

## Topic 3: Copyright Law in Cambodia-Rights of Reproduction

Mr. SIM Sarak, General Director of Administration and Finance,  
Ministry of Culture and Fine Arts

### I. INTRODUCTION

The legal basis of modern Copyright and Related Right Law rests on the Berne Convention (1971) on the Protection of Literary and Artistic work and the Rome Convention (1961) on the Protection of Performers, Producers of Phonogram and Broadcasting Organizations. Reproduction right constitutes exclusive right or pillar of author's right. In the globalization age, reproduction right is severely infringed due to reproduction of work without authorization from the author or right-holder. The unauthorized reproduction causes great losses to the author or the right-holder, to nation's business; and it also obstructs cultural development, especially creation of new work which would increase cultural property for the Society's interest.

### II. LAW ON COPYRIGHT AND RELATED RIGHTS OF THE KINGDOM OF CAMBODIA

In order to safeguard author's interest, to protect cultural value, to develop national economy and to integrate Cambodia economy into the World's, Cambodia enacted the law on Copyright and Related Right. This law was promulgated by the King of the Kingdom of Cambodia, on the 5th of March 2003, through the Royal Decree NS/RKM/0303/008. The law contains 8 chapters and 68 articles.

### III. RIGHT OF REPRODUCTION

The law on copyright and Related Right mentions the Right of Reproduction in the article 2(m) which reads *Reproduction is the whole or partial making one or more copies of a work or phonogram in any manner or form, including any permanent or temporary storage of the work or phonogram in electronic form.* In addition, article 21(f) reads *the author has exclusive right to act by him/herself or authorize someone to do reproduction of work.* These articles are to affirm that Reproduction of a work for exploitation absolutely requires the author's authorization.

Our copyright law is based on provisions of the article 9 of the Berne Convention which reads *authors of literary and artistic works shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.*

Reproduction could have forms of printing, photocopying, scanning, digital copying for instance

on CDs and DVDs and electronic storage in databases.

The exclusive right to authorize the reproduction a work shall not apply with limitation of right or exceptions stipulated in the article 9(2) of the Berne Convention, which reads

*It shall be a matter for legislation in countries of the union to permit 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.*

The scope of exceptions and limitations to the exclusive right is also stated in the TRIPS agreement, an agreement administered by the WTO. Article 31 of the TRIPS reads *Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the interests of the right holder.*

The WIPO copyright Treaty also sets up the same principles in its article 10. Limitations and exceptions to the exclusive rights shall be permissible as long as 3 requirements are met:

- Limitations and exceptions made only for certain special cases (but not for general cases)
- Limitations and exceptions shall not conflict with a normal exploitation of the work
- Limitations and exceptions shall not unreasonably prejudice the legitimate interests of the author.

In Cambodia, limitations of the author's rights are found in articles 23, 24, 25, 27, 28 and 29. Article 23 stipulates that the importation of a copy of a work by any natural person for his/her personal use can be done without the consent of the author. Article 24 allows a private reproduction of a work, but this article shall not extend to the reproduction of architecture work, of a book, of a musical work in the form of musical notation, of a database in a digital form, and of any work where reproduction would unreasonably prejudice the legitimate interests of the author or the right-holder.

In case of having no heir or will in the articles 19 and 33, the Ministry of Culture and Fine Arts shall govern and administrate the work. This means that any reproduction for exploitation of a work of no heir or will shall require authorization from the Ministry of Culture and Fine Arts.

#### **IV. SITUATION FROM 2003 to 2008**

- A. From September 2003, the Ministry of Culture and Fine Arts has adopted a policy of enhancing knowledge on the Law on Copyright and Related Rights for civil servants, authors, artists, students, general public and other relevant persons:
- Spreading knowledge of the law to 20 provinces and municipalities.
  - Spreading knowledge of the law through TVK, Bayon TV, Kosh Sante Pheap Newspaper...
  - Training the law to students of the Royal University of Law and Economics...
- B. The Ministry enforces the law very well through the Inter-ministerial Committee to Suppress of illegal Video and cinematography.

#### **V. FUTURE ACTION PLAN**

From 2009, there shall be vigorous enforcement of the Copyright law as to encourage new work, to develop national Culture and to safeguard cultural products of Cambodia as a WTO member. However, the first step to take is to establish a COLLECTIVE MANAGEMENT ORGANIZATION.