject who infringes must also take remedial measures such as publicly correcting false information on mass media; forcing others to remove electronic copies that violate copyright laws on the internet and digital environments, or forcing others to destroy infringing objects for acts above.

5.2 Handling acts of copyright infringement in Universities: In Vietnamese law, the authorities responsible for handling acts of copyright infringement are divided according to the measures applied to handle acts of intellectual property infringement. The competent authorities include the Court, Inspectorate, Market Management, Customs, Police, and People's Committees at all levels. The application of civil and criminal measures falls under the jurisdiction of the Court. In case of necessity, the Court may apply temporary

emergency measures according to legal regulations. The application of administrative measures falls under the jurisdiction of the Inspectorate, Police, Market Management, Customs, and People's Committees at all levels. In case of necessity, these agencies may apply preventive measures and ensure administrative penalties according to legal regulations. The application of measures to control exports and imports related to intellectual property ownership falls under the jurisdiction of the customs authorities.

The act of infringing on the author's rights in universities (such as copying works improperly, unreasonable citation, and plagiarism) is essentially under the jurisdiction of the court. When the intellectual property owner discovers that the infringing party has infringed on one or more intellectual property rights, the owner has the right to choose to sue the infringing party in court and apply civil remedies to the infringing party.

The jurisdiction to resolve disputes regarding intellectual property infringement is specifically defined in the 2015 Civil Procedure Code. Article 26, Section 4, and Article 30, Section 2 of the Code have established that disputes over intellectual property rights and technology transfer will fall under the jurisdiction of the court. The competent authorities to apply civil remedies here are understood to be the dispute resolution authorities, 2015 Civil Procedure Code to include district people's courts, provincial people's courts, high people's courts, and the Supreme People's Court. The court usually imposes a series of sanctions to compensate the intellectual property owner for the infringement, such as compensation for damages, court orders, profit declarations, and orders to surrender infringing goods... As for criminal measures, an individual or legal entity is only considered to have committed an offense and criminal responsibility when there is a valid judgment or decision of the competent court. Simply put, the court is the only agency that can force intellectual property infringers in particular and criminals, in general, to bear criminal responsibility and apply criminal measures. This has been recorded in the 2015 Criminal Law, amended and supplemented in 2017. These measures may include imprisonment, fines... During the process of resolving civil claims, and criminal cases involving intellectual property infringement, when it is deemed necessary, the court will apply temporary emergency measures.

In addition, disciplinary action may be taken against, depending on regulations, disciplinary action may be taken against individuals who commit acts of infringement on each school's scientific management regulations. Specifically, Can Tho University stipulates that during the use of textbooks and study materials, if there are complaints about copyright or scientific content, depending on the level of violation, the Rector will consider and handle or propose competent agencies to handle according to current regulations (Đại học Cần Thơ, 2015).

The University of Law of Ho Chi Minh City has detailed regulations on the forms of handling copyright infringement such as reprimanding, deducting 25% to 50% of the score for violating works, temporarily suspending the protection work, evaluating and testing works (from 3 months to 12 months), not protecting, testing works; canceling the results of protecting graduation thesis for essays, dissertations, scientific research projects (Đại học Luật Thành phố Hồ Chí Minh, 2015).

The University of Social Sciences and Humanities has regulations on the forms of handling plagiarism in cases where the work has passed the system's requirements but there is evidence of plagiarism during the appraisal and evaluation session. Depending on the violation level, the work's appraisal and evaluation will be temporarily suspended for 1 to 3 months (if there is still a research/training period). After the temporary suspension period, if the revised work does not meet the requirements, the Department of Foreign Affairs and Scientific Management, Postgraduate Department, and Training Department will not organize the evaluation and testing of the work. In case of plagiarism discovered after publication, protection, or testing, the evaluation and testing results of scientific research projects will be canceled; published scientific research publications will be withdrawn; bachelor's, master's, and doctoral degrees will be suspended or revoked. The form of handling, depending on the nature, level, and consequences of the violation, may include reprimanding, warning, temporarily suspending study with a deadline, or expelling from school. For civil servants and employees in the unit, if there is a violation, they may be reprimanded, warned, have their salary increase delayed for no more than 06 months, demoted, dismissed, or terminated. In addition, copyright infringement may be handled by the competent authority by intellectual property law regulations (Trường Đại học Khoa học xã hội và Nhân văn, 2020).

The University of Economics and Law of Ho Chi Minh City has regulations on the forms of punishment for one or more forms such as delaying the protection and evaluation of works for some time (from 01 to 06 months), not protecting, evaluating works; deducting from 25% to 50% of the score for violating works if the violation has not been corrected or has not met the requirements; canceling the evaluation results of works including essays, dissertations, graduation theses, graduation reports/essays, and scientific research projects that violate citation regulations (Trường Đại học Kinh tế - Luật, 2019).

In general, universities have different regulations on the forms of handling copyright infringement, and the forms of handling are limited to the internal framework of the university. It is necessary to regulate the handling forms to curb copyright infringement and raise awareness of learning and scientific research among faculty, lecturers, and students.

6. Realities and Some Solutions to Curb Common Infringements of Copyright in Vietnamese Universities

In recent years, intellectual property laws in Vietnam have undergone distinct improvements in the context of adapting to global integration. The issuance, revision, and supplementation of intellectual property laws aim to affirm the determination of the Vietnamese Party and State to promote creative activities and scientific research in various societal domains. However, the reality demonstrates that certain organizations and individuals have not fully grasped the benefits and value of establishing and safeguarding intellectual property, especially in universities.

6.1. *The reality of intellectual property infringement behavior in universities in Vietnam.*

The main subjects who commit copyright infringement in universities are mainly lecturers and students. In addition to teaching, lecturers also have to carry out scientific research tasks, which can take the form of projects, topics, textbooks, books, and newspapers... to consolidate the theoretical basis of research. Quoting related works is inevitable. For students, copyright infringement can occur during the learning process, performing specialized topics, assignments, graduation theses, or scientific research topics. In a comparative study of plagiarism among Vietnamese and New Zealand students, authors Minh Ngoc Tran, Linda Hogg, and Stephen Marshall pointed out that there are differences in students' perceptions arising from many factors rather than just the system they were educated in. The findings confirm that culture cannot be regarded as a simple explanation for plagiarism perception or behavior, challenging the inherent bias in treating students from different cultural backgrounds. Clear differences arise from factors such as the English language and skills, such as the more lenient attitude of Vietnamese students towards writing. There are also strong influences based on the level of study, as observed between Master's and doctoral students, as well as the experience in the role of formal teaching (Tran & Marshall, 2022).

The relationship between the two main entities, the lecturer and the students, is a reciprocal interaction. The infringement of copyright can be considered in various aspects. Firstly, students can infringe the copyright of lecturers through their works such as reference books, newspapers, specialized journals, lecture slides, audio and video recordings, etc. Secondly, lecturers can infringe the copyright of students by guiding them in the completion of topics, reports, projects, and graduation theses. Additionally, universities can also be subject to copyright infringement through the reproduction of books and textbooks that are owned by the university.

Copying works within a university setting is not a new phenomenon, but researchers and public opinion must seriously reconsider the issue. In 2017, the University of Law in Ho Chi Minh City issued Decision No. 41-QD/DHL, disciplining a female student by suspending her studies for one year due to the unauthorized printing and distribution of textbooks and learning materials, in violation of the university's regulations and the law. It should be acknowledged that photocopying textbooks for studying is not considered an unauthorized act. However, the 2022 amendment to the Intellectual Property Law introduces a new provision stating that photocopying for educational purposes, without an intention for commercial use, is an unauthorized act unless it meets certain exceptions. When photocopying a work does not meet the conditions of the "three-step test" under the Berne Convention of 1971 and does not fall under the exceptions specified in Vietnamese law, it is considered an infringement of the copyright.

In terms of quality control, evaluation, and acceptance of intellectual property products at universities, there are many issues, among which the reliability of data and input data is noteworthy. These factors are generally considered and evaluated superficially and formally by thesis committees, as well as research project evaluation committees, even at the highest level. Many research projects receive significant funding from foreign sources or the state budget, but the acceptance process is loose and often overlooks the examination of academic integrity standards. Meanwhile, publishers and specialized journals also tend to underestimate the scrutiny and evaluation of the authenticity and reliability of citations, data, and input data. This context has created conditions for works that violate the standards of "academic integrity" to bypass the "filter", further exacerbating the current situation and the potential for subsequent accusations and lawsuits related to "plagiarism" and "documentary manipulation" (Vũ Công Giao, 2017).

6.2 *There are several solutions to combat copyright infringement in Vietnamese universities*

When comparing the "three-step test" under the Berne Convention and the Vietnamese legal system regarding copyright issues in the context of universities, it is essential to examine the recognition of copyright infringement and the practicality of handling such infringements in Vietnam. It is acknowledged that the current Vietnamese Intellectual Property Law has fundamental mechanisms for protecting copyright. However, within universities, the legal awareness of intellectual property and copyright, despite being widely propagated and regulated by guidelines for addressing copyright infringement, as well as instructions on proper citation according to the law, remains a common issue. Copyright infringement in higher education institutions still occurs frequently, where some staff and teachers may unintentionally violate copyright when conducting teaching, learning, and scientific research activities. To enhance legal awareness, honesty, integrity, transparency, and responsibility in research,

teaching, and learning activities, several measures are proposed to curb copyright infringement in universities.

Firstly, in terms of the legal framework, it is necessary to amend Decree No. 22/2018/ND-CP (luật, 2018), towards developing quantitative criteria for citation. Additionally, there should be a limitation on the percentage of content from a work that can be used for citation purposes. This regulation aims to protect authors and ensure academic integrity in research, enhancing the quality of research works, particularly encouraging innovative creativity within universities, where knowledge is continuously generated. Moreover, it is important to specify the number of works that can be copied for library preservation purposes, with a specific limit of one or two copies. This is necessary to prevent excessive copying in libraries, which can adversely affect the normal exploitation rights of the authors.

Secondly, there is a need to establish a strategy for managing intellectual assets and a policy to support the identification of intellectual assets within the university. In a study, authors Weedon and M.r. SheenL pointed out that higher education has transformed itself into a major business enterprise, resulting in greater consideration for managing its assets. Universities have no other purpose than to create, disseminate, understand, and develop knowledge, and inevitably, the issue of intellectual property management as a collective management entity cannot be ignored. The majority of intellectual assets of a university are protected by rules and regulations. Furthermore, the study also mentioned that any intellectual asset deemed to have commercial value is controlled, but no standardized copyright control strategy applies to all universities (Weedon & M. R. SheenL, 2000). Therefore, depending on the conditions and strategic orientation, Vietnamese universities need to develop specific strategies that are suitable for their circumstances. This includes conducting regular training sessions and promoting awareness about intellectual property laws for faculty members and students. Annually, activities should be implemented to review and evaluate scientific research, review and adjust internal regulations on handling copyright infringement by the university's policies and intellectual property laws. Encouraging and supporting the establishment of "Academic Clubs" with core members being faculty members from various departments. These clubs aim to promote innovative activities, exchange experiences and regularly conduct training sessions for faculty members and students to disseminate knowledge about intellectual property laws and the university's regulations regarding copyright, copying, citation, and measures to address copyright infringement. In line with this perspective, in a copyright policy study, authors Kathryn Ann Loggie and colleagues recommend that universities recognize and promote the traditional academic freedom of their staff members to create and disseminate knowledge. Universities strive to establish a respectful environment that allows staff members to create and publish works without restrictions (Loggie, 2006).

Thirdly, it is necessary to establish a network of specialized training institutions for each field. For example, there is a network of Law training institutions in Vietnam called VLSN with 55 members. The members of this network will develop a common scientific management regulation and share information on books, textbooks, scientific topics, dissertations, and theses of faculty members and students. Universities within the system should consider building inter-university mechanisms to control actions that violate copyright laws. Similarly, in a study on copyright ownership of teaching and online learning materials, authors Elizabeth and Ralph Weedon recommend that universities regularly review their copyright policies in collaboration with academic staff, individuals, and organizations investing in any form of online learning. These policies should ensure ownership rights during performances, even for non-employees and for employees after the termination of their contracts. To achieve this goal, universities will be greatly supported by a sector-wide agreement on rights and reuse requirements involving all relevant parties in producing electronic learning materials (Elizabeth & Weedon, 2017).

Fourthly, for student theses and dissertations, it is essential to establish the responsibilities of the supervising faculty members and the evaluation boards. The University of Malaya, one of the earliest universities in Malaysia, has regulations regarding the responsibilities of the supervising faculty members and the evaluation boards. According to these regulations, the university will design templates for thesis and dissertation reports for students and research scholars. If there are grounds for suspicion of academic misconduct, the report must include evidence of plagiarism. If the evaluation board concludes that the percentage of plagiarism exceeds 30% as stipulated, disciplinary measures appropriate to the circumstances may be imposed (Universiti Malaya, 2020). The author agrees with these regulations because the practice of academic misconduct, specifically plagiarism, is prevalent in many higher education institutions in Vietnam. Additionally, when invited to serve on evaluation boards, many faculty members have the mindset of "benefits received, benefits spoken, and benefits taken away." Therefore, it is necessary to clearly define the responsibilities of faculty members and evaluation board members to control plagiarism by students and researchers.

7. Conclusion

In recent years, Vietnamese universities have increasingly emphasized managing and enforcing copyright protection through internal regulations. Some universities have taken the lead in issuing regulations for scientific management within their institutions. However, these regulations are not yet fully refined, and there is a lack of

consistency among different educational institutions nationwide. Some private universities have shown little concern for enforcing and protecting copyright.

Using the "three-step test" under the Berne Convention of 197, the article identifies instances of copyright infringement in Vietnamese universities. To enhance the awareness of faculty members, lecturers, students, and researchers regarding copyright, universities need comprehensive strategies for managing intellectual property assets. They should establish appropriate management and monitoring mechanisms to enforce copyright protection and issue synchronized and standardized guidelines for handling copyright-related matters. These efforts aim to promote research, innovation, and creativity while aligning with the overall goals of the Communist Party and the State of Vietnam and complying with international regulations and standards.

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